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The Secretary,
Central Electricity Regulatory Commission,
3rd & 4th Floor, Chandralok Building, 36, Janpath,
New Delhi -110001

Subject: Comments on behalf of L&T IDPL on the proposed Draft CERC (Sharing of Inter-State Transmission Charges and Losses) Regulation, 2019

- It is submitted that the efforts made by Hon'ble Commission to bring out Sharing of Inter-State Transmission Charges and Losses Regulations, 2019 in a progressive, clean and structured manner is appreciable and we welcome the move as it is going to benefit and protect the interest of all the stakeholders present in Power sector. We are sure that the consultative approach being followed by the Commission in finalizing the Sharing of Inter-State Transmission Charges and losses will protect the interest of all the stakeholders and help the economy to attract more investments.
- We may further request to the Hon'ble Central Commission to upload the Explanatory Memorandum for the Draft CERC (Sharing of Inter-State Transmission Charges and Losses) Regulation, 2019 as well to enable better and purposeful understanding on the subject as in some parts reasoning is not clearly visible. Without prejudice to these, our comments on Draft Regulation are as follows:

Sr. No.	Regulation No.	Existing Regulations - CERC (Sharing of Inter-State Transmission Charges and Losses) Regulation 2010	Proposed Regulations - CERC (Sharing of Inter-State Transmission Charges and Losses) Regulation 2010	Our Suggestions
1	Regulation 3 (3) - Principle of Sharing Transmission Charges	New clause which was not present in CERC regulations, 2010	The transmission charges for transmission system after such transmission system has achieved COD with regular service, shall be shared by DICs in accordance with Regulations 5 to 8 of these regulations.	<u>Suggested modification:</u> <ul style="list-style-type: none"> • In terms of proposed regulation, DICs are required to share transmission charges for transmission system which has been put to <i>regular service and achieved the COD</i> • However, it is to mention here that in terms of TSA, once any element or project has declared to have achieved COD, Transmission licensee (TL) should be eligible for Transmission Charges irrespective of whether that is regular or non-regular Services. • Also, definition of regular and non-regular service has not been defined in Regulation. • The Proposed Regulation is non-explanatory to the fact that TL may be

				<p>required to provide number of non-regular service to others such as startup power, auxiliary supply of power to generating companies etc. Hence, these transmission charges shall not be shared with DICs and should remain paid to TL.</p> <ul style="list-style-type: none"> • Therefore, it is requested to bring clarity regarding payment of Transmission charges for Startup power/Auxiliary Supply of power after CoD.
2	Regulation 3(4) - Principles of sharing transmission charges and 11(1)(C)- Transmission charges in Specific cases	New clause which was not present in CERC regulations, 2010	<p>Long Term Access or Medium Term Open Access for projects covered under clause (1) of Regulation 11 shall not be considered for apportionment of transmission charges under regulations 5 to 8 of these regulations.</p> <p>As per Rule 11(1), inter alia, no transmission charges and losses for the use of ISTS shall be payable for solar and wind generation for the useful life of the projects.</p>	<ul style="list-style-type: none"> • Joint reading of the Regulation 3(4) and 11(1)(C) shows that Hon'ble CERC would like to promote the Renewable Energy despite the fact that it lacks the said function under the Electricity Act, 2003 because: Section 86 (1) (e) of the Act, 2013 provides as under: <p><i>"The State Commission shall discharge the following functions, namely:</i></p> <p><i>(e) promote congeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution license"</i></p> <p>However, under Section 79 of the Indian Electricity Act, 2003, the Central commission was not assigned such functions of promoting the Renewable Energy.</p> <p>Therefore, in our humble submissions, it is to mention that Hon'ble Central Commission lacks such power to promote Renewable Energy and should not bring this provision under Draft Sharing Regulations, 2019 as it is exclusively of SERC's domain.</p>
4	Regulation 11 (5) - Transmission	New clause which was not present in CERC regulations, 2010	Where Long Term Access to ISTS is granted to a generating station on existing margins and COD of the generating station or	<ul style="list-style-type: none"> • It has been proposed in the draft Regulation that Generating stations are required to pay 10% of transmission charges for the state where it is located where LTA is granted and CoD of generating station is delayed.

