



Ref: ATL/CERC/15042023
Date: April 15, 2023

To
The Secretary
Central Electricity Regulatory Commission
3rd and 4th Floor, Chanderlok Building
36 Janpath, New Delhi -110001

Subject: Comments on Draft CERC (Sharing of Inter-State Transmission Charges and Losses) (Second Amendment) Regulations, 2023 sought vide Notification No. L-1/250/2019/CERC dated 17.03.2023

Dear Sir

Adani Transmission Limited (ATL) is the holding company of various TBCB ISTS licenses. Accordingly, with reference to the comments invited by the Hon'ble Commission on the above-mentioned Draft Regulations, we hereby submit our comments on the same with a request to kindly take the same on record.

For **Adani Transmission Ltd.**

A handwritten signature in blue ink that reads "Brundelia".

Authorized Signatory

Encl: As mentioned above

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Comments on Draft CERC (Sharing of Inter-State Transmission Charges and Losses) (Second Amendment) Regulations, 2023

Regulation No.	Existing Provisions after 1st amendment	Proposed Regulation (Draft 2 nd Amendment in Sharing Regulation, 2023)	Comments
Regulation 13 - Treatment of transmission charges and losses in specific cases	<p>(12) In case of a transmission system where COD has been approved in terms of proviso (ii) of Clause (3) of Regulation 4 of the Tariff Regulations, 2014 or Clause (2) of Regulation 5 of the Tariff Regulations, 2019 or where deemed COD has been declared in terms of Transmission Service Agreement under Tariff based Competitive Bidding, the Yearly Transmission Charges for the transmission system shall be:</p> <p>a) paid by the inter-State transmission licensee whose transmission system is delayed till its transmission system achieves COD, or</p> <p>b) paid by the generating company whose generating station or unit(s) thereof is delayed, till the generating station or unit thereof, achieves COD, or</p> <p>c) shared in the manner as decided by the Commission on case-to-case basis, where more than one inter-State transmission licensee is involved or both transmission system and generating station are delayed or,</p>	<p>(12) For the cases other than those covered Clauses (3), (6) or (9) of Regulation 13 of these regulations, the YTC for the inter-State transmission system approved or declared as deemed COD shall be treated as follows:</p> <p>h) The inter-State transmission licensee shall be paid 20% of 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.</p> <p>i) The inter-State transmission licensee shall be paid 100% of YTC of its inter-State transmission system from seventh (7th) month till commencement of actual power flow, in case actual power flow does not commence within a period of 6 months from date of deemed COD.</p> <p>j) The charges under sub clauses (a) and (b) of this Clause shall be disbursed from charges collected under third bill in terms of Clause (3) of Regulation 12 of these regulations: Provided that in case of shortfall in collection under third bill to meet the requirement of payment under sub-clauses (a) and (b) of this Regulation, the balance shall be paid from charges collected under T-GNA in terms of Clause (3) of Regulation 11 of these regulations: Provided further that in case of shortfall in charges collected under T-GNA to meet the requirement of</p>	<ul style="list-style-type: none"> • It may be noted that the obligations of the Transmission Service Provider (TSP) are clearly defined in the Transmission Service Agreement (TSA) and once the TSP has completed its obligations, as per TSA, then the TSP has full right to claim the tariff defined under the TSA. Please appreciate the fact that if the tariff can be stopped or delayed for reason not attributable to TSP, it will increase the risk associated with the project tremendously and no financial institute will be willing to finance such project with unclear sight of revenue generation. • The responsibilities and liabilities of Transmission Service Provider are defined in the TSA. Therefore, in case of any delay, the TSP should be held liable as per the provisions of TSA and accordingly LD should be imposed as per the provisions of these agreements. The TSP cannot be held liable beyond what is specified and agreed in the TSA; otherwise, this would be tantamount to unlimited liability, and it will become impossible to get these projects financed. The obligations of all the parties are well defined in TSAs and all commercial decisions should be in line with the provisions of TSA. Any other levy of damages/ penalty over and above the TSA in place is unjustified. In this regard, it is also relevant to note the following provisions of the TSA:

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	<p>d) paid by the respective drawee DIC(s) of the State whose intra-state transmission system is delayed, till such intra-State transmission system achieves COD.</p> <p>e) paid by the Bulk consumer or distribution licensee granted approval to directly connect to ISTS, whose connecting transmission line to ISTS is delayed, till such line is connected to ISTS, or</p> <p>f) paid by the ESS whose project is delayed, till the ESS achieves COD.</p> <p>g) paid by the Renewable Power Park developer whose Park is delayed, till it is connected to ISTS.</p>	<p>payment under sub-clauses (a) and (b) of this Regulation, the balance shall be paid from Deviation and Ancillary Service Pool Account under DSM Regulations.</p> <p>k) In case an 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.</p> <p>l) In case an intra-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 an inter-State transmission licensee which has achieved deemed COD, intra-State transmission licensee of the delayed intra-State transmission system shall pay 20% of YTC of the inter-State transmission system which has achieved deemed COD, till its delayed intra-State transmission system achieves COD.</p> <p>m) The billing and collection for the charges in terms of sub-clauses (d) and (e) of this Clause shall be made in accordance with Clause (3) of Regulation 15 of these regulations.</p>	<p>a. As per Article 18.12 (No consequential or indirect losses) of the TSA, the liability of the TSP i.e. WKTL shall be LIMITED to that explicitly provided in the TSA.</p> <p>b. As per Article 18.20 (Entirety) of the TSA, TSA is the complete statement of terms of conditions in relation to the transmission system being implemented. Except as provided under the TSA, all prior understandings, offers or other communications of every kind pertaining to the TSA or the provision of transmission service under TSA to LTTCs by TSP shall stand superseded and abrogated.</p> <ul style="list-style-type: none"> • It was the decision of the beneficiaries through the planning agencies, to have separate contracts with Generation Developer and TSP. Therefore, the benefits of such structuring of contracts accrue to the beneficiaries in the form of lower tariff. Therefore, in case of delay in CoD of any of the assets, the tariff for other assets should be borne by the beneficiaries, through the pool account. • The delay in commissioning of the project can also be on account of uncontrollable Force Majeure 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.

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		<p>n) The charges collected as per sub-clause (f) of this Clause shall be reimbursed in terms of Clause (3) of Regulation 12 of these regulations.</p> <p>o) In case of inter-State transmission system under Tariff based Competitive Bidding, the first year of the contract shall commence 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.</p>	<ul style="list-style-type: none"> Overall, this will lead to increasing the risk associated with transmission projects tremendously, with the result that the financial institutions will either refrain from financing such project or will charge very high interest rates. Both of which are against the interest of sector as it will derail the entire process of developing transmission projects through TBCB process, which is against the spirit of the Electricity Act, 2003, which aims to promote competition in the sector. Further, in order to address the lacuna in the existing CERC Sharing Regulation, 2020, MoP on 15.01.2021, issued directions to Ld. CERC under Section 107 of the Act qua the Sharing Regulations (i) No additional penalties to be levied for delay in COD of an element of ISTS through Sharing Regulations and (ii) The penalties (if any) shall be equitable and shall not extend to compensating transmission company for the delay in associated transmission. Accordingly, we request the Hon'ble Commission to implement the direction of MoP in totality and delete the Regulation 13 (3), 13 (8) and 13 (12) of CERC Sharing Regulation 2020. Further, the amendment should also be applicable to all the TSAs entered under MoP's TBCB 2008 guidelines. Without prejudice to the above, it is submitted that as per the proposed draft regulation, the Transmission system which achieves CoD and could not be charged due to non-availability of upstream or downstream network, shall be eligible for recovery of 20% of its YTC for the first six months and its 100% revenue stream will start from the seventh month or when mismatch

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			<p>issue is resolved. In terms of this TSP will be denied its revenue recovery of 80% of YTC from the date it achieves deemed CoD and same will be recovered at the end of project, as revenue stream gets extension. Such delay in revenue recovery for 35 years, will cause loss in terms of NPV of such 80% revenue. Accordingly, its proposed to honour provisions of TSA, which allows 100% revenue recovery from date of Deemed CoD.</p> <ul style="list-style-type: none"> In view of above, we propose following modifications in draft Regulation 13 (12): <p><i>“12) For the cases other than those covered Clauses (3), (6) or (9) of Regulation 13 of these regulations, the YTC for the inter-State transmission system approved or declared as deemed COD shall be treated as follows:</i></p> <p><i>a) The inter-State transmission licensee shall be paid 20100% of 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.</i></p> <p><i>b) The inter State transmission licensee shall be paid 100% of YTC of its inter State transmission system from seventh (7th) month till commencement of actual power flow, in case actual power flow does not commence within a period of 6 months from date of deemed COD.</i></p> <p><i>c)</i></p> <p><i>d) In case an inter-State transmission licensee is responsible for the delay (for any reason including excluding the reason attributable to Force Majeure events) in commencement of power flow in the inter-</i></p>

Regulation No.	Existing Provisions after 1st amendment	Proposed Regulation (Draft 2 nd Amendment in Sharing Regulation, 2023)	Comments
			<p><i>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.</i></p> <p><i>e) In case an intra-State transmission licensee is responsible for the delay (for any reason including excluding the reason attributable to Force Majeure events) in commencement of power flow in the inter-State transmission system of an inter-State transmission licensee which has achieved deemed COD, intra-State transmission licensee of the delayed intra-State transmission system shall pay 20% of YTC of the inter-State transmission system which has achieved deemed COD, till its delayed intra-State transmission system achieves COD.</i></p> <p><i>f) ...</i></p> <p><i>g) ...</i></p> <p><i>h) In case of inter-State transmission system under Tariff based Competitive Bidding, the first year of the contract shall commence 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.”</i></p>