

TAMILNADU GENERATION AND DISTRIBUTION CORPORATION LIMITED

From

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To

The Secretary
Central Electricity Regulatory Commission
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Lr. No CFC/RC/SE/CERC/EE2/AEE4/ F. Sharing Reg./D.97 /23, dt:21.04.2023.

Sir,

Sub: Draft Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) (Second Amendment) Regulations, 2023 - TANGEDCO's comments and observations -Submission of – Reg.

Ref: Public Notice issued vide No. L-1/250/2019/CERC Dated: 17.03.2023

This has reference to the public notice issued vide No. L-1/250/2019/CERC Dated: 17.03.2023 inviting comments/ suggestions/ objections from the stakeholders and interested persons on the Draft Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) (Second Amendment) Regulations, 2023.

In this regard, it is submitted that the proposed amendment is against public interest and not sustainable in law and hence may be withdrawn. The detailed views and comments are enclosed as Annexure.

Thanking you,

Yours faithfully,


Chief Financial Controller
Regulatory Cell, TANGEDCO

Encl: As above

Comments and suggestions of TANGEDCO on the draft CERC (Sharing of Inter-State Transmission Charges and Losses) (Second Amendment) Regulations, 2023:

- 1) The primary objective of the 2nd Amendment to the Sharing Regulations 2020, proposed by the Hon'ble Commission is 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.
- 2) In this context it is pertinent to bring it to the notice of the Hon'ble Commission that the basic premise of the provisions under the Sharing Regulations 2020 to deal with the mismatches.
- 3) The Hon'ble Commission vide its Statement of Reasons (SoR) for the 2020 Sharing Regulations has dealt with each and every scenario elaborately duly discussing the comments, views & objections of the various stake holders.
- 4) It is appropriate and relevant to bring to the notice of the Hon'ble Commission, the following deliberations and justification given in the SoR of the 2020 Sharing Regulations:

"31.3.1 The draft Regulation has been modified as Regulation 13(4) in the 2020 Sharing Regulations as follows:

"(4)Where COD of a generating station or unit(s) thereof is delayed and the Associated Transmission System has achieved COD, which is not earlier than its SCOD, the generating station shall pay Yearly Transmission Charges for the Associated Transmission System corresponding to Long Term Access granted for the generating station or unit(s) thereof, which have not achieved COD:

Provided that Yearly Transmission Charges in respect of Associated Transmission System shall be included for determination of transmission charges of DICs in accordance with Regulations 5 to 8 of these regulations upon the generating station or unit(s) thereof achieving COD."

31.3.2 Subject to provisions of the Grid Code, a transmission system shall be entitled for tariff after its COD which shall not be before its SCOD. In case of delay in achievement of COD of generating station or unit(s) thereof, the generating station shall pay Yearly

Transmission Charges for the Associated Transmission System corresponding to Long Term Access granted for the generating station or unit(s) thereof, which have not achieved COD.

31.3.3 Regarding availability of transmission system for drawl of start-up power or power for testing and commissioning, the Commission observes that in case such transmission system has been built as per timeline given by the generating station for start-up power or for trial operation, the generating station can always enter into an agreement regarding terms and conditions for payment of such tariff.

31.3.4 Further, the payment of charges as per the Regulations is pro-rata for the period of delay only and not for the entire year. For example, if a generating station gets delayed by 6 months, it shall pay YTC corresponding to six months only. Adjustment of transmission charges payable for the period of delay against the capital cost for such generating station or sale of infirm power is outside the scope of this Regulation.

31.3.5 The associated transmission system is not utilised optimally till generating station is declared under commercial operation. In case of projects eligible for waiver of inter-State transmission charges and losses, waiver is applicable only after the project achieves COD. Therefore, a RE generating station has to pay transmission charges in case of any delay in COD. Non-payment of transmission charges by such generators would either result in the transmission service provider not recovering the tariff even when it has declared its system under commercial operation or it would lead to burdening of existing DICs even when they are not getting any benefit from such generating station. Both cases result in penalising entities who are not responsible for delay of the RE generating station. Irrespective of whether a generating station is covered under provisions of waiver of transmission charges and losses scheme or not, it shall be liable to pay charges as per Clause 3 or Clause 7 of Regulation 13 of the 2020 Sharing regulations, as the case may be.

32.3.1 The following rationale for the draft Regulation was given in the Explanatory Memorandum to the Draft 2019 Sharing Regulations:

“(v) There may be generating stations for whose Long term Access no additional investment is required i.e there is no Associated transmission system and the Long term Access is granted on existing margins. If such a generating station gets delayed, it would be difficult to levy transmission charges for specific transmission elements to such generator because no

*such element is identified. However the existing system is allocated such generator from a specific date which may lead to construction of new elements for Applicants who apply for LTA post this generator. Hence to ensure that generating stations apply for date of start of Access prudently and other entities donot suffer, it is proposed that such generating station shall pay transmission charges @10% *TDR for the period of delay of the generating station."*

32.3.2 Therefore, generators shall be levied transmission charges if they are delayed, even in cases where they have been granted LTA on existing system. Further, such charges shall also be applicable for the renewable projects covered under waiver of transmission charges.

32.3.3 Billing for the transmission system covered under Regulations 5 to 8 shall be included in the first bill. Billing for delay of generating station under this Clause i.e. 10% of transmission charges for the State, shall be over and above the charges covered under the first bill and hence the same shall be reimbursed to the DICs in proportion to the first bill. There is no under-recovery to the transmission licensees on this count.

32.3.4 The Regulations provide for payment of transmission charges for delay by all generating stations covered under the clause, irrespective of whether the same is due to uncontrollable reasons.

32.3.5 Levying 10% transmission charges for delay by a generating station is fair as no additional expenditure on transmission has been made for such a generator. The treatment of recovery made under this provision has been included in the Regulation 13(7) of the 2020 Sharing Regulations.

32.3.6 Applicability of per MW transmission charges of State has been incorporated in Regulation 13(7) of the 2020 Sharing Regulations as follows:

"Where Long Term Access is granted to a generating station on existing margins and COD of the generating station or unit(s) thereof is delayed, the generating station shall, corresponding to the capacity that is delayed, pay transmission charges at the rate of 10% of transmission charge per MW for the State where such generating station is located:

Provided that the amount so received in a billing month, shall be reimbursed to the DICs in proportion to their share in the first bill in the following billing month."

33.3.1 The capital cost of transmission system is a small percentage of the capital cost of a generation project. Therefore, where transmission system is delayed, a transmission licensee cannot fully compensate for the generation loss of a generation project in terms of the

revenue loss based on the tariff in the PPAs or IDC, IEDC of generating station or fixed charges.

33.3.2 Regional Power Committee (RPC) as provided under the Act comprises of distribution licensees apart from CEA, CTU, POSOCO, generating stations and STUs. Further, it is the function of RPC as per Grid Code to agree on matters concerning stability and smooth operation of the integrated grid. Therefore, RPC is the appropriate forum to certify as to whether the transmission line is being used for improving the performance, safety and security of the grid. In cases where LTA is applied by a generating station on behalf of beneficiaries and beneficiaries sign the LTA Agreement, part LTA operationalization may be sought by generating station in case generating unit(s) has been declared under commercial operation.

