

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

No. L-1/42/2010-CERC

Coram:

**Shri P.K Pujari, Chairperson
Shri I.S. Jha, Member
Shri Arun Goyal, Member**

Date: 21st February, 2021

In the matter of

Central Electricity Regulatory Commission (Regulation of Power Supply) (First Amendment) Regulations, 2021

Statement of Reasons

1. Introduction

- 1.1 In exercise of powers conferred under Section 178 of the Electricity Act, 2003 (hereinafter referred to as ‘the Act’) and all other powers enabling it in this behalf, the Central Electricity Regulatory Commission (hereinafter referred to as “the Commission”) proposed to amend the Central Electricity Regulatory Commission (Regulation of Power Supply) Regulations, 2010 (hereinafter referred to as “the Principal Regulations”) through draft Central Electricity Regulatory Commission (Regulation of Power Supply) (First Amendment) Regulations, 2020 (hereinafter referred to as “the draft Amendment Regulations”). The Commission posted the draft Amendment Regulations along with an Explanatory Memorandum on the website of the Commission on 16th July, 2020 inviting comments/ suggestions/ objections from the stakeholders and interested persons on the proposed amendments in compliance with the provisions of Electricity (Previous Publication) Rules, 2005. Comments have been received from 10 stakeholders which include State Power utilities, inter-State transmission licensees, associations, generating companies in the central and private sector. List of stakeholders who have given their comments is attached as Annexure-I.

- 1.2 The comments/ suggestions/ objections of stakeholders have been considered and the Central Electricity Regulatory Commission (Regulation of Power Supply) (First Amendment) Regulations, 2021 (hereinafter referred to as “the Amendment to the Principal Regulations”) has been finalised and posted on website of the Commission. Deliberations on the comments/ suggestions/ objections offered by the stakeholders on the draft Amendment Regulations and the decisions of the Commission thereon along with rationale have been discussed in the succeeding paragraphs. While an attempt has been made to consider all the comments/ suggestions/ objections received, the names of all the stakeholders may not appear in the deliberations. However, comments of all the stakeholders have been uploaded on the website of the Commission.
- 1.3 The CERC (Open Access in inter-State transmission) Regulations, 2008 has been referred to as “the 2008 Open Access Regulations” in this document.
- 1.4 The CERC (Terms and conditions of Tariff) Regulations, 2019 has been referred to as “the 2019 Tariff Regulations” in this document.

2. Regulation 2 of the Principal Regulations:

- 2.1 The draft Amendment Regulations proposed substitution of sub-clause (c) of Clause (1) of Regulation 2 of the Principal Regulations as under:

“(c) "Beneficiary" means the person who has been allocated electricity from a Central generating station or is being supplied electricity generated from an inter-State generating station through long term access or medium-term open access or who is a user of the inter-State transmission system, as the case may be;”

- 2.2 POWERGRID has suggested to include the words “or Independent Power Producers” after the words “inter-State generating station” stating that Independent Power Producers (IPPs) also supply electricity through long term access or medium term open access, and that the same is not covered under proposed amendment to definition of “Beneficiary”.

2.3 Analysis and Decision

- 2.3.1 Beneficiary is a person who avails (a) electrical energy and/ or (b) transmission access or (c) both. A beneficiary under the instant Regulations may be regulated for non-payment of dues to generating company or transmission licensee. Accordingly, the definition of ‘beneficiary’ has been modified to include all such persons who avail electricity from central generating stations, and other generating stations whose tariff

is determined or adopted by the Commission. Further, in so far as transmission is concerned, beneficiary is a person who is availing Long term Access or Medium term open access to inter-State transmission system or any user of the inter-State transmission system. Accordingly, the proposed Regulation has been modified as under:

“(c) "Beneficiary" means the person (i) who has been allocated electricity from a Central Generating Station; or (ii) who is being supplied electricity generated from a generating station whose tariff is determined or adopted by the Commission; or (iii) who is availing long term access or medium-term open access to inter-State transmission system; or (iv) who is a user of the inter-State transmission system”

2.4 The draft Amendment Regulations proposed for addition of a new sub-clause (e-i) after sub-clause (e) of Clause (1) of Regulation 2 of the Principal Regulations as under:

“(e-i) “Due date” for payment of outstanding dues shall be:

- i) as specified in Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 as amended from time to time, in respect of inter-State transmission system; or*
- ii) 45th day from date of presentation of bills in respect of generating companies covered under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019, as amended from time to time; or*
- iii) as per provisions of the respective Agreements for entities not covered under sub-clauses (i) and (ii) above.”*

2.5 Comments have been received from Ayana Power and MPPMCL.

2.5.1 Ayana Power has suggested that the due date should be reduced from 45 days to 30 days as the debt cycle is on monthly basis.

