

POWERGRID Comments on draft 2nd amendment to CERC Sharing Regulations, 2020

POWERGRID comments on various regulations of the proposed draft 2nd amendment to CERC Sharing Regulations, 2020 are as hereunder :

Sl.	Clause as per existing regulation	Changes proposed in draft Amendment	Modification proposed by POWERGRID
1.	<p>2. Definitions</p> <p>(1) In these Regulations, unless the context otherwise requires: -</p>	<p>A new sub-clause (i-i) shall be added after sub-clause (i) of Clause (1) of Regulation 2 of the Principal Regulations as under:</p> <p><i>“(i-i) ‘Deemed COD’ means the (a) COD of the transmission system approved by the Commission 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 (b) deemed COD of the transmission system declared by the transmission licensee, in terms of Transmission Service Agreement under Tariff Based Competitive Bidding. “</i></p>	<p><i>“(i-i) ‘Deemed COD’ means the (a) COD of the transmission system or an element thereof, approved by the Commission 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 (b) deemed COD of the transmission system or an element thereof, declared by the transmission licensee, in terms of Transmission Service Agreement under Tariff Based Competitive Bidding. “</i></p> <p>Further, it is proposed that the word “or an element thereof” may be inserted after word “transmission system” in proposed Regulation 13 (12) also.</p>
<p>Rationale:</p> <ul style="list-style-type: none"> • 'Transmission System' is generally a combination of one or more transmission elements. Transmission elements can be a transmission line, Sub-station, Sub-station equipment or any combination thereof. • Generally different transmission elements of the same transmission system are commissioned progressively but not on the same date. These elements may or not be interconnected with other elements in the same project. • Regarding subject draft regulation, it is submitted that depending upon availability or non-availability of interconnecting elements, 'Deemed COD' may be required only for specific transmission element but not for complete Transmission System. • Presently, proposed Deemed COD for transmission elements is already being done in line with TSA provisions in TBCB and approved by CERC for RTM elements in line with regulatory provisions, <p>In view of the above, for better clarity it is proposed that the word “or an element thereof” may be inserted after word “transmission system” to enable 'Deemed COD' for individual transmission elements also.</p>			

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2.	<p>11. Transmission charges for Short Term Open Access T-GNA and T-GNARE</p> <p>(1) T-GNA Rate (in Rs. /MW/time-block) shall be published for each billing month by the Implementing Agency on its website which shall be calculated State-wise as under:</p> <p>.....</p> <p>(3) Transmission charges for T-GNA and T-GNARE collected in a billing month, shall be reimbursed to the drawee DICs in proportion to their share in the first bill in the following billing month, after adjustment of such charges as per subclause (d) of Clause (2) of Annexure-III to these regulations.”</p>	<p>11. Transmission charges for Short Term Open Access T-GNA and T-GNARE</p> <p>(1) T-GNA Rate (in Rs. /MW/time-block) shall be published for each billing month by the Implementing Agency on its website which shall be calculated State-wise as under:</p> <p>.....</p> <p>(3) Transmission charges for T-GNA and T-GNARE collected in a billing month, shall be reimbursed to the drawee DICs in proportion to their share in the first bill in the following billing month, after adjustment of such charges as per subclause (d) of Clause (2) of Annexure-III to these regulations and subclause (b) of Clause (12) of Regulation 13 of these regulations.”</p>	<p>11. Transmission charges for Short Term Open Access T-GNA and T-GNARE</p> <p>(1) T-GNA Rate (in Rs. /MW/time-block) shall be published for each billing month by the Implementing Agency on its website which shall be calculated State-wise as under:</p> <p>.....</p> <p>(3) Transmission charges for T-GNA and T-GNARE collected in a billing month, shall be reimbursed to the drawee DICs in proportion to their share in the first bill in the following billing month, after adjustment of such charges as per subclause (d) of Clause (2) of Annexure-III to these regulations followed by adjustment as per and subclause (b) (c) of Clause (12) of Regulation 13 of these regulations.”</p>

Rationale:

In proposed Regulations 11 (3), Transmission charges collected for T-GNA and T-GNARE to be reimbursed to DICs after adjustment of

- i. Waiver of transmission charges for RE Power as per subclause (d) of Clause (2) of Annexure-III of these regulations
- ii. Mismatch charges as per subclause (C) of Clause (12) of Regulation 13 of these regulations

With regard to above, it is to submit that the hierarchy or order in which these two adjustments will be done is not provided. For situation where such T-GNA charge collected may not be sufficient to meet above mentioned adjustments, order in which such adjustment is to be done may be provided in the regulation.

Further, there appears to be typographical error and instead of the referred subclause (b) of Clause (12) of Regulation 13, subclause (c) of Clause (12) of Regulation 13 should have been mentioned.

