



# Presentation on Draft CERC Transmission Licensing Regulations 2023 issued by CERC on 28.11.2023

Tata Power - Regulatory

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Sr. No.	Suggestions proposed in Clause/s	Slide Nos.
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# Comments/ Suggestions on Draft CERC Transmission Licensing Regulations, 2023 – (1)



Sr. No.	Clause No & Details	Suggested/Modified Clause	Rationale/ Remarks
1	<p>5(5). The applicant shall, within 3 days after filing the application, publish a notice of its application in Form-II, attached to these regulations, on its website and in at least two leading daily digital newspapers, one in English language and another in Indian language of the State or Union Territory where an element of the project or concerned transmission line is situated, inviting comments from the general public.</p>	<p>(5) The applicant shall, within 3 days after filing the application, <b>publish a notice of its application by posting the application on the e-filing portal of the Commission and on its website</b> in Form-II, attached to these regulations, <del>on its website and in at least two leading daily digital newspapers, one in English language and another in Indian language of the State or Union Territory where an element of the project or concerned transmission line is situated,</del> inviting comments from the general public.</p>	<ul style="list-style-type: none"> <li>The time and effort required for the process of publishing the Notices either in Physical Newspaper or Digital Newspaper is similar in nature. Hence, with the objective of reducing the burden imposed on businesses/ citizens and to promote ease of doing business it is necessary to remove the burdensome compliances under the regulations.</li> <li>Further, also to align the provisions of the Transmission License Regulations with the provisions of the Information and Technology Act, 2000, we request the Hon'ble CERC to apply its decision given vide its Suo motu order in Petition No. 1/SM/2022 dated 22.01.2022 wherein the requirement of publication in newspapers has been substituted by the provision for publication on the websites. We Request the Hon'ble CERC to include the similar provision of publishing the digital newspaper.</li> </ul>

# Comments/ Suggestions on Draft CERC Transmission Licensing Regulations, 2023 – (2)



Sr. No.	Clause No & Details	Suggested/Modified Clause	Rationale/ Remarks
2	<p><b>Clause 5(10) - Procedure for Grant of License</b>  <i>"(10) The applicant may file its comments, duly supported by an affidavit, on the recommendations made by the Central Transmission Utility and the suggestions and objections, if any, received in response to the public notice published by it, within 3 days of receipt of such suggestions and objections, with an advance copy to the Central Transmission Utility or the person who has filed the suggestions and objections on the proposal made in the application, as the case may be."</i></p>	<p><i>"(10) The applicant may file its comments, duly supported by an affidavit, on the recommendations made by the Central Transmission Utility and the suggestions and objections, if any, received in response to the public notice published by it, <b>preferably</b> within 3 days of receipt of such suggestions and objections, with an advance copy to the Central Transmission Utility or the person who has filed the suggestions and objections on the proposal made in the application, as the case may be <b>but not later than 3 days from the last date for submission of suggestions/objections in response to public notice and from last date for recommendation of CTU"</b></i></p>	<p>The filing of comments on the recommendations made by CTU or suggestions/ objections received in response to public notice may sometimes require detailed analysis which may take more than 3 days to comment, hence, change in the regulation is suggested.</p>

