

Date: 17.04.2023

To,

Shri Harpreet Singh Pruthi,
Secretary, Central Electricity Regulatory Commission
3rd and 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110001

Sub: Comments on Draft Second Amendment in Draft Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) (Second Amendment) Regulations, 2023

Dear Sir,

The Hon'ble Commission, vide public notice dated 17.03.2023 invited comments/suggestions/objections on the subject draft regulations. Our comments on the same has been annexed as **Annexure-1**.

We request the Hon'ble Commission to take our views on record.

Thanking You
Yours Sincerely,



Balaji Sivan,
Director- Policy Advocacy & Regulatory Affairs,
Sterlite Power, Gurugram, 122008, Haryana

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

Annexure-I

The Hon'ble Commission, vide public notice (No. L-1/250/2019/CERC) dated 17th March 2023 has invited comments/suggestions/objections on the Draft Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) (Second Amendment) Regulations, 2023.

We are thankful to Hon'ble Commission for notification of the draft Second Amendment. In this regard, our comments on the same is as below:

#	Clause	Clause as per Draft	Proposed Modification with Rational
1	Sub Clause (a) of Clause 12 of Regulation 13.	<p>13. Treatment of transmission charges and losses in specific cases</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>(a) 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>As soon as the transmission licensee validly declares its COD, recovery of 100% transmission charges should automatically commence from the PoC Pool so that TSP can pay towards its liability.</p> <p>Proposed Regulation is as below:</p> <p>13 (12) (a) The inter-State transmission licensee shall be paid 20% 100% 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>Subsequent to above changes, Regulation 13 (12) (b) and 13 (12) (h) may be deleted.</p> <p>Rationale:</p> <p>a) <u>Contractual Position – TSP is entitled to 100% of YTC on the CoD</u></p> <p>Under the provisions of the Standard TSA notified by the MOP under Section 63 of the Electricity Act, the term Commercial Operation Date has been defined as the date as per Article 6.2 of the TSA.</p> <p>Further, as per Article 6.2.1 of TSA, COD means, either (i) Seventy two (72) hours following the connection of the element with the Interconnection Facilities or (ii) Seven (7) days after the date on which it is declared by the TSP to be ready for charging but is not able to be charged for reasons not attributable to the TSP or Seven (7) days after the date of deferment.</p> <p>Furter, Article 6.2.2 of the TSA provides that when a project developer has achieved Deem COD as per Article 6.2.1, the elements of the project shall be deemed to have availability equal to the target availability till the actual charging of the Element and to this extent, shall be eligible for payment of the monthly transmission charges applicable for such element.</p>

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			<p>It is also worthwhile to note that the Standard TSA provides under Article 10.5.1 that the month following the month in which COD of an asset occurs, the TSP shall submit the LTTCs monthly invoices to be paid by the LTTCs.</p> <p>From the above provisions, it can be clearly seen that the Standard TSA issued by the MOP under the TBCB guidelines envisages the payment of MTC from the date of COD by the LTTCs, based on the monthly bills issued by TSP. It is worthwhile to note that the MOP, while notifying the SBDs and TSA under SBD was clear that a TSP is entitled to recover its MTC from the LTTCs in both scenarios mentioned under Article 6.2.1 of the TSA. Therefore, the intent of the MOP is included in the TSA without any ambiguity.</p> <p>As per the above contractual arrangement, TBCB based TSP has right to get 100% of MTC from the date of achieving the COD in both the scenarios mentioned under Article 6.2.1. Whereas, under the proposed 2nd Amendment to the Sharing Regulations, the Central Commission has proposed that in case of deemed commissioning TSP shall receive 20% of MTC for first 6 months or till the power flow whichever is earlier. This proposal puts a TSP at higher risk in comparison to the existing mechanism of recovering full MTC from the delaying entity.</p> <p>b) Dictum of Barh-Balia is not applicable on mismatch between two TSP for the following reasons:</p> <p>It is important to note that there is no legal prohibition against recovering transmission charges from beneficiaries before the transmission line is operating for transmission project commissioned under Section 63 of the Electricity Act.</p> <p>The Barh-Balia Judgement created an embargo on a Section 62 developer to recover transmission tariff prior to achieving commercial operations. Supreme Court and APTEL had arrived at their findings on the basis of definition of Commercial Operation Date defined under the Tariff Regulations. In the remand proceedings, Central Commission revised its earlier orders and directed PGCIL to recover 6 months of IDC and IEDC under the indemnification agreement it had executed with NTPC, and capitalized the IDC and IEDC of the remaining period of mismatch i.e. for the remaining 8 months.</p>