33.3.3 If a generating station seeks part operationalization of LTA, it shall be liable to pay transmission charges as per the Regulations including untied LTA, if any.

34.3.1 Generally, the capital cost of the transmission system is a small percentage of the capital cost of a generation project. Therefore, where transmission system is delayed, a transmission licensee cannot fully compensate for the generation loss of a generation project in terms of the revenue loss based on the tariff in the PPAs or IDC, IEDC of generating station or fixed charges. This clause is in line with the provisions of Tariff Regulations 2019 notified on 7.3.2019.

34.3.2 Dealing with bank Guarantee is not the subject matter of this regulation.

34.3.3 In case of alternate arrangement, scheduling of power on long term basis would depend on whether LTA has been operationalized by CTU with such system. Moreover, dealing with issue of LTA is beyond the scope of these regulations.

34.3.4 Treatment of any charges paid by generating station for delay is beyond the scope of these regulations.

34.3.5 In case a transmission system is delayed and the other transmission system is ready but prevented from being put to use due to delayed transmission system, the transmission charges for such system which is ready, cannot be left without any compensation. Further, such compensation cannot be charged to other DICs, who are denied the benefit of using the transmission system for delay by another transmission licensee.

34.3.6 The Regulations provide that alternate arrangement shall be at the cost of transmission licensee. For making alternate arrangement for dispatch of power, the transmission licensee shall consult CTU. Needless to state, any alternate arrangement by the transmission licensee shall be allowed only with proper system studies, so that grid security is not compromised.

- 5) Further as cited in the draft notification, in the judgment dated 3.3.2016 in Civil Appeal No. 9193 of 2012 and Civil Appeal No. 9302 of 2012, the Hon'ble Supreme Court had taken a view that the beneficiaries cannot be made liable to pay the transmission charges before the transmission line is made operational as extracted below:

" 11. From the above definition, it is clear that switchgear and other works are part of transmission lines. In our opinion, Regulation 3 (12) of the Regulations, 2009 cannot be interpreted against the spirit of the definition of "transmission lines" given in the statute. It is evident from record that it is not a disputed fact that switchgear at Barh end of Barh-Balia line for protection and metering were to be installed by NTPC and the same was not done by it when transmission line was completed by the appellant. As such the appellant might have suffered due to delay on the part of NTPC in completing the transmission lines for some period. But beneficiaries, including respondent No. 1, cannot be made liable to pay for this delay w.e.f. 01.07.2010 as the energy supply line had not started on said date.

...

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."

Furthermore, the Regulations 19(5) (a) of the Tariff Regulation 2019 mandates as below:

"The following shall be excluded from the capital cost of the existing and new projects:

(a) The assets forming part of the project, but not in use, as declared in the tariff petition"

The law mandates to not load the beneficiaries unless the asset is put into use.

- 6) It is inferred from the Explanatory memorandum to the draft second amendment to SR 2020 that the amendment is proposed based on the directives of MoP vide letter dated 15.01.2021. The said direction under Section 107 of MoP is arbitrary and

against public interest and also contrary to the provisions under various Regulations and also against the provisions of Act and law laid down by Hon'ble Supreme Court in the matter of Power Grid Corporation of India Ltd. Vs Punjab State Power Corporation Ltd & Others in Civil Appeal No. 9193 of 2012 and Civil Appeal No. 9193 of 2012.

- 7) The effect of the said amendment is detrimental to the consumers and against the mandate of Section 61 of the Electricity Act, 2003.
- 8) In this connection, it is also pertinent to state that though the provisions under Regulation 13 of SR 2020 to deal with cases of mismatch are just and equitable; the **provisions are being diluted by the modified definition for the "Associated Transmission System" (ATS) under the GNA Regulations**. The new definition considers only the immediate evacuation system as ATS instead of considering immediate evacuation along with the network expansion system. In view of this new definition, the generators are already relieved off their liability to pay transmission charges even if there is delay on their part as the charges for the ATS will be pooled and recovered from the DICs. Under such circumstances, it is essential to safeguard the effectiveness of the provisions under Regulations 13 of the SR 2020 by restoring the original definition of ATS in the GNA Regulations as well as Sharing Regulations. Further, the present amendments are contrary to the provisions of the Act, 2003 and it is not legally permissible to bring in a Regulation which does not fall within the four corners of the Act, 2003.

9) Issues in the draft amendment:

Proposed amendment

"(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:

(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.

(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.

(c) 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 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.

(d) 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.

(e) 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.

Comments and views:

Without prejudice to the submissions in the earlier paragraphs, the following comments and views are submitted:

- a) There is no justification given in the explanatory memorandum for relieving the defaulting entity from payment of transmission charges liability when the tariff of the transmission entity approved based on deemed COD that cannot be recovered from the beneficiaries as per law.
- b) The sub clause(b) of Clause 12 of Regulation 13 generously allows the transmission tariff of the transmission licensee to be paid from the pool if the actual power flow in the transmission system is prevented beyond 6 months due to default of another Licensee till the actual power flow is established (no time limit). This is totally against the law and unduly benefitting the defaulting entities.
- c) The charges collected under third bill are the legitimate income for the beneficiaries that are recovered from the DICs on account of deviation. Since the transmission charges of the licensees are being paid fully by the DICs, any additional revenue to the pool should be paid back to the DICs. Disbursing the revenue earned by the DICs to the Licensees who's deemed COD is declared is unlawful and against public interest.

- d) Further sub clause (d) and (e) are vague and redundant under the circumstances of non provisions of events of defaults by the Licensee (reason for delay) explicitly in the Regulations.
- e) This is bad in law and will jeopardize the entire regulatory process and framework as the same is against public interest and consumer's interest as envisaged under s. 61 (c) and (d) of Act, 2003.
- f) Further, there is no reason to defer the commencement of the life period of the transmission asset when the deemed COD is declared.
- g) There is no reason / justification given for non recovery of 80% of the transmission charges till six months.
- h) The recovery of 20% YTC for six months and further 100% YTC from the seventh month from the pool is against public policy and consumers' interest. The consumers are in no way responsible for the delay in commissioning of the ATS. This will defeat the objectives of the Act to encourage competition and improve efficiency and recover the charges in a legitimate way.

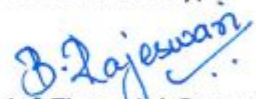
Under the above circumstances, since the proposed amendment is bad in law, it is requested that the proposed amendment may be dropped.

It is further submitted that since the proposed draft amendment is initiated based on the directions of MoP, TANGEDCO has requested MoP to withdraw the said notifications. A copy of the letter addressed to MoP is enclosed as Annexure-A.

Thanking you,

Encl.: As above

Yours faithfully,


Chief Financial Controller
Regulatory Cell

Rajesh Lakhoni, I.A.S.,
 Additional Chief Secretary /
 Chairman & Managing Director /
 TANGEDCO & TNEB Ltd., and
 Chairman, TANTRANSCO



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D.O.Lr. No. CFC/RC/SE/CERC /EE1/AEE4/F. Sharing Reg./D.98/23 dt:21.04.2023

Sub: TANGEDCO – MoP’s direction to CERC under Section 107 –CERC’s draft second amendment to Sharing Regulation 2020 – Adverse impact on Discoms and end consumers - Request to revisit the directions- Regarding.

