

Email**Mukesh Kumar**

Fwd: Tata Power_ Comments_ draft Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2023

From : Shilpa Agarwal <shilpa@cercind.gov.in>

Mon, Dec 18, 2023 10:35 PM

Subject : Fwd: Tata Power_ Comments_ draft Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2023 1 attachment**To :** Awdhesh Kumar Yadav <awdhesh@nic.in>, Mukesh Kumar <mukeshkr.cea@gov.in>, ramakant ece <ramakant.ece@gmail.com>

----- Forwarded Message -----

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Sent: Mon, 18 Dec 2023 22:34:41 +0530 (IST)

Subject: Tata Power_ Comments_ draft Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2023

Dear Sir/Mam

Please find enclosed comments from Tata Power on the draft Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2023

Regards,

Mohd Sarim Siddiqui

Group Head - Advocacy

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 **Tata Power_ Comments_ Draft CERC (Procedure, Terms and Conditions for grant of Transmission Licence and other.pdf**
480 KB

Comments/ Suggestions from Tata Power on Draft CERC (Procedure, terms and Conditions for grant of Transmission License and other related matters) Regulations, 2023

S. No.	Clause No & Details	Suggested/Modified Clause	Remarks
1.	<p>Clause 5(10) - Procedure for Grant of License</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, 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, preferably 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 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"</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>
2.	<p>Clause 10 - Term of License</p> <p><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 07.07.2007,10.10.2008,02.05.2012 and 02.01.2014 and as may be further amended from time to time:</i></p> <p>.....</p> <p>.....</p>	<p>The following sub-clause (c) may be added under Clause 10(4):</p> <p><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</i></p>	<p>I). The Ministry of Power (MoP) vide its order dated 15.07.2015 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</p>

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	<p>....."</p>	<p><i>CODs of each Element of the Project."</i></p>	<p>implementation/ yet to be bid out under TBCB/ yet to be assigned to CTU (PGCIL) under compressed time schedule. The relevant part of the order is extracted below:</p> <p><i>"1.1 For transmission system strengthening schemes under Tariff Based Competitive Bidding (TBCB) and also for such schemes awarded to PGCIL under compressed time schedule on cost plus basis, the developer shall get the following incentive for early commissioning of transmission project(s).</i></p> <p>(i) Entitlement of the transmission charges from the actual date of commercial operation (COD) prior to the original scheduled COD. However, the number of years of applicability of tariff would remain unchanged i.e. 25/35 years, as the case may be.</p> <p><i>Note: The above incentive will be applicable for the transmission project(s)/ element(s) which are under implementation/ yet to be bid out under TBCB/ yet to be assigned to CTU (PGCIL) under compressed time schedule.</i></p> <p>"</p> <p>II) 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, refer file no.: No. ENGG-21/1/2019-CERC, had advised MoP to allow the Transmission Licensees, under</p>

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			<p>Section 63 of the Electricity Act 2003 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. The relevant part of the said letter is reproduced below:</p> <p align="center">"4.4 Delay of Project</p> <p><i>4.4.1 Under the current provisions of SBD, if a transmission project gets delayed due to any reason, the transmission licensee pays following penalties for delay, if such delay is not condoned:</i></p> <p><i>(i) Liquidated damages for the period of delay @3.33% of Monthly Transmission Charges for each day of delay up to sixty (60) days and @5% of the Monthly Transmission Charges, beyond delay of 60 days.</i></p> <p><i>(ii) Forgoing tariff for the period of delay. For example, if the useful life of the project is 35 years and it gets delayed by 3 years, it will get tariff only for 32 years starting from the 4th year.</i></p> <p><i>4.4.2 In addition, as per the Regulations and Orders of the Commission, if due to delay of a transmission project, transmission system of other transmission licensee is prevented from getting charged, the transmission licensee whose project is delayed has to compensate the other</i></p>

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			<p><i>transmission licensee by paying transmission charges. Similarly, if due to delay of a transmission project of a transmission licensee, a generating station gets stranded, the transmission licensee whose project is delayed has to compensate the generating station by paying transmission charges. Such compensation is payable even if the delay has been condoned by the Commission for such transmission project.</i></p> <p><i>4.4.3 Thus, in case of delay, the transmission licensee not only pays penalties but also compensation to the affected parties. Bidders normally would factor in such costs in their bids to cover the risks, which leads to increase in bid price.</i></p> <p><i>4.4.4 Therefore, for delay on the part of the transmission licensee in completion of its transmission elements, in addition to compensation to stranded transmission licensee or generating station on account of such delay, penalty may only be limited to Liquidated damages. Therefore, the transmission licensee may be allowed tariff for the entire contracted period of the project.</i></p> <p>III) Therefore, 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</p>

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			<p>additional sub-clause (c) in clause 10(4) of the Draft Regulations.</p> <p>IV) 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).</p> <p>V) It may kindly be noted that 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 and reads as follows:</p> <p><i>“7.1. For procurement of transmission services under these guidelines: Transmission charges shall be paid and settled for each payment period as per regulations of the Appropriate Commission. Annual transmission charges for the first year, which shall remain fixed for the period of 35 years from COD of project, shall form the basis for bidding and evaluation.”</i></p> <p>VI) It is submitted that 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</p>

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			<p>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.</p> <p>VII) 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.</p>