2.5.2 MPPMCL has suggested that proposed sub-clause (e-i) (i & ii) must also be made applicable to all entities irrespective of the provisions contained in the agreement for the sake of consistency and uniformity in the treatment of due date for all the stakeholders.

2.6 Analysis and Decision

2.6.1 Due date for bills has been retained as 45 days in line with the 2019 Tariff Regulations.

2.6.2 The payment modalities for entities shall be as per respective agreements, unless provided for in the relevant Regulations, as parties may agree for a different timeline for billing and settlement in their respective agreements, particularly in cases of PPAs under Section 63 of the Act.

2.6.3 Accordingly, the definition of “Due date” has been retained as proposed in the draft Amendment Regulations.

3. Amendment to Regulation 3 of the Principal Regulations:

3.1 The draft Amendment Regulations proposed for substitution of Regulation 3 of the Principal Regulations as under:

“3. Scope and Applicability: These Regulations shall be applicable to generating station, transmission system and beneficiary, where there is a specific provision in the Agreement between generating company and beneficiary or between transmission licensee and beneficiary, as the case may be, or in the relevant Regulations of the Commission, for regulation of power supply in case of non-payment of outstanding dues or non-maintenance of Letter of Credit or any other agreed Payment Security Mechanism.”

3.2 Comments have been received from Ayana Power and POWERGRID.

3.2.1 Ayana Power has inquired whether these Regulations will be applicable to the projects which are being allocated after International Competitive bidding by SECI and NTPC. It has further sought to know as to whether these Regulations will be applicable to the PPAs executed in past with SECI/NTPC or only to the new PPAs.

3.2.2 POWERGRID has suggested to include word “Inter-State” before the words ‘transmission system’.

3.3 Analysis and Decision

3.3.1 The Explanatory memorandum provided the rationale for proposed amendment as under:

“Transmission Service Agreement issued under CERC (Sharing of inter-State transmission charges and losses) Regulations, 2010 enabled CTU to undertake regulation of power supply under the 2010 Power Supply Regulations. However, Transmission Service Agreement is no more part of the 2020 Sharing Regulations. However, TSAs already signed continue to be applicable till expiry of the same in so far as they are not inconsistent with 2020 Sharing Regulations. Accordingly, amendment to Regulation 3 has been proposed to include the provision that regulation of power can be invoked if there is a provision in Agreement between generating company and beneficiary or the transmission licensee and beneficiary and also if there is a provision in the relevant Regulations of the Commission.”

3.3.2 Regulation 21 of the CERC (Sharing of inter-State Transmission charges and losses) Regulations, 2020 provides as under:

“Consequences of non-payment of dues by a DIC

Failure on the part of a DIC to make payment, in full, against the bills by the due date under these regulations shall make such DIC liable for action for any or combination of the following, by the Central Transmission Utility, on behalf of inter-State transmission licensee(s):

(a) regulation of power supply in accordance with the Power Supply Regulations 2010;”

3.3.3 The above Regulation empowers CTU to take action under the provisions of the Principal Regulations. Hence, irrespective of any agreement entered into between transmission licensee and DIC, the instant Regulations shall be applicable for regulation of power supply in case of non-payment of transmission charges, in part or full as per the 2020 Sharing Regulations.

3.3.4 The purpose of the instant Regulations is to ensure recovery of outstanding dues of the generating companies or transmission licensees from their respective beneficiaries and to ensure maintenance of payment security mechanism by such beneficiaries. The term “beneficiary” has been defined in the regulations. Therefore, the generation projects including those awarded by SECI and NTPC, whose beneficiaries conform to the definition of “beneficiary” shall be covered. Further, the Amendment to the Principal Regulations shall be applicable to the relevant PPAs which are executed prior to its notification, provided that there is specific provision in such agreements as regards regulation of power supply in case of non-payment of outstanding dues or non-maintenance of Letter of Credit or any other agreed Payment Security Mechanism.

