

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Draft Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) (Second Amendment) Regulations, 2023 along with Draft Supplementary Amendment

No. L-1/250/2019/CERC

Dated: 24.3.2023

Explanatory Memorandum

1.0 Background

1.1 Central Electricity Regulatory Commission vide Notification No. L-1/250/2019/CERC, dated 4.05.2020 notified Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020, (hereinafter referred to as “Sharing Regulations,2020”) effective from 1.11.2020.

1.2 Further, the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) (First Amendment) Regulations, 2023 was notified vide notification dated 07.02.2023, which is yet to become effective. By virtue of the First amendment to the 2020 Sharing Regulations, consequential changes were required, in order to align 2020 Sharing Regulations with the CERC (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 (‘GNA Regulations’) and were thus incorporated.

1.3 Sharing Regulations,2020 deals with provisions for payment of transmission charges in case of delay in achieving the COD of inter-State transmission System or intra-State transmission system or generating stations and others. As per the prevailing provisions, the defaulting entity which is either the inter-State transmission licensee or generating station or the intra-State transmission licensee executing the inter-connecting transmission system, if delayed, is liable to pay the 100% of Yearly transmission charges of the inter-State transmission system declared under deemed COD.

1.4 Ministry of Power vide letter dated 15.01.2021 issued directions under section 107 of Electricity Act 2003, to the Commission, for formulating regulations with

regard to sharing of transmission charges under force majeure condition, wherein MoP has observed that the penalties should be equitable; and may not extend to compensating either the Generation Companies for the power it could not dispatch because of delay in transmission or to compensate the transmission company for the delay in generation or the associated transmission.

1.5 APTEL through various orders have advised the Commission to incorporate suitable provisions in the Sharing Regulations to cover the mismatch issues.

1.6 Hon'ble Supreme Court vide judgment dated 3.3.2016 in Appeal No. 9193 and Civil Appeal No. 9302 of 2012 observed as follows:

" 13. Since we are in agreement with the Tribunal that in the present case, respondent No. 1 and the beneficiaries could not have been made liable to pay the tariff before transmission line was operational, we find no infirmity in the impugned order. Therefore, the appeals are liable to be dismissed. Accordingly, both the appeals are dismissed without prejudice to the right of the appellant, if any, available to it under law, against NTPC. There shall be no order as to costs."

As per the above Hon'ble Supreme Court had taken a view that the beneficiaries cannot be may liable to pay the transmission charges before the transmission line is made operational. This aspect has been considered while finalizing the proposed draft amendment.

1.7 Draft Second Amendment to the 2020 Sharing Regulations have been proposed to address issues of mismatch in commissioning of inter-State transmission system and intra-State transmission system leading to non-commencement of power flow in inter-State transmission system.

1.8 It is observed that there are three kinds of the mismatch cases i.e. between Generation-Transmission, Transmission-Transmission and Transmission-Upstream/Downstream connecting Transmission System of the STU. The provisions covering the mismatch cases between Generation-Transmission are suitably covered under Regulation 13(3),13(6) and 13(9) of the 2020 Sharing Regulations.

1.9 Commission has already issued its Statutory advice to the MoP vide letters dated 14.10.2016 and 22.06.2020 on the issue of development of transmission capacity in an efficient and economical manner under TBCB route. Vide the said advice, the Commission observed as follows:

(a) Vide letter dated 10/5/2013-Statutory Advice/CERC dated 14th Oct. 2016, following has been suggested:

"12. ..

- a. *In case of new transmission network, splitting the network into components and award of project through TBCB complicates the execution of project. Therefore, it is advisable to identify the entire network for development through TBCB, instead of comparatively smaller elements, commissioning of which depends upon commissioning of all upstream/ downstream elements.*
- b. *Suitable provisions as per the Grid Code be made in the bidding guidelines to provide for entering into an implementation agreement initially between the Bid Process Coordinator and generating station or the developer of the upstream/ down stream transmission system, as the case may be. Subsequent to selection of project developer through TBCB, the implementation agreement may be transferred to the project developer for the execution of project in coordinated manner.*
- c. *In case of delay by any party (the developer or the upstream/ downstream transmission system developer), the implementation of time over run on the project cost or the transmission charges due to early commissioning or the deemed COD may be settled through the implementation agreement entered into by the transmission project developer and developer of the upstream/ downstream system, as the case may be.*
- d. *In order to factor in the policy for incentivizing the early commissioning of transmission project issued by the Ministry of Power vide its order dated 15.07.2015, the provision related to entitlement of transmission charges for the early commissioned transmission projects from the actual date of commercial operation (CoD) prior to the original scheduled CoD till the scheduled CoD should be suitably incorporated in the bidding guidelines as well as the implementation agreement keeping in view observations of Commission in various orders.*

(b) Vide letter No. ENGG-21/1/2019-CERC dated 22nd June 2020, following was observed:

“4.2.3 Therefore,

(i) In case the proposed transmission line in the bid is to be terminated at existing substation(s), the end coordinates may be fixed upfront before award.