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			<p>Whereas, in cases where a TBCB project had achieved and declared its COD in terms of Article 6.2 of the TSA, under the provisions of Article 10 of the TSA read with Article 6.2, the TBCB licensee are directed to recover transmission tariff for the entire period of mismatch from the defaulting party.</p> <p>The difference in approaches while dealing with a stranded asset commissioned under the provision of Section 62 of the Electricity Act versus a transmission project commissioned under Section 63 of the Electricity Act is primarily due to the contractual provisions of the TSA, which mandated recoveries of transmission charges from the date of COD or Deem COD as opposed to the Tariff Regulations, which clearly mandated that Commercial Operation Date is only after achieving regular service, which is not the case in Section 63 TSA.</p> <p>Under the proposed 2nd Amendment to the Sharing Regulations, the Central Commission has proposed that in case of deemed commissioning TSP shall receive 20% of MTC for first 6 months or till the power flow whichever is earlier. This proposal puts a TSP at higher risk in comparison to the existing mechanism of recovering full MTC from the delaying entity.</p> <p>In cases of mismatch between two transmission licensees implementing separate but interconnected transmission assets</p> <p>In the below three cases, following provisions are proposed for incorporation:</p> <p>Case I – Since the definition of COD as provided under the TSA includes Deem COD, the project should not be denied 100% transmission charges. The recoveries of such charges should be from the LTTCs as provided under Article 10 of the TSA.</p> <p>Case II – Under the 2019 tariff Regulations, Central Commission has included Deem COD in the definition of COD, therefore, Deem COD is to be treated as COD and licensee should recover transmission charges from beneficiaries.</p> <p>Case III – the treatment should be the same as in Case-I.</p>