3.3.5 The words “inter-State” has been added in the Regulation since the Commission regulates inter-State transmission of electricity.

3.3.6 Accordingly, the Regulation has been amended as under:

“3. Scope and Applicability: These Regulations shall be applicable to generating station, inter-State transmission system and beneficiary, where there is a specific provision in the Agreement between generating company and beneficiary or between transmission licensee and beneficiary, as the case may be, or in any other Regulations of the Commission, for regulation of power supply in case of non-payment of outstanding dues or non-maintenance of Letter of Credit or any other agreed Payment Security Mechanism.”

4. Amendment to Regulation 5 of the Principal Regulations:

4.1 The draft Amendment Regulations proposed for substitution of Regulation 5 of the Principal Regulations as under:

“5. A copy of the notice under Regulation 4 shall be forwarded by the Regulating Entity to the Regional Load Despatch Centre or State Load Despatch Centre in whose control area (s) the Regulating Entity is situated with a request to prepare implementation plan. Copies of the said notice and request shall also be served on other concerned Regional Load Despatch Centres, State Load Despatch Centres, Regional Power Committees and the Defaulting Entity. The said notice and request shall also be posted on the website of the Regulating Entity at least three (3) days in advance of the proposed date of commencement of regulation of power supply.

Provided that the Regulating Entity shall undertake to indemnify, defend and save concerned Regional Load Despatch Centre/State Load Despatch Centre and hold them harmless from any and all damages, losses, claims and actions, demands, suits, recoveries, cost and expenses, court costs, attorney fees, and all other obligations by or to third parties arising out of or resulting from the regulation of power under these regulations.”

4.2 Comment has been received from POWERGRID.

4.2.1 POWERGRID has suggested that indemnification as provided in the clause for RLDCs/SLDCs may also be extended to CTU as CTU is acting as Regulating entity to regulate the power of defaulting entity as per the responsibilities assigned to it under the 2020 Sharing Regulations.

4.3 Analysis and decision

CTU is discharging the functions of billing, collection and disbursement on behalf of the transmission licensees under the provisions of the 2020 Sharing Regulations. Therefore, the provisions for indemnification, if any, is a subject matter of the 2020 Sharing Regulations.

5. Amendment to Regulation 6 of the Principal Regulations:

5.1 Draft Amendment Regulations proposed to substitute the word “Regulated” with the word “Defaulting” in Regulation 6 of the Principal Regulations.

5.2 Comments have been received from NTPC, SRPC, POWERGRID and NHPC.

5.2.1 NTPC has suggested to add following proviso after Regulation 6 of the Principal Regulations:

“Provided that it shall be ensured by the concerned Load Despatch Centres that the Defaulting Entity during the period of regulation, has no access to procure power from Power Exchanges, and they shall not be granted Short Term Open Access.”

5.2.2 SRPC and NHPC have suggested for provision to deny the Defaulting Entity to procure power from power exchanges or under Short Term Open Access during the period of regulation of power supply.

5.2.3 POWERGRID has suggested that during the period of regulation of power supply, for defaults in payment of transmission charges, STOA to the regulated entity should be denied by NLDC/RLDCs under Regulation 25A of the 2008 Open Access Regulations from the date of commencement of regulation of power supply. POWERGRID has further suggested that when Regulation 25A of the Open Access Regulations is invoked independent of regulation of power supply, default trigger date for invoking Regulation 25A should be from the due date of payment of various charges covered under the 2008 Open Access Regulations.

5.3 Analysis and Decision

5.3.1 Short term open access is governed in terms of the 2008 Open Access Regulations. The Regulations 25A of the said regulations provide for denial of short term open access for default in payment of transmission charges, RLDC fees and charges, DSM charges etc. Any suggestion with regard to denial of short term open access can be taken up when amendment to the 2008 Open Access Regulations is taken up. Regulation 11A of the Amendment to the Principal Regulations provides as under:

“11A. Denial of grant of short term open access to a beneficiary, for default in payment of outstanding dues shall be governed in accordance with the provisions of Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008, as amended from time to time or any re-enactment thereof.”