# Comments/ Suggestions on Draft CERC Transmission Licensing Regulations, 2023 – (3)



Sr. No.	Clause No & Details	Suggested/Modified Clause	Rationale/ Remarks
3	<p><b>Clause 10 - Term of License</b>  <i>"(4) For the projects being developed under competitive bidding guidelines issued by the Ministry of Power Government of India vide letter dated 13.04.2006 as amended on 07.07.2007,10.10.2008,0 2.05.2012 and 02.01.2014 and as may be further amended from time to time:</i>            .....            .....            ....."</p>	<p>The following sub-clause (c) may be added under Clause 10(4):</p> <p><b><i>"For Projects awarded under Guidelines and SBDs in vogue prior to 10.08.2021, the Transmission Licensees shall be allowed to recover Yearly Quoted Transmission Tariff for the entire contracted period of the Project i.e. for 25/35 years, as the case may be, from respective CODs of each Element of the Project."</i></b></p>	<ul style="list-style-type: none"> <li>• The <b>Ministry of Power (MoP) vide its order dated 15.07.2015</b> had approved the policy for incentivizing early commissioning of Transmission Projects, such as TBCB Projects and PGCIL Projects under compressed time schedule on cost plus basis, w.e.f 12.06.2015. Vide the said Order, Transmission Licensees were allowed Transmission Charges from Actual Date of Commissioning prior to SCOD and the number of years of applicability of Tariff would remain unchanged i.e. 25/35 years, as the case may be. Further, it was mentioned that the said incentive shall be applicable for Transmission Projects/ elements which are under implementation/ yet to be bid out under TBCB/ yet to be assigned to CTU (PGCIL) under compressed time schedule.</li> <li>• Further, in line with and in the spirit of above policy issued by MoP, the Hon'ble Commission vide its letter dated 22.06.2020 had advised MoP to allow the Transmission Licensees, under Section 63 which are under implementation/ yet to be bid out under TBCB, to recover their Tariff for the entire contracted period (25/35 years) from even if the Licensee's Project got delayed and its penalty may be restricted to only Liquidate Damages (mentioned in the TSA), which is a fair compensation for delay.</li> </ul>

# Comments/ Suggestions on Draft CERC Transmission Licensing Regulations, 2023 – (4)



Sr. No.	Clause No & Details	Suggested/Modified Clause	Rationale/ Remarks
			<ul style="list-style-type: none"> <li>• As per above, the yearly quoted tariff is recoverable for entire bid period of 25/35 years from CoD of each element of the Project in case of TBCB Projects, which are bid before the issuance of Competitive Bidding Guidelines dated 10.08.2021 by MoP. Therefore, it is suggested to include an additional sub-clause (c) in clause 10(4) of the Draft Regulations.</li> <li>• In other words, Licensee's Fixed Transmission Tariff stream should be shifted to start from actual COD of the element of the Project and should not be linked to SCOD of the Element/Project (as clarified in the above stated documents and also unambiguously mentioned in the Standard Bidding Documents dated 06.08.2021 and Competitive Bidding Guidelines dated 10.08.2021).</li> <li>• Further, MoP has given this clarification in the revised SBDs on 06.08.2021 and immediately thereafter on 10.08.2021 revised Guidelines were issued repealing the 2006 Guidelines and saving the actions taken under those Guidelines. It is important to note that Guidelines dated 10.08.2021 specifically provided that tariff shall remain fixed for the period of 35 years from COD of the project.</li> </ul>

# Comments/ Suggestions on Draft CERC Transmission Licensing Regulations, 2023 – (5)



Sr. No.	Clause No & Details	Suggested/Modified Clause	Rationale/ Remarks
			<ul style="list-style-type: none"> <li>• Although the yearly varying bid tariff was changed to fixed yearly tariff in the new Guidelines, the period of payment of tariff continued to remain same i.e. 35 years from CoD of the Project. Thus, as for as payment period for the bid tariff is concerned, even the new SBDs and Guidelines provided only further clarification and explanation on earlier SBDs as basic premise of the Guidelines that defined the substantive law/scheme for competitive bidding continued to be the same and, hence, such clarification would also operate retrospectively. Further, it is settled law that a subsequent amendment is of the nature of clarification if it does not affect substantive law but merely clarifies the position in substantive law.</li> <li>• The proposed provision in Draft Regulations would reduce lot of pending and future litigations on the subject. In nutshell, if the Transmission Licensee is able to commission its element-wise Project before its SCOD or after its SCOD, the Licensee should be able to recover Tariff for the entire contracted capacity of the Project during the contracted period from such date of commissioning under both current and repealed Guidelines.</li> </ul>