	charges in specific cases		unit(s) thereof is delayed, the generating station shall pay transmission charges @10% of transmission charge for the State where it is located for the quantum of such Long Term Access.	<p>It is to be noted here that LTA needs to be operationalized based on the commissioning of Transmission System and having no relevance to COD of Generation Plant / unit(s). Hence, If the Generating station will pay only 10% of transmission charges for the State (state pays of concern DIC) where it is located for the quantum of such long term Access, then in that case remaining 90% of Transmission Charges would be paid by whom to Transmission Licensee.</p> <p>Also, proposed regulation is silent whether Generating Station with LTA to target region is having identified Beneficiaries or Un-identified beneficiaries.</p> <p>In view of aforesaid, we request the Hon'ble Commission to provide the explanatory memorandum and also amend the Regulation 11(5) suitably so that 100% of Transmission charges can be recovered in all cases where LTA is granted and CoD of Generating station is delayed irrespective of identified or un-identified beneficiaries.</p>
5	Regulation 11 (7) and (11) – Transmission Charges in Specific case.	New clause which was not present in CERC regulations, 2010	<p>Regulation 11(7): In case the generating station or unit(s) thereof has achieved COD and transmission system is delayed, the concerned transmission licensee(s) shall make alternate arrangement for dispatch of power in consultation with Central Transmission Utility at the cost of the transmission licensee(s).</p> <p>Provided that till such alternative arrangement is made, the transmission licensee(s) shall pay to the generating station the transmission charges proportionate to Long Term Access for the transmission system which is delayed.</p>	<ul style="list-style-type: none"> • The rolls, responsibilities and liabilities of Transmission Licensee (TL) is defined in the TSA. Therefore, in case of any delay, the TL should be held liable as per the provisions of TSA only and accordingly LD should be imposed as per the provisions of TSA. The TL cannot be held liable beyond what is specified and agreed in the TSA; otherwise this would tantamount to unlimited liability and it will become impossible to get these projects financed and investors may also lose interest in such projects • It may also be appreciated that there may be a substantial difference between the Capex of TL & Generation Developer and therefore, TL cannot compensate the Generators by any stretch of imagination. • It may also be appreciated that it was the decision of the beneficiaries through the planning agencies, to have separate contracts with Generation Developer and TL. Therefore, the benefits of such structuring of contracts accrue to the beneficiaries in the form of lower tariff. Therefore, in case of

			<p>Regulation 11(11): Where a transmission system has been declared to have achieved deemed COD in terms of Transmission Service Agreement under Tariff Based Competitive Bidding (TBCB) or the Commission has approved the date of commercial operation of such transmission system in terms of clause (2) of Regulation 5 of Tariff Regulations, 2019 or proviso (ii) to clause (3) of Regulation 4 of the Tariff Regulations, 2014, the transmission licensee or generating company whose transmission system or generating station or unit thereof is delayed shall pay the transmission charges of the transmission system till the generating station or unit thereof or the transmission system achieves COD. Provided that where more than one transmission licensee or both transmission licensee and generating station are getting delayed, the proportionate sharing of above transmission charges shall be as decided by Commission.</p>	<p>delay in CoD of any of the assets, the tariff for other assets should be borne by the beneficiaries, through the pool account.</p> <ul style="list-style-type: none"> • The delay in commissioning of the Transmission project can also be on account of uncontrollable force majeure (FM) events, which are beyond the control of the licensee. In such a case of delay due to FM, the other party needs to be paid their dues. Therefore, the proposed Regulation is not good in law and should be removed. In all such cases, the payment to party who has completed its obligations, should be made from pool account. • It is understood from proposed regulation that the concerned TL shall make alternate arrangement for dispatch of power in consultation with Central Transmission Utility at the cost of the TL. Practically, it would be very difficult for TL to make alternate arrangement for dispatch of power because of the reasons that 1) it may not own the other asset and to convince the CTU i.e. PGCIL being one of the largest commercial player / TL would be difficult and may have conflict of interest. .
6	Regulation 11 (8) - Transmission Charges in Specific case.	New clause which was not present in CERC regulations, 2010	<p>Where construction of dedicated transmission line has been taken up by the Central Transmission Utility as part of coordinated transmission planning and is constructed by an inter-State transmission licensee, the Yearly Transmission Charges for such dedicated transmission line shall be payable by the generating station in proportion to the Connectivity granted and for</p>	<ul style="list-style-type: none"> • The proposed regulation is directly in teeth of Section 10 of Electricity Act, 2003 which defines the duties of generating companies as "Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, substations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder."