(ii) In case of new substation where coordinates are not fixed before award, bidding may be made in packages containing both transmission line and sub-station so that mismatching is avoided and both transmission line and sub-station are executed and put to use together. For example, if the scope of the construction comprises of a substation and associated transmission line, both the substation and the transmission line may be included in the same package.

.....

4.8.1 Due to various uncertainties involved with execution of transmission projects such as issues of ROW, land acquisition and forest clearance, mismatch with upstream and downstream transmission system cannot be fully avoided.”

4.8.2 Therefore, a suitable provision in the bidding documents may be incorporated providing for a window of three months for declaration of deemed COD. If the transmission licensee under TBCB route is ready to declare COD but downstream/ upstream assets are not ready for interconnection, the transmission licensee would be free to declare the deemed COD after three months as per the provisions of TSA.”

...

5.8 A suitable provision in the bidding documents may be incorporated providing for a window of three months for declaration of deemed COD. If the transmission licensee under TBCB route is ready to declare COD but downstream/ upstream assets are not ready for inter-connection, the TBCB transmission licensee would be free to declare the deemed

COD after three months as per the provisions of TSA.”

As per the above, it was observed that mismatches cannot be fully avoided, however mismatches should be minimized as far as possible through appropriate packaging. Further, the need of Implementation agreement between the inter-connecting entities was highlighted along with provision for shifting of COD in case of mismatch.

1.10 It is observed that transmission projects that have been awarded through TBCB route, have filed petitions seeking relief on account of change in law and/or force majeure .

1.11 It is observed that inter-connecting transmission system should be planned with matching dates so that there should not be any mismatch at planning stage itself. However, during execution, a transmission system may get delayed due to various reasons including Force Majeure reasons. A transmission system may need to declare deemed COD due to delay in commencement of power flow due to delay of another transmission licensee. Keeping in view of the Hon'ble Supreme Court directions as well as MOP suggestions, following aspects have been considered while proposing the amendment:

- (a) the liabilities are required to be equitable
- (b) The liability of transmission charges for a system under deemed COD without any power flow, cannot be fastened on distribution licensees who are not getting benefit from the same.
- (c) The transmission licensee whose transmission system is delayed cannot be denied tariff for a long period of time leading to financial uncertainties.
- (d) The transmission licensee who is delayed for any reasons including force majeure needs to make all efforts to commission its system at the earliest so that the stranded asset is put to use at the earliest to avoid national wastage. Hence, such delayed licensee cannot be allowed to go scot-free. Hence, liabilities have been proposed for the delayed transmission licensees so that delay in flow of power is minimized.

1.12 Keeping in view the above discussion, a methodology is proposed for the treatment of transmission charges for a transmission system declared or approved for deemed COD.

2.0 Proposed Draft Amendment

2.1 Vide the draft Second Amendment to the Sharing regulations 2020, amendments have been proposed mainly under Regulation 13 (12) of the Principal Regulations and consequential changes have been proposed in other regulations.

2.2 Amendment to Clause 12 of Regulation 13 of Principal Regulations

- (a) An inter-State transmission licensee shall be paid 20% of Yearly Transmission Charges(YTC) of its inter-State transmission system for a period of six (6) months from date of deemed COD or till commencement of actual power flow, whichever is earlier and in case actual power flow does not commence within a period of 6 months from date of deemed COD it shall be paid 100% of YTC of its inter-State transmission system from seventh (7th) month till commencement of actual power flow. 20% YTC has been proposed as it is considered sufficient to meet basic obligations of part of debt servicing and operation & maintenance (including employee costs) of an inter-State transmission licensee, whose deemed COD has been approved or declared.
- (b) Liabilities of defaulting transmission licensee
- i. In case the inter-State Transmission Licensee is responsible for the delay (for any reason including the reason attributable to Force Majeure events) in commencement of power flow in the inter-State transmission system of another inter-State transmission licensee which has achieved deemed COD, inter-State transmission licensee of the delayed inter-State transmission system shall pay 20% of YTC of its transmission system OR 20% of YTC of the transmission system which has achieved deemed COD, whichever is lower, till its delayed inter-State transmission system achieves COD.
 - ii. If the transmission licensee is an intra-State transmission licensee then the said intra-State transmission licensee of the delayed intra-State transmission system shall pay 20% of YTC of the inter-State transmission system whose deemed COD has been declared/ approved, till its delayed intra-State transmission system achieves COD.

With the above proposed amendments, the licensee which is executing the system which is delayed, shall not be levied full transmission charges and the entity which is ready shall also be able to get a reasonable amount to cater to its obligations

- (c) It is also proposed that first year of the contract shall start from the date when such transmission licensee starts receiving 100% of YTC under sub-clause (b) of this Clause or under Regulation 5 to 8 of these regulations.

2.3 Further, the consequential changes have also been proposed under Regulation 2, Regulation 11 and Regulation 12 of the Principal Regulations.