6. Amendment to Regulation 12 of the Principal Regulations:

6.1 The draft Amendment Regulations proposed to substitute the word “Defaulted” with the word “Regulated” in Clause (1) of Regulation 12 of the Principal Regulations.

6.2 Comments have been received from NTPC and THDCIL.

6.2.1 NTPC has suggested to add another proviso under Regulation 12(1) of Principal Regulations as under:

“Provided also that in case of regulation of power supply from Renewable Generating Stations, liability to pay the energy charges corresponding to agreed CUF as per the PPA shall be of the Defaulting Entity.”

6.2.2 THDCIL has suggested that in case surplus regulated power is sold to any entity at less than the Energy Charge Rate of the generating station or generic tariff of the renewable generating station, the liability to pay for the loss of energy charge after all adjustment shall be that of the defaulting entity.

6.3 Analysis and decision

6.3.1 During the regulation of power supply, the share of power of the regulated entity in the generating station is put at the disposal of the generating station to sell to third parties or in the market to recover its dues. If the generating station is unable to recover its energy charge from such sale, the regulated entity cannot be penalized for that.

6.3.2 Any sale of power is a commercial decision of the generating station.

6.3.3 In Regulation 12(1), the words “Defaulted” has been replaced with word “Regulated”.

6.4 The draft Amendment Regulations proposed to delete Clause (2) of Regulation 12 of the Principal Regulations which is related to sale of regulated power by availing different forms of access.

6.5 Comments have been received from POWERGRID.

6.5.1 POWERGRID has suggested to retain the Regulation 12(2) with certain modifications as under:

“Open access in case of diversion of power shall be regulated in accordance with the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2009.”

6.6 Analysis and Decision

6.6.1 Since Regulation 12(2) mainly pertains to the open access for sale of regulated power in terms of appropriate regulations, the said provision has been retained. However, the inadvertent error regarding the year of the 2008 Open Access Regulations has been corrected as under:

“In Clause (2) of Regulation 12 of the Principal Regulations, in 3rd line, year ‘2009’ shall be replaced with the year ‘2008’”

7. Amendment to Regulations 14 and 18 of the Principal Regulations:

7.1 The draft Amendment Regulations proposed for substitution of Regulations 14 and 18 of the Principal Regulations as under:

“14. During regulation of power supply from a hydro generating station, the generating station may, in order to avoid spillage of water, sell the power rendered surplus, to any person in accordance with the provisions of Regulation 12 of these regulations. The loss of energy charge, in case of spillage of water, shall be made good from the revenue earned through sale of power rendered surplus due to regulation of power supply, on first charge, and the balance amount shall be adjusted in accordance with Regulation 13 of these regulations.”

“18. During regulation of power supply from a hydro generating station, the generating station may, in order to avoid spillage of water, sell the quantum of power rendered surplus, to any person in accordance with the provisions of Regulation 12 of these regulations. The loss of energy charge, in case of spillage of water, shall be made good from the revenue earned through sale of power rendered surplus due to regulation, on first charge, and the balance amount shall be adjusted in accordance with Regulation 16 of these regulations.”

7.2 Comments have been received from NHPC.

7.2.1 NHPC has suggested that in case of sale of regulated power through power exchanges, there could be an incidence of penal DSM Charges due to tripping/ forced outage as there is no provision for revision of schedule under collective transactions. In such cases, it may be permitted to adjust the DSM loss of generator in the regulated sale proceeds as part of incidental expenses before the same is passed on to the defaulting entity. This is also in line with the findings of the Commission at paragraph 59(b) of order dated 02.09.2015 in petition no. 142/MP/2012.

7.3 Analysis and decision

7.3.1 The referred para 59(b) of order dated 02.09.2015 in Petition No. 142/MP/2012 covers the case where the transmission licensee is the Regulating entity. In that petition, the Commission decided that UI (DSM) charges during tripping shall be considered as incidental expenses under Regulation 16 of the Principal Regulations. No decision has been taken for cases where the Regulating Entity is the generating station. The suggestion of NHPC requires amendment of Regulation 13 of the Principal Regulations which is not under consideration in the instant amendment.