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			<p>Tabular Representation is as below:</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-bottom: 10px;"> <thead> <tr> <th style="width: 15%;">Cases of mismatches</th> <th style="width: 20%;">Commissioned entity</th> <th style="width: 20%;">Delayed entity</th> <th style="width: 10%;">62</th> <th style="width: 35%;">Applicability of law</th> </tr> </thead> <tbody> <tr> <td>Case I</td> <td>Section 63 developer</td> <td>Section developer</td> <td>62</td> <td>Provision of the Section 63 TSA</td> </tr> <tr> <td>Case II</td> <td>Section 62 developer</td> <td>Section developer</td> <td>63</td> <td>Provision of tariff Regulations.</td> </tr> <tr> <td>Case III</td> <td>Section 63 developer</td> <td>Section developer</td> <td>63</td> <td>Provision of the Section 63 TSA</td> </tr> </tbody> </table> <p>c) Proposed financial support for initial 6 months for deemed commissioned asset is grossly inadequate:</p> <p>The proposed financial support, i.e. 20% of transmission charges for initial 6 months, is not sufficient to meet even the basic obligations of part of debt servicing. Further, apart from interest payment, TSPs whose transmission system is ready are liable to pay O&M charges, insurance premiums, etc. It is imperative to highlight that the Developer is out of pocket to service its debt for 06 months even under 60% tariff recovery scenario.</p> <p>Also, the proposal will add another dimension to the risk sensitivity as it is not possible to predict the mismatch duration and 20% of transmission tariff for 6 months after deemed commissioning of any ISTS project has a significant impact on the Equity IRR of the project as depicted below:</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th rowspan="3" style="width: 10%;">Sample Project Size</th> <th colspan="3" style="width: 30%;">Deemed CoD to CoD - 6 Month</th> <th colspan="3" style="width: 30%;">Deemed CoD to CoD - 3 Month</th> </tr> <tr> <th style="width: 10%;">Delta in EIRR with 20% tariff</th> <th style="width: 10%;">Delta in EIRR with 50% tariff</th> <th style="width: 10%;">Delta in EIRR when interest cost is recovered</th> <th style="width: 10%;">Delta in EIRR with 20% tariff</th> <th style="width: 10%;">Delta in EIRR with 50% tariff</th> <th style="width: 10%;">Delta in EIRR when interest cost is recovered</th> </tr> <tr> <td></td> <td></td> <td style="text-align: center;">(~62-70% YTC in these cases)</td> <td></td> <td></td> <td style="text-align: center;">(~62-70% YTC in these cases)</td> </tr> </thead> <tbody> <tr style="background-color: #ffffcc;"> <td style="text-align: center;">Average</td> <td style="text-align: center;">-2.31%</td> <td style="text-align: center;">-1.37%</td> <td style="text-align: center;">-0.68%</td> <td style="text-align: center;">-0.89%</td> <td style="text-align: center;">-0.35%</td> <td style="text-align: center;">-0.05%</td> </tr> </tbody> </table>	Cases of mismatches	Commissioned entity	Delayed entity	62	Applicability of law	Case I	Section 63 developer	Section developer	62	Provision of the Section 63 TSA	Case II	Section 62 developer	Section developer	63	Provision of tariff Regulations.	Case III	Section 63 developer	Section developer	63	Provision of the Section 63 TSA	Sample Project Size	Deemed CoD to CoD - 6 Month			Deemed CoD to CoD - 3 Month			Delta in EIRR with 20% tariff	Delta in EIRR with 50% tariff	Delta in EIRR when interest cost is recovered	Delta in EIRR with 20% tariff	Delta in EIRR with 50% tariff	Delta in EIRR when interest cost is recovered			(~62-70% YTC in these cases)			(~62-70% YTC in these cases)	Average	-2.31%	-1.37%	-0.68%	-0.89%	-0.35%	-0.05%
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#	Clause	Clause as per Draft	Proposed Modification with Rational
			<p>Recommendation: As India accelerates towards its ambitious RE goals, there is an urgent need for a rapid transmission build-out. Therefore, the transmission assets should not be seen through the narrow prism of their immediate utilization during the initial years but need to be assessed over the entire life cycle of the assets.</p> <p>Therefore, as soon as the transmission licensee validly declares its COD, recovery of 100% transmission charges should automatically commence from the PoC Pool.</p>
2	Sub Clause (d) of Clause 12 of Regulation 13.	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>In case of delay, there should not be any penalty under 2020 Sharing Regulations as TSP already pays in case of delay, in the form of liquidated damages which are linked to the project tariff in TSA. So, the proposed Sub Clause (d) of Clause 12 of Regulation 13 may be deleted.</p> <p>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>Rationale: No additional penalties through Sharing Regulations to be levied for delay in COD of an element of ISTS in the Regulations. Delay automatically causes losses to the transmission licensees in the form of delay in realization of revenues, increased finance cost, etc. Moreover, in case of TBCB projects, the penalties for default are already provided in the form of liquidated damages which are linked to the project tariff in TSA. So, there are sufficient disincentives to the transmission licensees for delay in COD. Further, TSA doesn't provide any such penalty of 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>Further, it is requested that, Hon'ble CERC may like to consider relief under FM event which is not considered in the present draft amendment.</p> <p>As per Article 11.3 of the TSA, definition of Force Majeure Events is as below: "A Force Majeure means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an affected party in the performance of its obligations under this Agreement, but only if and to the extent that such</p>

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			<p><i>events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices.”</i></p> <p>As per Article 11.7 (a) of the TSA, “no party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;”</p> <p>Imposition of liability on the delaying entity, where the delay is beyond the reasonable control of the entity and the force majeure events are duly recognized by the competent authority, is extremely inequitable. However, the prescription under Regulation 13(12)(d) and Regulation 13(12)(e) for the delaying entity to pay transmission charges even when it is impacted by force majeure events cannot be said to be equitable. It is submitted that the subject regulations deviate from one of the primary objectives of the Hon’ble Commission and ought to be reconsidered.</p>
3	Clause 3 of Regulations 13	Where COD of a Connectivity grantee other than Renewable Power Park Developer is—delayed has not achieved COD on or before start date of Connectivity in terms of GNA Regulations, and the Associated Transmission System has achieved COD, which is not earlier than start date of Connectivity, the Connectivity grantee shall pay Yearly Transmission Charges for the Associated Transmission System corresponding to	<p>Proposed Regulation is as below:</p> <p>Where COD of a Connectivity grantee other than Renewable Power Park Developer has not achieved COD on or before start date of Connectivity in terms of GNA Regulations, and the Associated Transmission System has achieved COD, which is not earlier than start date of Connectivity, the Connectivity grantee shall pay Yearly Transmission Charges in the POC Pool for the Associated Transmission System corresponding to Connectivity capacity which has not achieved COD and Transmission Service Provider shall get Yearly Transmission Charges from the POC Pool:</p> <p>Provided that where a Connectivity grantee is Renewable Power Park Developer and the generation capacity within the Renewable Power Park has not declared COD on or before start date of Connectivity in terms of GNA Regulations, and the Associated Transmission System has achieved COD, which is not earlier than start date of Connectivity, the Renewable Power Park Developer shall pay Yearly Transmission Charges in the POC Pool for the Associated Transmission System corresponding to generation capacity which has not achieved COD and Transmission Service Provider shall get Yearly Transmission Charges from the POC Pool:</p> <p>Provided that Yearly Transmission Charges in respect of Associated Transmission System corresponding to the Connectivity capacity which have achieved COD shall be included for</p>