Ref: 1) MoP’s letter No. 23/1212016-R&R dated 15.01.2021
 2) CERC’s Public Notice No. L-1/250/2019/CERC Dated: 17.03.2023

- 1) I invite your kind attention to the MoP’s direction to CERC under Section 107 of Electricity Act 2003 vide ref.(1) cited. In the said directives, MoP had discussed various issues associated with delay in execution of transmission and generation projects and the liabilities fastened on the entity responsible for the delay. Further, a direction has been issued by MoP to CERC to amend to Sharing Regulations.
- 2) In this context, it is essential to flag various misplaced facts and provisions of Regulations and also consequential huge financial implications on Discoms and ultimately the end consumers. Under paragraph (3) &(4) of the letter, the following are stated as

“(3) In its role as nodal agency, CTU signs the Long-Term Access Agreement (LTA) agreement with the users (long term customers). The Ministry is actively considering to amend the TBCB Guidelines to require the CTU to sign the Transmission Service Agreements (TSA) for development of the ISTS elements with the transmission licensees. The CTU also bills and collects ISTS charges from the users and disburses inter-state transmission charges to the transmission licensees on collection from DICs. As the nodal agency for the ISTS, the CTU acts as a bridge between the users and the transmission licensees. It coordinates with the transmission licensees on the one hand and the users on the other.

(4). There is no direct relationship between the transmission licensees and the users (other than for ATS under TBCB route, which is also proposed to be changed in the revised Guidelines being issued by the Ministry under section 63 of the Act). This is also neither desirable nor possible since the ISTS is an inter-connected system with many sub-systems and multiple transmission licensees used by multiple users as a shared resource.”



- 3) In this connection, it is pertinent to mention that CTU being the Central transmission Planner is assigned the responsibility to discharge all functions of planning and co-ordination relating to inter-State transmission system with State Transmission Utilities, State and Central Govt, RPCs and Licensees. For any Inter State transmission system, the State Discoms are predominantly the end beneficiaries. The CERCs Sharing Regulation 2020 mandates to recover the transmission charges of the ISTS licensees from the beneficiaries / Designated ISTS Customers (DICs). For any new ISTS that are planned and executed based on the requirement of the State Utilities, the State Utilities are taking part in the planning process and only with the concurrence / approval of the schemes by the concerned State Utilities /stake holders and the RPC, the schemes are taken up for implementation. Though the Inter-State transmission system is an inter-connected system with many sub-systems and multiple transmission licensees, used by multiple users as a shared resource, the ISTS planning is done at regional level and predominantly at the behest of the State utilities and the transmission charges are fully recovered primarily from the State discoms. The State Utilities in each region takes care of optimal planning of ISTS duly analysing the cost benefits and tariff liability on each Discom. Since the transmission tariff is being recovered from the Discoms which is a pass through to the end consumers, it is the primary responsibility of the Discoms to ensure the following:
- i) Optimal planning of the ISTS
 - ii) Technical requirement and financial viability of the scheme
 - iii) Ensuring timely execution and commissioning of the transmission projects with due followup and coordination to avoid any mismatch
 - iv) To avoid any redundancy in the system being paid by the utilities without using the system
 - v) Flagging various issues including non execution of the projects before appropriate forums
 - vi) Taking up with appropriate commission /forum to protect the interest of end consumers
- 4) Under these circumstances, the direct relationships between the Discoms and the ISTS licensees as provided and protected by the Act cannot be delinked, which otherwise would jeopardize the contractual rights of the Discoms that are responsible for creation of the ISTS based on the need.
- 5) It is pertinent to bring it to your notice that despite the stringent provisions in the statutes there are major mishaps happened in transmission planning and execution process in the recent past. For instance, nine numbers high capacity transmission corridors with an estimated capital investment of **Rs.58,061 Crore**



were approved by CERC during 2009 in petition No.233/2009 for evacuation of power from the IPPs based on the anticipated demand and target regions specified by the IPPs. However, many of the IPPs did not firm up their projects despite the transmission systems were developed at the behest of the generators. Due to non materialisation of the PPA and also their own problems, the generators relinquished the LTA availed by them at a stage where the transmission schemes were already developed. This has resulted in creation of huge redundant transmission network. The capital cost of the transmission assets are forcefully put into PoC pool and the cost are being socialised. In contrary some of the generators are relieved off the relinquishment charges also due to conversion of the evacuation schemes into system strengthening schemes. The Hon'ble CERC vide its order dated **8th March, 2019** in petition No.92/MP/2015 has directed to recover the relinquishment charges from the generators who have relinquished their LTA due to non firming up of PPA or abandonment of generation project. The Commission has observed in the above said order as below:

120. It is evident from the above table that out of 40607.95 MW envisaged capacity in 9 HCPTCs, quantum of 17556.3 MW is remaining and the balance capacity of 23051.65 MW has been surrendered. In fact, the average works out to 56.8% of relinquishment/abandonment or in abeyance of LTAs. Considering such large quantum of relinquishment of capacity, it cannot be said that there would not be stranded transmission capacity in ISTS.

- 6) Further, the relinquishment charges to a tune of **Rs.7299 crore** on account of stranded capacity created due to relinquishment of LTA, notified by CTUIL has not been recovered from the generators and reimbursed to DICs due to interim stay granted by Hon'ble APTEL. The CTUIL has neither excluded the illegitimate burden imposed on existing DICs nor taken any serious steps to vacate the stay and recover the charges from the defaulting generators.
- 7) Furthermore, the revised Guidelines for encouraging competition in development of Transmission Projects notified by MoP vide resolution dated 10th August 2021 has aggravated the turmoil by removing the legitimate rights of DICs being the signatory to the Transmission Service Agreement and assigning CTUIL as the nodal agency to act on behalf of DICs. In this connection, TANGEDCO vide letter dated 06.09.2021 addressed to SRPC with a copy to MoP requested to withdraw the modified guidelines in the best interest of the consumers. A copy of the letter is enclosed as Annexure-I
- 8) Moreover, the transmission schemes developed for evacuation of power from RE generators are also commissioned well ahead of commissioning of RE generators. The present Sharing Regulations mandates the entities attributing to the delay to bear the transmission charges. If the generation /demand is delinked from



transmission planning, it will result in irreversible damages to Discoms, who are already overburdened with transmission charges waiver to RE generators / and the beneficiaries of RE power. This has already created unnecessary financial burden for payment of transmission charges in respect of capacity not being used due to delay in COD of the generators.

9) However, it has been stated in the letter as below:

6. However, it has been noted that the Sharing regulation 2020 require that an ISTS licensee whose transmission system is delayed, **rather than the CTU, on behalf of the DICs, pays transmission charges to the licensee of an inter-connected transmission element / Generation company whose deemed Commercial Operation Date (COD) is declared (Regulation 13(12)).**

7. Similarly, Regulation 13(8) requires payment of the transmission charges of the Associated Transmission System by a transmission licensee to a generating company in case of delay in commissioning of the Transmission System for the period from the COD of the generating station to the COD of the ATS. Conversely, on delay of COD by a generating station, the generating company concerned is required to pay the transmission charges of the ATS and the dedicated lines for the period from the COD of the ATS or the dedicated line, as the case may be, to the COD of the generating station (Regulation 13(5) and 13(9)).