# Comments/ Suggestions on Draft CERC Transmission Licensing Regulations, 2023 – (6)



Sr. No.	Clause No & Details	Suggested/Modified Clause	Rationale/ Remarks
4	<p>16. Amendment of Licence</p> <p>(1) (b) Where an existing licensee who has been granted a transmission licence pursuant to selection under the competitive bidding guidelines, and is subsequently selected through the process under the competitive bidding guidelines to implement additional transmission element(s) under project mode, it shall be eligible to add such transmission element(s) to its existing licence, after making an application before the Commission in terms of this Regulation.</p> <p>(c) Where an existing licensee who has been granted a transmission licence pursuant to being nominated by the Central Government or its authorized agency to implement transmission element(s) under regulated tariff mechanism, it shall be eligible to add such transmission element(s) to its existing licence, by making an application before the Commission in terms of this Regulation.</p>	<p>May be re considered to be deleted/exempted/modifed</p>	<p>The proposed amendment for the requirement of afresh Application to Hon'ble CERC every time there is an additional element/s to the transmission project may be re considered on three grounds. To begin with, The Electricity Act, 2003 ("The Parent Act") clearly stipulates that the essence of granting license is on the basis of geographical area and is not Asset/Project specific this essence may be highlighted by Section 14 which stipulates that the grant of License for transmission/distribution/trading would be provided by Appropriate Commission, area wise and according to the Section 79 and 86 of the Parent Act, the CERC and SERC have the jurisdiction to grant inter-state and intra state Transmission Licenses, respectively and the section 19(2) which also stipulates that license will be revoked area wise either wholly or partially for the transmission/distribution licensee.</p>



# Comments/ Suggestions on Draft CERC Transmission Licensing Regulations, 2023 – (7)



Sr. No.	Clause No & Details	Suggested/Modified Clause	Rationale/ Remarks
			<p>Therefore the proposed additional condition for grant of license on the basis of Asset/Project was never contemplated by the provisions of The Parent Act.</p> <ul style="list-style-type: none"> <li>It is a well settled law that the power of the regulation making authority, must be in accordance to the four corners of the Act and must be interpreted keeping in view the provisions of the Parent Act. Reliance is placed on the Hon'ble Supreme Court's judgement in Civil Appeal Nos. 3457-3458 of 2009 dated 11.05.2009 in Global Energy Limited vs CERC:  <i>"....As Section 52 does not empower the Regulation making authority to provide for qualification or disqualification, <u>the delegated legislation or a subordinate legislation as is well known must conform exactly to the power granted.</u>"</i></li> <li>In addition to it, under section 14 the applicant undergoes through the worthiness test for grant of transmission/distribution/trading license thereby casting any further obligation on the Applicant to apply afresh each time a new/additional transmission asset is created, leads to <b>Regulatory Overburden</b>.</li> </ul> <p>Lastly, omission of the proposed amendment would also lead to <b>Ease of Doing Business</b> and an regulatory friendly environment, the correlation between relaxed norms and Ease of doing business was highlighted by the Hon'ble Commission itself in its Order dated 22.01.2022 in Petition No. 1/SM/2022.</p>

# Comments/ Suggestions on Draft CERC Transmission Licensing Regulations, 2023 – (8)



Sr. No.	Clause No & Details	Suggested/Modified Clause	Rationale/ Remarks
			<ul style="list-style-type: none"> <li>• There is no requirement of project details in existing rules/regulations in eligibility for grant of license. Therefore, there is no requirement for granting project specific licenses. Once a company is granted a transmission license based on its credentials, the list of projects being executed/completed by the company may be updated and informed to Hon'ble Commission by the company itself.</li> <li>• In this regard, MoP in its amendment to electricity rules dated 30.06.2023 has allowed automatic renewal of license after 25 years for a further period of 25 years in order to promote ease of doing business. This automatic extension is not applicable to project awarded under Section 63 probably because the quoted tariff is for 35 years and only 10 years extension is warranted. Hon'ble Commission may also consider automatic extension for 25 years except for Section 63 project which may be automatically extended for balance period of quoted tariff.</li> <li>• Therefore, we request the Hon'ble Commission to re consider such an Amendment and consider granting the inter-state license for the whole geographical area of the country which is in consonance with The Parent Act. Hence, for streamlining the Regulatory compliance and oversight we propose the following suggestion –</li> <li>• The Hon'ble Commission may grant inter-state license for the whole country without restricting it to one or more projects/elements. <b>The licensee may be obligated to maintain a record of all its transmission Assets and update any addition of under construction/ new Assets within 7 days on their website with public Access.</b></li> </ul>

**Thank You!**