			<p>which Long Term Access is not operational. Such transmission charges shall be payable to the inter-state transmission licensee who has constructed such dedicated line.</p>	<ul style="list-style-type: none"> In view of aforesaid provision, it is clear that the dedicated transmission line shall be constructed by generating company(ies), while proposed regulation emphasizes the construction of dedicated transmission line by Inter State Transmission Licensee which is in conflict of the duties spell out as per provision of Electricity Act, 2003. Therefore, we request Hon'ble Central Commission to come up with detailed understanding note under what circumstance ISTS may construct the dedicated transmission line and justification/explanations thereof.
7	Regulation 11(12) – Transmission Charges in Specific cases	New clause which was not present in CERC regulations, 2010	<p>An Intra-State Transmission System already certified by the respective Regional Power Committees being used for inter-State transmission of electricity and for which tariff has already been approved by the Commission, shall be covered under these Regulations: Provided that such intra-State Transmission System shall be included under these Regulations only for the tariff period for which tariff has already been approved by this Commission.</p>	<ul style="list-style-type: none"> As proposed regulation is published by CERC while the powers are conferred with State Commission for regulating the Intra-State Transmission lines. We would need to appreciate the fact that some of State commissions are not determining tariff transmission line wise. E.g. Uttarakhand Commission determined the tariff on overall basis and not at the transmission line level.
8	Regulation 13(3): Billing	New clause which was not present in CERC regulations, 2010	<p>No transmission Charges shall be levied for Inter-State transmission system in respect of Short Term Open Access transactions.</p>	<ul style="list-style-type: none"> It is submitted that proposed regulation is likely to give contradictory treatment between Long term, Medium term and Short term open access transaction. In such situations, DICs will be discouraged to take Long Term/Medium Term access and investors may not be interested in making investments in such projects It is also not out of place to mention that the proposed regulation should have been mentioned in regulation 11 under the head of Transmission charges in specific case inspite under the Regulation 13 i.e. Billing. This important issue might be overlooked by other

				stakeholders who are interested in Billing and other procedures.
9	Regulation 15 – Rebate and Late payment charges	New clause which was not present in CERC regulations, 2010	The rebate and late payment surcharge shall be governed in accordance with the Tariff Regulations, 2019 or the Tariff Regulations for subsequent period to be notified by the Commission, as the case may be.	<ul style="list-style-type: none"> As Tariff Regulations do not specify the priority of apportionment of Payment among Late Payment Surcharge, past dues, Current dues etc. This encourages Discoms to delay the payments as the LPS remains static. Consequently, Transmission Licensee would have to incur higher working capital. Further, it is to mention that as Discoms typically tends to delay payment of Transmission Charges Bills, so in order to bring discipline in the payment by the Discoms, LPS rate of 1.5% per month may be retained and in case of further delay in payments of LPS, an interest on LPS for may also be charged and granted This anomaly was very well addressed in the competitive bidding PPA's by stipulating priority of apportionment of payment. Therefore, it requested to Hon'ble Central Commission to incorporate similar provision in the proposed Regulation with payment appropriation priority as follows: <ul style="list-style-type: none"> i. Amount Received is first adjusted against Outstanding Late Payment Surcharge. ii. Balance Amount if any is adjusted against Past Arrears if any. iii. Balance Amount if any is adjusted against Current Months Dues. Alternatively, LPS should be allowed on compounding basis. This is appropriate considering the fact that all the accounting is on compounding basis.
10	Regulation 16(2) : Letter of Credit	New clause which was not present in CERC regulations, 2010	The Letter of Credit shall have a term of 12 (twelve) months and shall be for an amount equal to 1.05 (one point zero five) times the average amount of the First Bill for a year, where tripartite agreement for securitization on account of arrears against the	<ul style="list-style-type: none"> As Draft regulation has proposed to calculate letter of credit equal to 1.05 times the amount of first bill for a year. In this regard, it is submitted that as regulation specifies calculation of First bill on various components of transmission charges e.g. National Component, Regional Component,