8. In all these cases, there is no contract or direct relationship between the defaulting party and the aggrieved. It is not proper to require a third entity not party to a contract to compensate either party to a contract. These clauses are also not proper for the following reasons:

(i) The penalties are uncapped. This puts a lot of risk on the licensee and will lead to inflated bids, which will not be in public interest.

(ii) The penalties in case of regulation 13(12), are not linked to the project cost of the defaulting party.

(iii) In case of TBCB projects,

a) the defaulting licensee is already required to pay liquidated damages as per the TSA;

b) the above-mentioned additional amount is not specified in the TSA. Requiring additional payments through Regulations is not in the spirit of section 63 of the Act, according to which the Commission is required to adopt the tariff.

c) there is no provision in the TSA for payment by the generating company to the transmission licensee in case of delay of COD of the generating station. It is not proper to levy the same through Regulations after the TSA has been signed.

(iv) **It changes the payer from the CTU (on behalf of the DICs) to the defaulting party.**

9. It is also noted that the Sharing Regulations do not recognize events of force majeure which may delay COD of a transmission element or a generating station."

10) It is noted with great concern and disquiet that the true spirit of the provisions under the Sharing Regulations to fasten the responsibility on the entity responsible for any mismatch between COD of two inter-dependent projects



(Generation- ISTS, ISTS- ISTS and ISTS-Intra STS), has been misplaced and misinterpreted in these directives.

- 11) The very purpose of the provisions under Regulation 13 of SR 2020 is to deal with exclusive cases that are not indemnified through indemnification agreement / implementation agreement and not covered under any other Regulations. When a transmission system is developed for evacuation of power from a generating Station, then the COD of the transmission system should be matched with that of the generating station so as to bring both the generating station and the associated transmission system into beneficial use in the larger public interest. If there is any delay on account of any one, then the assets cannot be put into regular use and **tariff cannot be awarded to such assets**. In order to safeguard the interest of Transmission licensee / generator (not the beneficiaries), the Regulators have brought in a proviso under the Tariff Regulations to approve the deemed COD and thereby the tariff is approved. By approving the deemed COD, the concerned entity becomes eligible to claim the tariff. If the assets are not physically brought into beneficial use, then the Regulation mandates to compensate the entity that has prevented the other entity from declaring COD and putting the asset to beneficial use. Once both the systems are put into beneficial use, the beneficiaries are liable to pay both generation and transmission tariff. This is applicable for the other cases also ie. ISTS- ISTS and ISTS-Intra STS.
- 12) It is an established fact that there is a liability between parties in all the above cases and DICs do not come into picture at all. **Shifting the responsibility from the defaulters to the exiting DICs is unlawful, arbitrary and against public interest and violative of the law laid down by Hon'ble Supreme Court** in the matter of Power Grid Corporation of India Ltd. Vs Punjab State Power Corporation Ltd & Others in Civil Appeal No. 9193 of 2012 and Civil Appeal No. 9193 of 2012. In fact, the Hon'ble Central Commission had deliberated all the above issues in detail in the Statement of Reasons (SoR) to Sharing Regulations 2020 which are in line with the law laid down by the Hon'ble Supreme Court. A copy of the relevant pages of SoR to SR 2020 is enclosed as Annexure-II
- 13) The transmission licensees irrespective of Regulated tariff route or TBCB route should abide by the provisions of Sharing Regulations. The Liquidated damage (LD) is applicable for the delay in completion of a project by the licensee. The clauses under **Reg.13 are applicable for preventing the other entity/ licensee** to get the tariff approved by CERC. In the entire scenario, the



beneficiaries have no role to play. However, the present directions impose financial liability on the end consumers through the beneficiaries. The ignored fact is that the consumers cannot be billed unless the assets are put into beneficial use.

- 14) Further, it is to be stated that the Force majeure events are clearly defined in both the TSA as well as the Regulations. If the delay is on account of force majeure events, the Central Commission condones the delay and approves the tariff and no liability is imposed on the licensees and tariff liability is imposed on the beneficiaries (IDC, IEDC etc). Hence, the observation of MoP that the Sharing regulations do not recognize Force majeure is incorrect. MoP also failed to recognize that Force Majeure event causes financial implication on the beneficiaries also. The consumers are in no way responsible for the delay in commissioning of the ATS / mismatches. This will defeat the objectives of the Act to encourage competition, improve efficiency and recover the charges in a legitimate way. A consideration of this would be in the larger public interest.
- 15) Under these circumstances, the draft amendments to Sharing Regulations 2020 notified by Hon'ble CERC based on the directives of MoP is against the public interest and will impose huge financial implication on the Discoms. Further, it will dilute the entire regulatory process of tariff determination /adoption and sharing of charges on equitable basis and let scot-free the defaulting entities without paying any damages. TANGEDCO has submitted the comments and observation on the draft amendment to SR 2020 to Hon'ble Commission. A copy of the comments and observations is enclosed as Annexure-III for reference.
- 16) In view of the above, the following is submitted for kind consideration:
- Withdraw the directions issued vide MoP's letter No. 23/12/2016 - R&R dated 15.01.2021 to CERC
 - Restore the provisions under the original guidelines for encouraging competition in development of Transmission Projects so that LTTCs be a signatory to TSA.

Yours sincerely,

Sd...21.04.2023

(Rajesh Lakhoni)

Encl: As above

To

Shri. Alok Kumar,

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TANGEDCO

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Southern Regional Power Committee,
29, Race Course Cross Road,
Bengaluru.

Lr. No: CFC/RC/SE/CERC/EE 1/AEE 1/F. SRPC/D.260 / 2021, dt:06.9.2021

Sir,

Sub: MoP – Notification of Guidelines for Encouraging
Competition in Development of Transmission Projects –
Concerns and views of TANGEDCO – Issue to be taken
up with MoP and CERC- Requested- Regarding
Ref: MoP's Resolution dated 10th August, 2021

This has reference to the MoP's Resolution dated 10th August, 2021 on the
Guidelines for Encouraging Competition in Development of Transmission Projects.

2) In this context, TANGEDCO would like to express the concerns and views as
detailed below:

**TANGEDCO'S concerns and views on the "Guidelines for encouraging
competition in development of Transmission Projects" :**

- (i) Ministry of Power vide resolution dated 10th August, 2021 notified the revised guidelines for encouraging competition in development of Transmission Projects. The new guidelines repealed the existing guidelines for development of transmission projects through Tariff Based Competitive Bidding.