7.3.2 Proposed amended provisions of Regulations 14 and 18 have been retained in the Amendment to the Principal Regulations.

8. Other amendments

8.1 NHPC has suggested that in Regulation 10, the word and number ‘Regulation 17’ may be changed to ‘Regulation 19’ as the mechanism for adjustment of dues by generating

company and transmission licensee in case of concurrent Regulation is discussed under Regulation 19.

8.2 Analysis and Decision

8.2.1 This is an inadvertent error. When Regulation 10 deals with concurrent regulation of power for default in payment to a generating company and transmission licensee, the corresponding provision for adjustment of payment received on account of regulation of power supply is Regulation 19 and not Regulation 17. Accordingly, “Regulation 17” mentioned in Regulation 10 of the Principal Regulations has been replaced with “Regulation 19”.

8.3 POWERGRID has suggested to modify Principal Regulation 15 to incorporate directions of the Commission in order dated 02.09.2015 in Petition No 142/MP/2012 related to (i) considering technical minimum requirement of thermal units and (ii) in place of “consultation” with generating company, information may be given to the generating company .

8.4 Analysis and decision

8.4.1 The Commission in order dated 2.9.2015 in Petition No. 142/MP/2012 decided as under:

“59. Summary of order:

(d) While formulating plan under Regulation 6 of Power Supply Regulations for RPS Regulations, there is a requirement to adhere to the technical minimum of a thermal generating unit. Moreover, `operating at technical minimum would increase heat rate, secondary fuel oil consumption and energy charge for which a generating station needs to be compensated. The technical minimum and the compensation for increase in heat rate, secondary fuel consumption and energy charge are proposed to be included in the Grid Code through amendment. Accordingly, technical minimum in case of regulation of power supply will be governed as per the amendment to be notified to the Grid Code

....”

8.4.2 Since no amendment has been proposed in Regulation 15, the suggestion of POWERGRID cannot be incorporated.

8.5 MB Power and APP have stated that Regulation 13(2) of the 2020 Sharing Regulations mandates billing of Transmission Charges under LTA/ MTOA directly on the end

buyers/ beneficiaries under the PPAs, even if such LTA/ MTOA has been granted to the generators/ sellers (i.e. LTA/ MTOA applicants). In case of any Event of Default by such end buyers/ beneficiaries, “Notice for Regulation of Power Supply” in terms of Regulation 13(2) of the 2020 Sharing Regulations is invariably required to be issued to such end buyers/ beneficiaries and not to generators/ sellers, who are the original LTA/ MTOA Applicants. It is also observed that CTU, while regulating power supply under LTA/ MTOA, also curtails the Short Term Open Access (STOA) of the defaulting entity in terms of paragraph 59(c) of this Commission’s Order dated 02.09.2015 in the Petition No.142/MP/2012. As such, it is imperative that any STOA curtailment due to regulation of power supply is essentially done for such end buyers/ beneficiaries only and there is no impact of such STOA curtailment on the STOA granted to generators/ sellers, who are the original LTA/ MTOA applicants i.e. such generators/ sellers (original LTA/ MTOA applicant) shall continue to interchange power without any regulation of power/ restrictions/ curtailments.

8.6 Analysis and decision

- 8.6.1 The issue highlighted is with regard to curtailment of STOA under Regulation 25A of the Open Access Regulations on account of default in payment of transmission charges where the generator has taken the LTA/MTOA but the liability for payment of transmission charges for such LTA/MTOA has been fastened on the buyers of power from the generating station as per the provisions of the 2020 Sharing Regulations. This issue pertains to the Open Access Regulations and is outside the scope of the present Amendment.

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(P.K. Pujari)
Chairperson

Annexure-I

List of stakeholders who submitted written comments

S.No.	Name of the Stakeholder	Short form used in this document
1	Association of Power Producers	APP
2	Ayana Renewable Power Private Limited	Ayana Power
3	MB Power (Madhya Pradesh) Limited	MB Power
4	NHPC Limited	NHPC
5	NTPC Limited	NTPC
6	POWERGRID	POWERGRID
7.	Southern Regional Power Committee	SRPC
8.	THDC India Limited	THDCIL
9.	Torrent Power Limited	TPL
10.	MP Power Management Company Limited	MPPMCL