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3.	<p>12. Transmission Deviation</p> <p>(1) Transmission Deviation, in MW, shall be computed as under:</p> <p>.....</p> <p>(3) The Transmission Deviation charges shall be recovered through the third bill and shall be reimbursed to the drawee DICs in proportion to their share in the first bill in the following billing month.</p>	<p>12. Transmission Deviation</p> <p>(1) Transmission Deviation, in MW, shall be computed as under:</p> <p>.....</p> <p>(3) The Transmission Deviation charges shall be recovered through the third bill and shall be reimbursed to the drawee DICs in proportion to their share in the first bill in the following billing month <i>after adjustment of such charges as per sub-clauses (c) and (g) of Clause (12) of Regulation 13 of these regulations.</i></p>	<p>12. Transmission Deviation</p> <p>(1) Transmission Deviation, in MW, shall be computed as under:</p> <p>.....</p> <p>(3) The Transmission Deviation charges shall be recovered through the third bill and shall be reimbursed to the drawee DICs in proportion to their share in the first bill in the following billing month <i>after adjustment of such charges as per sub-clauses (c) and (g) of Clause (12) of Regulation 13 of these regulations.</i></p>
<p>Rationale:</p> <p>In proposed Regulations 12 (3), sub-clause (g) of Clause (12) of Regulation 13 is also referred but it is not clear how the same is relatable.</p>			
4.	<p>13. Treatment of transmission charges and losses in specific cases</p> <p>.....</p> <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>Clause (12) of Regulation 13 of the Principal Regulations shall be substituted as under:</p> <p>13. Treatment of transmission charges and losses in specific cases</p> <p>.....</p> <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 20% of YTC of its inter-State</i></p>	<p>13. Treatment of transmission charges and losses in specific cases</p> <p>.....</p> <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 20% 50 % of YTC of its inter-State</i></p>

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	<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,</p> <p>.....</p>	<p><i>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>.....</p> <p>(c) <i>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:</i></p> <p><i>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:</i></p> <p><i>Provided further that in case of shortfall in charges collected under T-GNA to meet the requirement of 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.</i></p> <p>.....</p>	<p><i>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>.....</p> <p>(c) <i>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:</i></p> <p><i>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:</i></p> <p><i>Provided further that in case of shortfall in charges collected under T-GNA to meet the requirement of 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.</i></p> <p>.....</p>

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		<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>	<i>(h) In case of inter-State transmission system, under Tariff based Competitive Bidding, the first year of the contract, expiry period, useful life and determination of YTC, as applicable 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>

Rationale:

1) Comment w.r.t sub-clause (a) of Clause (12) of Regulation 13

- Regarding proposed 20 % YTC, Explanatory Memorandum to draft regulation provides the following;

"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"

- In this regard it is to mention that upto Deemed COD, majority of capital cost including debt portion is already deployed. Therefore, Debt repayment in initial years are very high. Considering debt to be 70 % of Capital cost, debt servicing itself is 40%-50% * of YTC in initial years depending upon debt deployed and rate of interest. Operation & maintenance (including employee costs) are over and above debt servicing for all projects.
- Considering above, it is submitted that proposed 20% YTC is not even adequate to service debt portion. Further, Standalone TBCB companies may not be in position to service debt in such cases since there is no separate source of funds for them aside from the tariff adopted. Therefore, to protect interest of Transmission licensees, following is submitted;
 - o IDC as part of capital cost is already subject to prudence check in RTM project, therefore, instead of 20 % YTC, actual IDC may be allowed or otherwise 50% YTC may be allowed.
 - o In TBCB projects, 50 % YTC may be allowed.

(Indicative debt servicing is calculated considering Capital cost of 100 Crs ,Debt as 70 Crs and typical 1st year tariff for RTM & TBCB Project)*

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	<p>2) Comment w.r.t sub-clause (c) of Clause (12) of Regulation 13</p> <ul style="list-style-type: none"> It is submitted that for a ready RTM project with mismatch, depending upon the size of transmission element and gap between Deemed COD and final order in tariff petition, it may result in high arrear along with interest for mismatch charge to be billed. In case the funds are not adequate in a particular month, the same may be allowed to be recovered in instalments along with applicable carrying cost. <p>3) Comment w.r.t sub-clause (h) of Clause (12) of Regulation 13</p> <ul style="list-style-type: none"> Proposed provision only provides shifting of Contract year for TBCB projects. Similar treatment is also required all ISTS projects irrespective of mode of implementation to protect their interests. Accordingly, following modifications is proposed; <p><i>In case of inter-State transmission system under Tariff based Competitive Bidding, the first year of the contract, expiry period or useful life and determination of YTC as applicable 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> <p>Further, enabling amendments if required may also be incorporated in Tariff Regulations also.</p>		
5.	<p>Issue regarding ongoing litigations and disputes on mismatch charges: Regrading existing dispute and litigation, following is submitted;</p> <ul style="list-style-type: none"> Before CERC Sharing Regulations,2020, regulatory provisions did not cover such mismatch cases explicitly and these charges were mostly levied through Orders wherein approach to address has also evolved over time. With increasing number of cases, different approaches were adopted by CERC (matching of COD/deemed COD or levy of IDC& IEDC or Transmission charge) to decide liability in its orders. Majority of CERC Orders on mismatch cases have been disputed resulting into increased litigation in the Sector. As the issue is very complex, different judgement and varied opinions has been expressed by Hon'ble APTEL in against orders issued by Hon'ble Commission. Clear regulatory provisions are required for regulatory certainty in the sector. The draft amendment by Hon'ble Commission is a welcome step as it proposes a reasonable, rational and acceptable solution to address contentious issue of recovery mismatch charges. <p>However, considering high number of ongoing disputes and litigations, it may be appropriate that the amendment proposed or the same philosophy may be made applicable for old disputes and litigation which have yet not been settled. A uniform approach for all such cases will help in ending disputes and ensuring cash flow stuck due to disputes to transmission licensees .</p>		

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