- (ii) As per the Section 63 of the Electricity Act 2003 and National Electricity Policy, the Ministry of Power, GoI notified on 19th January, 2005 the bidding guidelines for procurement of transmission services through tariff based competitive bidding (TBCB) and amendments were issued subsequently. The Central Electricity Regulatory Commission is empowered under Section 63 to adopt the tariff determined through transparent process of bidding. Similarly, the appropriate Commissions have jurisdiction in case of disputes in Transmission Service Agreement or Tariff. The Transmission Service Agreement (TSA) is a statutory/legal document approved by the Central Commission. The Long Term Transmission Customers (LTTCs) / beneficiaries are the signatories of the TSA. The TSA is initially executed between the Bid Process Coordinator and the LTTCs and then transferred to the successful bidder. One among the LTTCs is assigned as Lead LTTC.
- (iii) Since the tariff of the transmission projects is being recovered from the beneficiaries and the transmission services are going to be availed by them, the beneficiaries / LTTCs are obviously assigned party to the agreement. The TSA clearly specifies the rights and obligations of the LTTCs as well as the Transmission Service Provider (TSP). Breach of the contractual obligations like delay in commissioning of the Project, declaration of Force Majeure condition, claiming liquidated damages, revision of tariff on account of various reasons will severely impact the financial liability of the LTTCs. There are many litigations / disputes decided in favour of the LTTCs by CERC and other forums.
- (iv) Since the notification of the guidelines issued by MoP in 2005, amendments have been issued with **due consultation with the beneficiary States / Utilities**. The Central Commission had sent two advisories to MoP regarding modifications required in the guidelines. In the first advisory dated 14.10.2016, it was advised to issue modifications

in the guidelines with regard to introduction of implementation agreement, Awarding project as a whole instead of splitting into different elements, provision to dealing with delay in commissioning of upstream/downstream system and, early commissioning incentives. In the second advisory dated 22.06.2020, the Central Commission issued advise on number of issues which includes exclusion of Survey report from RfP, upfront firming up of coordinates of substations, indicating the purpose of the project, LD, foreclosure of the project, Committee comprising of CEA, CTU and LLTTC for quality verification and certifying deemed COD, dealing with mismatch of upstream and downstream elements, poor performance of TSP, bidding as a project, and reduction of fee for Bid Process Coordinator from 1% of project cost with a ceiling of Rs.15 crores to 5% of first year tariff with a ceiling of Rs.7 crores.

- (v) In these advisories, the role of LTTCs is given emphasis since they are inevitable part/ stakeholder of the project implementation and further throughout the life period of the project.
- (vi) Earlier, the Central Electricity Authority vide its letter dated 14.07.2017 forwarded the draft Implementation Agreement and Authorisation agreement related to Standard Bidding Documents for procurement of Inter State Transmission Service through TBCB seeking comments and views of the beneficiaries/ DICs. In response to the draft agreements, TANGEDCO vehemently opposed the move to dilute the rights of the beneficiaries as the State Utilities are important stakeholders in planning, implementation and utilization of the ISTS. Since the proposed modifications through the Authorization agreement was against the Statute, it was not proceeded further and withdrawn.
- (vii) Now, the MoP notified the revised guidelines for development of transmission projects through Tariff Based Competitive Bidding without

any consultation with the stakeholders/ beneficiaries. In the revised guidelines, the role/ rights of the State Utilities have been removed. The following has been stated in the new guidelines:

- *The projects shall be awarded on Build, Own, Operate and Transfer mode.*
- *For inter-state transmission projects, after expiry of the contract period of 35 years the project assets along with substation land with rights, right of way and clearances shall compulsorily be transferred to CTU or its successors or **an agency as decided by the Central Government** after 35 years from COD of project at zero cost and free from any encumbrance and liability.*
- *For intra-state transmission projects, the project assets along with substation land with rights, right of way and clearances shall compulsorily be transferred to an agency as decided by the State Government after expiry of contract period of project, at zero cost and free from any encumbrance and liability.*
- *The contract period for the intra state transmission projects may be 35 years or any period as fixed by the LTTCS or BPC as per the relevant regulations of the Appropriate Commission.*
- *The STU (being the planning agency), in the year which is three (3) years prior to the expiry of the project, will examine the need of upgradation of the system or renovation and modernization of the existing system depending on technological options and system studies at that time. The project may then be awarded to successor bidder selected through a competitive bidding process for renovation and modernization, if required, and operation and maintenance after contract period of project.*
- *For inter State transmission projects, a **separate Transmission Service Agreement (TSA)** will be signed between the Nodal Agency and the TSP for the development and operation of the project.*
- *Further, TSP shall also execute agreement(s) required, if any, under Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations as amended from time to time within fifteen (15) days from the date of grant of Transmission License from the Commission.*
- ***In case there is any default in payment of transmission charges by any DIC, the same shall be regulated as per the provisions of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations as amended from time to time.***
- *For monitoring of the project as well as for performing roles & responsibilities as identified in the Transmission Service Agreement, **Nodal Agency shall appoint independent engineer during construction phase**, as per framework provided in these Guidelines at Annex-2.*
- *The TSP shall provide to the CEA, Nodal Agency and independent engineer, on a monthly basis, progress reports along with likely completion date of each Element with regard to the Project and its execution. CEA shall monitor the development of the Project for its timely completion for improving and augmenting the electricity system as a part of its statutory responsibility.*

- (viii) It is evident from the above that the legitimate rights / powers of the beneficiaries / LTTCs have been completely removed through the revised guidelines. The LTTCs will not have any role in respect of the projects under TBCB except the liability to pay the transmission charges billed by the TSP.
- (ix) The LTTCs cannot litigate any disputes as they will be no longer parties to the TSA. Appointing an independent Engineer in place of the LLTTC is totally arbitrary and will benefit the TSPs at the cost of LTTCs.
- (x) This is against the statutory provisions under the Sharing Regulations since the TSA is an approved document of CERC. Any guidelines which are inconsistent with the Statutes are not legally tenable.
- 3) In view of the above, it is apparent that the modified guidelines are notified arbitrarily against the Statutes without consultation with the beneficiaries /stakeholders and hence not implementable. Since the modified guidelines will cause irreversible financial damages to all the Discoms, it is requested that the issue may be taken with MoP as well as Central Electricity Regulatory Commission from Chairperson /SRPC for withdrawing the **modified guidelines** for encouraging competition in development of Transmission Projects.

Yours faithfully,

B. P. Rajeswar
06/09/2024
Chief Financial Controller / Regulatory Cell

Copy submitted to

- 1) The Secretary(Power),Ministry of Power, Government of India,
Shram Shakti Bhawan, Rafi Marg, NewDelhi- 122001
- 2) The Secretary, Central Electricity Regulatory Commission, 4th Floor, Chanderlok
Building, 36, Janpath, New Delhi- 110001.

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

No.L-1/250/2019/CERC

Coram:

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

Date: 10th August 2020

In the matter of

Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2020

Statement of Reasons

1. Introduction

1.1. Section 61 of the Electricity Act, 2003 (hereinafter referred to as the "Act") provides as under:

"The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

- (a) The principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;*
- (b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;*
- (c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;*
- (d) Safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;*
- (e) the principles rewarding efficiency in performance;*
- (f) Multiyear tariff principles;*

(g) that the tariff progressively reflects the cost of supply of electricity and also, reduces and eliminates cross-subsidies within the period to be specified by the Appropriate Commission;

(h) the promotion of co-generation and generation of electricity from renewable sources of energy;

(i) the National Electricity Policy and tariff policy.”

- 1.2. Para 5.3.4 of the National Electricity Policy notified by the Ministry of Power, Government of India, under Section 3 of the Act vide Resolution No.23/40/2004-R&R (Vol.II) dated 12.1.2005 provides as under:

“To facilitate cost effective transmission of power across the region, a national transmission tariff framework needs to be implemented by CERC. The tariff mechanism would be sensitive to distance, direction and related to quantum of flow.”