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		<p>Connectivity capacity which has not achieved COD:</p> <p>Provided that where a Connectivity grantee is Renewable Power Park Developer and the generation capacity within the Renewable Power Park has not declared COD on or before start date of Connectivity in terms of GNA Regulations, and the Associated Transmission System has achieved COD, which is not earlier than start date of Connectivity, the Renewable Power Park Developer shall pay Yearly Transmission Charges for the Associated Transmission System corresponding to generation capacity which has not achieved COD:</p> <p>Provided that Yearly Transmission Charges in respect of Associated Transmission System corresponding to the</p>	<p>determination of transmission charges of DICs in accordance with Regulations 5 to 8 of these regulations.</p> <p>Rationale:</p> <p>With the notification of the GNA Regulations, the transmission system associated with generating stations has been limited to the Immediate Evacuation System. Further, the provisions of the GNA Regulations require the generators to submit Con-BG- II which corresponds to the total cost of the associated transmission system estimated by CTU. This Con-BG-II shall be encashed in an event of delay in commissioning of the generating station.</p> <p>Under the existing provisions of the Sharing Regulations 2020, the Hon'ble Commission has provisioned for payment of bilateral transmission charges by the delaying generator to the TSP from the date of COD of TSPs transmission assets.</p> <p>It is proposed for the consideration of the Hon'ble Commission that through the 2nd amendment, Hon'ble CERC may consider aligning the provisions of the Sharing Regulations with the mechanism provided under Section 63 TSAs. Since the TSA provides for the payment of transmission charges by the LTTCs, appropriate provisions may be incorporated to allow the recovery of tariff by the TSP under the POC mechanism and the Con-BG-II of the generating company be encashed to recuperate the POC Pool instead of the proposed bilateral billing by the TSP.</p>

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		Connectivity capacity which have achieved COD shall be included for determination of transmission charges of DICs in accordance with Regulations 5 to 8 of these regulations.	
4		Additional Comments	<p>As such the interpretation accorded while dealing with a case arising under the regulations framed by the Hon'ble Commission for tariff determination of Section 62 projects should not be used as a yardstick to modify the provisions of the Standard TSA which is issued by MOP in exercise of their powers under Section 63.</p> <p>Deem COD cannot be considered as actual COD under the definition of Commercial Operation Date provided in CERC's Tariff Regulations, therefore, the party claiming Deem COD under the provisions of Tariff Regulations is not eligible for transmission tariff in terms of the provisions of Tariff Regulations. Instead, the Tariff Regulations provides the flexibility to the developer and the Hon'ble Commission for shifting of SCOD to the date of actual utilization and commencement of recovery of transmission tariff for 35 years. Since, the Barh-Balia Judgement created an embargo on a Section 62 developer to recover transmission tariff prior to achieving commercial operations, the directions are given to the delaying party for bearing IDC & IEDC for the period of mismatch by the defaulting parties. It is worthwhile to note that mismatches between generators and transmission licensees were treated alike, and wherever Section 62 transmission project was delayed, the corresponding liability was levied on the delaying entity in form of IDC & IEDC.</p> <p>Whereas, in cases where a TBCB project had achieved and declared its COD in terms of Article 6.2 of the TSA, under the provisions of Article 10 of the TSA read with Article 6.2, the TBCB licensee was directed to recover transmission tariff for the entire period of mismatch from the defaulting party.</p> <p>The difference in approaches while dealing with a stranded asset commissioned under the provision of Section 62 of the Electricity Act <i>versus</i> a transmission project commissioned under Section 63 of the Electricity Act was primarily due to the contractual provisions of the TSA, which mandated recoveries of transmission charges from the date of COD or Deem COD as opposed to the Tariff</p>

**Comments on Draft CERC (Sharing of Inter-State Transmission Charges and Losses) (Second Amendment)
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			Regulations, which clearly mandated that Commercial Operation Date is only after achieving regular service, which is not the case in Section 63 TSA.