			transmission charges with the Government of India exist	transformers component and AC system Component and the Letter of credit is to be produced before the initiation of Billing cycle. Hence, in linking Letter of credit to First bill will not give effective results. Therefore, we request Hon'ble Commission to calculate the Letter of credit on the basis of approved Yearly transmission charges and suggest the following amendment in the proposed regulation: <i>"The Letter of Credit shall have a term of 12 (twelve) months and shall be for an amount equal to 1.05 (one point zero five) times the amount of 1/12th of the Approved Yearly Transmission Charges, where tripartite agreement for securitization on account of arrears against the transmission charges with the Government of India exist"</i>
9	Regulation 16(7) – Letter of Credit	New clause which was not present in CERC regulations, 2010	If a DIC fails to pay any bill or part thereof on or before the Due Date, the Central Transmission Utility may encash the Letter of Credit, and, for amount of the bill or part thereof that is overdue plus Late Payment Surcharge, if applicable, by presenting to the scheduled bank issuing the Letter of Credit, the following documents: (a) a copy of the Bill, which has remained unpaid or partially paid by such DIC; and (b) a certificate from the Central Transmission Utility to the effect that the Bill at item (a) above, or specified part thereof, is in accordance with these Regulations and that it has remained unpaid or partially paid beyond the Due Date; and (c) Calculations of applicable Late Payment Surcharge, if any.	<ul style="list-style-type: none"> As the proposed regulation shows the leniency on part of CTU towards DICs while using word "MAY" to encash LC in case DICs fails to pay bills on time, will further give leeway to DICs to not pay Bills on times. Therefore, We would request Hon'ble Central Commission to amend the regulations as below: <i>"If a DIC fails to pay any bill or part thereof on or before the Due Date, the Central Transmission Utility SHALL encash the Letter of Credit, and, for amount of the bill or part thereof that is overdue plus Late Payment Surcharge, if applicable, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:"</i> Further, Proposed regulations proviso emphasizes that any failure or delay in presenting the document to Banker for encashment of LC shall not attract any LPS on DIC. In this regard, we would like to submit that since transmission licensee would suffer delays in realization from

			<p>Provided that the failure on the part of the Central Transmission Utility to present the documents for encashment of the Letter of Credit shall not attract any Late Payment Surcharge, for the duration of such failure on part of the Central Transmission Utility, on the DIC.</p>	<p>encashment of LCs, any delay due to presentation of documents to Bank should be to the account of DICs or CTU and TL shall be eligible for LPS on such delay days.</p>
10	Regulation 18 (a) (b) – Event of Default of a DIC	New clause which was not present in CERC regulations, 2010	<p>The occurrence and continuation of the following events shall constitute a DIC Event of Default:</p> <p>(b) DIC fails to make payments against bills raised by the Central Transmission Utility under these Regulations within 60 days beyond Due Date.</p> <p>(2) Upon the occurrence and continuance of a DIC Event of Default, the Central Transmission Utility may serve notice on the concerned DIC, specifying the circumstances giving rise to such Notice.</p> <p>(3) Following the issue of such notice by the DIC, the concerned DIC shall take steps to remedy the default within 60 (sixty) days of issue of such notice.</p> <p>(4) After the expiry of 60 (sixty) days from the date of issue of notice, unless the circumstances giving rise to such notice as mentioned in clause (1) of this regulation shall have ceased to exist or have been remedied, the concerned DIC shall cease to be a DIC under these Regulations and the Central Transmission Utility shall issue a Termination Notice of 30 (thirty) days to this effect with a copy to the Commission and the Implementing Agency.</p> <p>Provided that in case of termination as DIC of an entity on account of DIC's</p>	<ul style="list-style-type: none"> • In terms of proposed Regulation 14, due date in relation to any bill shall be 45 days. Further, in Regulation 18 (b), Hon'ble Commission has proposed following timeline in case of event of default of a DIC <ul style="list-style-type: none"> ○ In case DIC fails to make payment within 60 days beyond due date than it will construed as event of default of DIC. ○ CTU shall serve notice to DIC in such cases ○ The concerned DIC shall take steps to remedy the default within 60 days of issue of notice ○ The CTU shall issue termination notice of 30 days after expiry of 60 days from date of issue of notice. • Therefore, it is clear from above that DICs will get 195 (45+60+60+30) days from date of bill to take steps to remedy the default. • It is pertinent to note that granting 195 days to take remedial steps is unreasonably long as Transmission licenses will have to manage the cash flow in the intermediate period of 195 days and Licenses may face default in repayment of their debt and working capital loans. Hence, we request Hon'ble Central Commission to restrict the time line of termination to the period of maximum 90 days. • We would also recommend Hon'ble Commission to change the language of the Regulation 18(3) as under: "Following the issue of such notice by the CTU, the concerned DIC shall take steps to remedy the default

		<p>event of default, the Long Term Access or Medium Term Open Access or both of such entity shall be cancelled. Such cancellation shall be treated as relinquishment of Long Term Access or Medium Term Open Access in terms of Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 and the said entity shall pay the relinquishment charges accordingly.</p> <p>(5) Upon termination of the status of DIC, the entity shall not be eligible for interchange of power under any form of open access unless such entity remedies the default and makes payment of all outstanding charges including relinquishment charges.</p>	<p><i>within 60 (sixty) days of issue of such notice."</i></p>
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for L&T Infrastructure Development Projects Ltd


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