- 1.3. Further, Para 7.2(1) of Tariff Policy notified vide Resolution No. No.23/2/2005-R&R (Vol.III) dated 6.1.2006 of Ministry of Power, Government of India provides as under:

“Transactions should be charged on the basis of average losses arrived at after appropriately considering the distance and directional sensitivity, as applicable to relevant voltage level, on the transmission system.”

- 1.4. The provisions of the Act and the policies issued by the Central Government enjoin upon the Central Electricity Regulatory Commission (hereinafter also referred to as the “Commission” or “CERC”) to develop and implement a national transmission tariff framework sensitive to distance, direction and quantum of flow.
- 1.5. The Commission, in exercise of the powers under Section 178 of the Act had notified the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 (hereinafter referred to as the “2010 Sharing Regulations”). The 2010 Sharing Regulations came into force with effect from 1.7.2011 and there had been six amendments to the 2010 Sharing Regulations. Keeping in view the changes in the transmission segment since 2010 and requests of stakeholders, the Commission constituted a Task Force vide Office Order dated 10.7.2017 under the Chairmanship of Shri A.S. Bakshi (the then Member, CERC) to review the framework of Point of Connection (POC) charges. The terms of reference (ToR) were *inter alia* to critically examine the efficacy of the existing PoC mechanism, indicate deficiency in the existing

31.2.7 KSK Mahanadi has suggested that this clause requires to be re-looked into with respect to the fact that transmission charges would be payable only to the extent of BPTA/LTA signed with the Associated Transmission system and it cannot be for the entire plant capacity.

31.2.8 NHPC and NEEPCO have suggested that availability of transmission system, 30-45 days prior to COD of the first generating unit of a hydro generating station, is essential for testing and commissioning of hydro generating units/ station. During the testing and commissioning period and till declaration of COD of first unit, hydro generating stations should be excluded from the purview of payment of any Yearly Transmission Charges. If the COD of the first unit of the generating station gets delayed, a provision may be made for payment of transmission charges by the generating station pro-rata for the period of delay instead of payment of Yearly Transmission Charges so as to bring consistency with the 2019 Tariff Regulations. Further, in that situation, the transmission charges to be paid should be set off against the revenue generated from sale of infirm power and the balance amount (if any) should only be deducted from the capital cost for the purpose of tariff.

31.1.10 MSEDCL has suggested that in case associated transmission system has achieved COD before its scheduled COD and before generating station gets commissioned, the transmission charges of transmission line should not be allowed to be recovered under POC mechanism under Regulations 5 to 8 of the Draft 2019 Sharing Regulations. In case of such delays, only after scheduled COD and till the generating station achieves COD that the transmission charges should be recovered from generator. The buyer would pay transmission charges if generating station achieves COD as per its schedule COD.

31.2.10 Azure power has suggested to add the following after Regulation 11(4):

"If there is a change in the project SCOD as approved by the Procurer/ appropriate Commission, the same extension shall also be provided to the SPD under its obligations to CTU/ PGCIL as well. In case, the generating station is delayed, beyond the SCOD, then the charges should apply from the SCOD of generating station or COD of the transmission station, whichever is later."

31.3 Analysis and Decision

31.3.1 The draft Regulation has been modified as Regulation 13(4) in the 2020 Sharing Regulations as follows:

“(4)Where COD of a generating station or unit(s) thereof is delayed and the Associated Transmission System has achieved COD, which is not earlier than its SCOD, the generating station shall pay Yearly Transmission Charges for the Associated Transmission System corresponding to Long Term Access granted for the generating station or unit(s) thereof, which have not achieved COD:

Provided that Yearly Transmission Charges in respect of Associated Transmission System shall be included for determination of transmission charges of DICs in accordance with Regulations 5 to 8 of these regulations upon the generating station or unit(s) thereof achieving COD.”

- 31.3.2 Subject to provisions of the Grid Code, a transmission system shall be entitled for tariff after its COD which shall not be before its SCOD. In case of delay in achievement of COD of generating station or unit(s) thereof, the generating station shall pay Yearly Transmission Charges for the Associated Transmission System corresponding to Long Term Access granted for the generating station or unit(s) thereof, which have not achieved COD.
- 31.3.3 Regarding availability of transmission system for drawl of start-up power or power for testing and commissioning, the Commission observes that in case such transmission system has been built as per timeline given by the generating station for start-up power or for trial operation, the generating station can always enter into an agreement regarding terms and conditions for payment of such tariff.
- 31.3.4 Further, the payment of charges as per the Regulations is pro-rata for the period of delay only and not for the entire year. For example, if a generating station gets delayed by 6 months, it shall pay YTC corresponding to six months only. Adjustment of transmission charges payable for the period of delay against the capital cost for such generating station or sale of infirm power is outside the scope of this Regulation.
- 31.3.5 The associated transmission system is not utilised optimally till generating station is declared under commercial operation. In case of projects eligible for waiver of inter-State transmission charges and losses, waiver is applicable only after the project achieves COD. Therefore, a RE generating station has to pay transmission charges in case of any delay in COD. Non-payment of transmission charges by such generators would either result in the transmission service provider not recovering the tariff even when it has declared its system under commercial operation or it would lead to burdening of existing DICs even when they are not getting any benefit from such generating station. Both cases result in penalising

entities who are not responsible for delay of the RE generating station. Irrespective of whether a generating station is covered under provisions of waiver of transmission charges and losses scheme or not, it shall be liable to pay charges as per Clause 3 or Clause 7 of Regulation 13 of the 2020 Sharing regulations, as the case may be.

32. Clause (5) of Draft Regulation 11

32.1 The draft Regulation provided as under:

“(5) Where Long Term Access to ISTS is granted to a generating station on existing margins and COD of the generating station or unit(s) thereof is delayed, the generating station shall pay transmission charges @10% of transmission charge for the State where it is located for the quantum of such Long Term Access.

Provided that the amount received on account of payments in the month towards such Long Term Access shall be reimbursed to the DICs in proportion to their shares under the First Bill in the following month.

Provided that such Long Term Access shall be excluded for computation under Regulations 5 to 8 of these regulations.”

32.2 Comments have been received from NEEPCO, NTPC, Adani Mundra, Sembcorp, Tata Power, WIPPA, APP, Renew Power, Sembcorp, TANGEDCO, ATL, CII, L&T IDPL, BYPL, GUVNL, KPTCL, Hero Future, Sprng Energy and SRPC.

32.2.1 NEEPCO, NTPC, Adani Mundra, Sembcorp, Tata Power, WIPPA and APP have suggested that when LTA has been granted on existing margins and if delay in COD of generating station has not caused any extra burden on the existing users, no transmission charges may be charged during the period of delay of the generating station in such cases. The margin may be used by other DICs during the period of delay.

32.2.2 Renew Power has suggested that following proviso may be added after Regulation 11(5):

“Provided further that, the above provisions are not applicable to the cases specified under Regulation 11(1) of these Regulations, where awarded through competitive bidding process in accordance with the guidelines issued by the Central Government.”

32.2.3 Sembcorp has suggested adding a proviso as under:

“no charges shall be applicable, where MTOA to ISTS is granted to a generating station on existing margins and COD of the generating station or unit(s) thereof is delayed.”

32.2.4 TANGEDCO has suggested that 20% transmission charges may be levied in place of proposed 10%.

- 32.2.5 ATL, CII and L&T IDPL have suggested that if only 10% of transmission charges will be paid, then the transmission licensee would not be able to recover the full transmission charges. Therefore, 100% of transmission charges should be recovered in cases where LTA is granted and CoD of generating station is delayed.
- 32.2.6 BYPL has suggested that the amount of transmission charges should be 100% irrespective of whether it is given on existing margin or otherwise because the transmission charges of ISTS which is under-utilized due to wrong planning is borne mainly by DISCOMs.
- 32.2.7 GUVNL has suggested that 100% transmission charges should be payable by the generator instead of 10% as it will lead to declaration of advanced date of commissioning for availing LTA on existing margins whereas the project would come only at a later stage. This would also deprive genuine applicants from availing LTA on existing margin.
- 32.2.8 KPTCL has suggested that the rationale for charging generator to an extent of only 10% is not justified. It has suggested to have uniform charges for delay by generator or by transmission licensee.
- 32.2.9 Hero Future and Sprng Energy have suggested that if the project gets delayed for reasons not attributable to the generator, it is inappropriate to ask for submission of LC and payment of transmission charges.
- 32.2.10 SRPC has suggested that the words 'transmission charge for the State' may be replaced with the words 'transmission charge for the State per MW'.

32.3 Analysis and Decision

- 32.3.1 The following rationale for the draft Regulation was given in the Explanatory Memorandum to the Draft 2019 Sharing Regulations:

*“(v) There may be generating stations for whose Long term Access no additional investment is required i.e there is no Associated transmission system and the Long term Access is granted on existing margins. If such a generating station gets delayed, it would be difficult to levy transmission charges for specific transmission elements to such generator because no such element is identified. However the existing system is allocated such generator from a specific date which may lead to construction of new elements for Applicants who apply for LTA post this generator. Hence to ensure that generating stations apply for date of start of Access prudently and other entities donot suffer, it is proposed that such generating station shall pay transmission charges @10% *TDR for the period of delay of the generating station.”*

- 32.3.2 Therefore, generators shall be levied transmission charges if they are delayed, even in cases where they have been granted LTA on existing system. Further, such charges shall also be applicable for the renewable projects covered under waiver of transmission charges.
- 32.3.3 Billing for the transmission system covered under Regulations 5 to 8 shall be included in the first bill. Billing for delay of generating station under this Clause i.e. 10% of transmission charges for the State, shall be over and above the charges covered under the first bill and hence the same shall be reimbursed to the DICs in proportion to the first bill. There is no under-recovery to the transmission licensees on this count.
- 32.3.4 The Regulations provide for payment of transmission charges for delay by all generating stations covered under the clause, irrespective of whether the same is due to uncontrollable reasons.
- 32.3.5 Levying 10% transmission charges for delay by a generating station is fair as no additional expenditure on transmission has been made for such a generator. The treatment of recovery made under this provision has been included in the Regulation 13(7) of the 2020 Sharing Regulations.
- 32.3.6 Applicability of per MW transmission charges of State has been incorporated in Regulation 13(7) of the 2020 Sharing Regulations as follows:

“Where Long Term Access is granted to a generating station on existing margins and COD of the generating station or unit(s) thereof is delayed, the generating station shall, corresponding to the capacity that is delayed, pay transmission charges at the rate of 10% of transmission charge per MW for the State where such generating station is located:

Provided that the amount so received in a billing month, shall be reimbursed to the DICs in proportion to their share in the first bill in the following billing month.”

Illustration

Suppose that a generating station “G” located in a State ‘C’ had obtained Long term Access of 400 MW from 1.1.2020 and such Long term Access was granted by CTU on the existing margins in ISTS. Suppose that commercial operation of ‘G’ gets delayed and that it achieves COD only on 1.1.2021. Also suppose that transmission charges under “first bill” for ‘C’ is Rs. 200 crore for the billing period January 2020 (billed in the billing month of March 2020). If LTA+MTOA for ‘C’ is 3,000 MW for billing period of January 2020, transmission charge per MW for ‘C’ shall be Rs. 200/(3000) crore/MW = Rs. 6.67 lakh/MW. Hence, “G” shall be liable to pay transmission charges @10% of 6.67 Rs. lakh/MW for 400 MW i.e. Rs. 2.67 crore for the billing period of January 2020. Similarly, “G” shall be liable to pay transmission charges for each month till it achieves COD

33. Clause (6) of Draft Regulation 11

33.1 The draft Regulation provided as under:

“(6) Where operationalization of Long Term Access granted to a generating station is contingent upon COD of Associated Transmission System consisting of several transmission elements and only some of the transmission elements have achieved COD, the generating station may seek part operationalisation of Long Term Access. The Central Transmission Utility shall part operationalize Long Term Access corresponding to the capacity sought to be operationalised by the generating station, subject to availability of transmission system. The Yearly Transmission Charges for such transmission elements shall be included in Regulations 5 to 8 of these Regulations.

Provided that for cases not covered above, when only some of the elements of the Associated Transmission System have achieved COD and if such transmission system is certified by the respective Regional Power Committee(s) for improving the performance, safety and security of the grid, such transmission system shall be included under Regulations 5 to 8 of these regulations.”

33.2 Comments have been received from HPPTCL, MSEDCL, NTPC, NEEPCO, TANGEDCO and Sembcorp.

33.2.1 HPPTCL has commented that Regional Power Committee is not a body under the Act and entrusting it with certifying whether the transmission system will serve the purpose of system strengthening may not be appropriate. The work should be entrusted to CEA that may do so in consultation with STU.

33.2.2 MSEDCL has suggested that before certification by RPC regarding any transmission line being useful for improving the performance, safety and security of the grid, the system study report should be shared with all DICs in the region and RPC may issue certificate, if any, only after detailed discussion and comments from DICs.

33.2.3 NTPC has suggested that the words ‘generating station’ may be replaced with the words ‘generating station including generating stations for which LTA Agreement has been entered by its long-term customers’.

33.2.4 NEEPCO has suggested that in case liability of payment of transmission charges lies on the beneficiaries, Regulation 11(6) may be modified to include Long Term Customers (who have signed the LTA Agreement) for operationalization of part LTA. Under such circumstances, CTU may operationalize the part LTA based on availability of transmission system on request made by CGS for scheduling of power. This will avoid bottling up power of CGS where beneficiaries are long term customers.

33.2.5 TANGEDCO has suggested that the proviso may be deleted that states that – ‘as if an associated Transmission system is developed for power evacuation from a generating station and only when some of the elements of the ATS have achieved COD, the transmission charges are to borne by the Generator and not included in Regulations 5 to 8’.

33.2.6 Sembcorp has suggested that following proviso may be added before proviso of 11(6):

‘Where operationalization of Long Term Access granted to a generating station is contingent upon COD of Associated Transmission System consisting of several transmission elements and only some of the transmission elements have achieved COD, the generating station may seek early operationalization of Long Term Access. However in case of delay in achieving such revised COD by the generating station, the generating station shall not be subject to payment of any transmission charges till the commissioning of balance transmission elements.’

33.3 Analysis and Decision

33.3.1 The capital cost of transmission system is a small percentage of the capital cost of a generation project. Therefore, where transmission system is delayed, a transmission licensee cannot fully compensate for the generation loss of a generation project in terms of the revenue loss based on the tariff in the PPAs or IDC, IEDC of generating station or fixed charges.

33.3.2 Regional Power Committee (RPC) as provided under the Act comprises of distribution licensees apart from CEA, CTU, POSOCO, generating stations and STUs. Further, it is the function of RPC as per Grid Code to agree on matters concerning stability and smooth operation of the integrated grid. Therefore, RPC is the appropriate forum to certify as to whether the transmission line is being used for improving the performance, safety and security of the grid. In cases where LTA is applied by a generating station on behalf of beneficiaries and beneficiaries sign the LTA Agreement, part LTA operationalization may be sought by generating station in case generating unit(s) has been declared under commercial operation.

33.3.3 If a generating station seeks part operationalization of LTA, it shall be liable to pay transmission charges as per the Regulations including untied LTA, if any.

34. Clause (7) of Draft Regulation 11

34.1 The draft Regulation provided as under:

“(7) In case the generating station or unit(s) thereof has achieved COD and transmission system is delayed, the concerned transmission licensee(s) shall make alternate

arrangement for dispatch of power in consultation with Central Transmission Utility at the cost of the transmission licensee(s).

Provided that till such alternative arrangement is made, the transmission licensee(s) shall pay to the generating station the transmission charges proportionate to Long Term Access for the transmission system which is delayed .”

34.2 Comments have been received from APP, Tata Power, WIPPA, Azure Power, Hero Future, FICCI, DANS Energy, NHPC, NTPC, NEEPCO, NLC, MSEDCL, NTPC, KSK Mahanadi, RUVNL, APP, ACME Solar, ATL and APP.

34.2.1 APP, Tata Power and WIPPA have suggested considering generation loss of developer due to unavailability of transmission system and that the concerned transmission licensee(s) should compensate revenue loss based on the tariff in the PPAs. Azure Power, Hero Future and FICCI have also suggested that the generator should be compensated for the generation losses due to non-commissioning of transmission elements.

34.2.2 DANS Energy has suggested that till alternate arrangement is made, transmission licensee should pay to the generating station, the loss of revenue and IDC & IEDC for the period of delay in providing transmission access.

34.2.3 NHPC has suggested that declaration of COD of generating stations and associated transmission system needs to be managed through appropriate implementation agreement. Due to remote location of hydro plant, alternate arrangement is generally not practically feasible. Further, hydro generating stations incur loss of AFC (capacity charges + energy charges) for the duration of delay in COD of transmission system and the same is not commensurate with the compensation in terms of transmission charges. Hence, generating company should also be able to recover its full AFC for the duration of this delay. NLC has suggested that generating companies should be compensated with AFC rather than the transmission charge in case of delay.

34.2.4 NTPC and NEEPCO have suggested that compensation may be fixed at certain percentage of fixed charges payable by the transmission licensee to the generator in case of delay in COD of transmission system and the same percentage of transmission charges payable by generator to the transmission licensee in case of delay in COD of generating station.

34.2.5 MSEDCL has suggested that if operationalization of any long term access is delayed due to COD of associated transmission lines, the fixed charge burden of

generating unit/ station (if any claimed by generator under deemed availability) should be borne by concerned transmission licensee responsible for delay unless such delay is beyond control of the said owner. WBSEDCL has suggested that Central Transmission Utility ought to compensate the generating station for all the revenue losses, on account of, interest, RoE, depreciation etc. for delay in evacuation of power so that cost is not passed on to the beneficiaries/ DISCOMs.

34.2.6 NTPC has suggested that the words 'in case of scheduling of such power shall be on long term basis' may be inserted after Regulation 11(7) before proviso.

34.2.7 KSK Mahanadi has suggested that alternate arrangement is only for short notices and requires huge investment by the generating stations. Hence, capital expenditure of the alternate arrangement shall be at the cost of the transmission licensee.

34.2.8 RUVNL has suggested to define that any additional charges borne by the transmission licensee(s) on account of penalty due to delayed COD, should not be passed on to the Distribution Licensee. Further, if CTU makes alternate arrangement through STU network, then either CTU or the generating station should be required to pay transmission charges proportionate to the LTA.

34.2.9 APP and ACME Solar have suggested that additional clause may be added as under:

'in case of any delay in commissioning of evacuation system by CTU then generating stations shall be entitled to refund of Bank Guarantees submitted if any. Any such delay was not factored in by generator while quoting the tariff. BG comes with a cost and delay has added cost. Therefore, generator must be protected from this additional cost which is not due to its fault.'

34.2.10 ATL and L&T IDPL have suggested that the responsibilities and liabilities of transmission licensees and the generating stations are defined in the TSA and PPA respectively and, therefore, in case of any delay, treatment should be as per the provisions of TSA/PPA. There should be no liability on transmission licensee or the generating station beyond what is specified and agreed in the TSA/PPA else liability would mount and it will become impossible to get these projects financed. 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.

34.2.11 L&T IDPL has suggested that it is understood that the concerned transmission licensee should make alternate arrangement for dispatch of power in consultation with Central Transmission Utility at the cost of the transmission

licensee. Practically, it would be very difficult for a transmission licensee to make alternate arrangements for dispatch of power as it may not own the other asset and it would be difficult to convince the CTU i.e. PGCIL that is the largest transmission licensee. It may even lead to conflict of interest.

34.2.12 APP, during the public hearing, has suggested that alternative arrangement may be made in consultation with gencos and should not be unilateral.

34.3 Analysis and Decision

34.3.1 Generally, the capital cost of the transmission system is a small percentage of the capital cost of a generation project. Therefore, where transmission system is delayed, a transmission licensee cannot fully compensate for the generation loss of a generation project in terms of the revenue loss based on the tariff in the PPAs or IDC, IEDC of generating station or fixed charges. This clause is in line with the provisions of Tariff Regulations 2019 notified on 7.3.2019.

34.3.2 Dealing with bank Guarantee is not the subject matter of this regulation.

34.3.3 In case of alternate arrangement, scheduling of power on long term basis would depend on whether LTA has been operationalized by CTU with such system. Moreover, dealing with issue of LTA is beyond the scope of these regulations.

34.3.4 Treatment of any charges paid by generating station for delay is beyond the scope of these regulations.

34.3.5 In case a transmission system is delayed and the other transmission system is ready but prevented from being put to use due to delayed transmission system, the transmission charges for such system which is ready, cannot be left without any compensation. Further, such compensation cannot be charged to other DICs, who are denied the benefit of using the transmission system for delay by another transmission licensee.

34.3.6 The Regulations provide that alternate arrangement shall be at the cost of transmission licensee. For making alternate arrangement for dispatch of power, the transmission licensee shall consult CTU. Needless to state, any alternate arrangement by the transmission licensee shall be allowed only with proper system studies, so that grid security is not compromised.

35. Clause (8) of Draft Regulation 11

35.1 The draft Regulation provided as under: