

No. 23/12/2016-R&R
Government of India
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,
New Delhi, 15th January, 2021

To
The Chairperson
CERC
Chadralok Building, Janpath
New Delhi

Subject: Direction to CERC under section 107 of Electricity Act 2003- regarding sharing of transmission charges under force majeure condition.

Sir,

This refers to the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 (referred to as Sharing Regulations hereinafter). I am directed to say as follows:

2. The Central Transmission Utility (CTU) has been given the responsibility to discharge functions of planning, coordination and ensuring development of inter-state transmission system (ISTS) and providing non-discriminatory access to it. The CTU along with other stakeholders plans the inter-state transmission elements and sub-systems to be developed. The CTU with the approval of the Ministry of Power gets the ISTS developed by the transmission licensees either through the regulated tariff mechanism (RTM) in which tariff is determined by the CERC under section 62 of the Electricity Act, 2003 or through the Tariff Based Competitive Bidding (TBCB) mechanism, in which tariff is adopted by the CERC under section 63 of the Act. The CTU provides open access (medium and long term) of the ISTS to generating companies, licensees and other Designated ISTS Customers (DICs). Thus, the CTU acts as a nodal agency (or manager) for the ISTS.

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.

5. Given that the ISTS is an inter-connected system with multiple licensees and users, it is important to recognize that the relationship of the licensees as well as users of the ISTS should be with the CTU for all purposes.

6. However, it has been noted that the Sharing Regulations 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. Moreover, clause (1) (c) of Regulation 13 of the Sharing Regulations exempts transmission charges for power generated from solar and wind power for a period of twenty-five years from generating stations whose capacity is declared to be under commercial operation on or before 31.12.2022. The Ministry vide order dated 5th August, 2020 has extended this date till 30th June 2023. Moreover, there may be delay in COD of a solar or wind power generating station due to an event of force majeure or due to delay in commissioning of associated transmission system. The Sharing Regulations thus need to be amended to provide for these.

11. In most cases, a power producer (generating plants) or power procurer (distribution companies) will be connecting to the existing network without any requirement of the upgradation of the network. In such a case, the only cost to be incurred is the cost of connecting to the network and this cost is to be met by the entity connecting to the system

whether it is a producer of power (generator) or procurer of power (DISCOM). In such a case if the producer of power does not begin to inject power into the system on the scheduled date or the DISCOM does not begin drawing the power on the scheduled date, it is not causing any loss to the system. However, the delays on both the sides should attract penalties (reasonable) so that grid discipline is maintained.

- (i) Where the addition of a generating unit or the increase in consumption by a DISCOM entails the strengthening of the transmission system at any particular point then more often than not the strengthening will not be only for one generator / DISCOM but will provide for a larger capacity addition to be used by many generators or consumers down the line. The entire burden of strengthening which will serve many producers / procurer in the future cannot be levied on one producer / procurer.
- (ii) The penalties for the failure of the Generator or procurer or Transmission entity to adhere to the committed timelines need to be equitable. Therefore, if it is proposed that where a transmission entity completes the construction of the line but the upstream (generation or other transmission segment) or downstream (Distribution or downstream segment of transmission) is not ready the defaulting entities pay the full transmission charges, then a similar penalty will need to be levied on the transmission entity and if it fails to adhere to the time line it will need to pay the cost of power not despatched. This construct is impractical as it puts unacceptable burden of risk on the constituents. The system must provide for penalties for delays but seeking to compensate any party for the losses will not be feasible.
- (iii) Where the determination has been made of the existence of the force majeure in accordance with the provisions of the contract governing the setting up of power plants, it should not be re-opened again in a litigation before the CERC.


12. In view of the above, the Central Government, in public interest, under section 107 of the Electricity Act, 2003 issues directions to the Central Electricity Regulatory Commission to amend the Sharing Regulations to provide for the following:

- (i) On COD of an element of ISTS, its Transmission Charges be included for determination of transmission charges of DICs in accordance with Regulations 5 to 8 of the Sharing Regulations, independent of the readiness of associated generation or upstream or downstream transmission elements.
- (ii) No additional penalties through Sharing Regulations to be levied for delay in COD of an element of ISTS in the Regulations. Delay automatically causes losses to the transmission licensees in the form of delay in realization of revenues, increased finance cost, etc. Moreover, in case of TBCB projects, the penalties for default are already provided in the form of liquidated damages which are linked to the project tariff in TSA. So, there are sufficient disincentives to the transmission licensees for delay in COD. The penalties recovered from the ISTS licensees for delay in commissioning shall be shared with the DICs.
- (iii) Penalties for delay in COD of generating stations, or for delay in completing transmission system, or operationalizing the LTA shall invite penalties to be paid to CTU. The penalties shall be equitable; and shall not extend to compensating either the Generation companies for power it could not despatch because of delay in transmission or to compensate the transmission company for the delay in generation or the associated transmission.

- (iv) Where a Renewable Energy generation capacity which is eligible for ISTS waiver in terms of the extant orders, is granted extension in COD by the competent authority, the commencement and the period of the LTA shall also get extended accordingly, and it will be deemed that the period of ISTS waiver is extended by the said period.
- (v) Events of force majeure may be defined and provision included enabling the CTU to extend the COD of a generating station and the LTA start date for reasons of force majeure.

13. This issues with the approval of Minister of State (Independent Charge) for Power and New and Renewable Energy, Government of India.

Yours faithfully,


(Ghanshyam Prasad)
Joint Secretary (RR & OM)
Tel No 23710389

Copy to:

1. Secretary, MNRE, New Delhi.
2. Chairperson, Central Electricity Authority, New Delhi.
3. Secretary in charge, Power/Energy Department, State Governments/UTs.
4. Secretary, State Electricity Regulatory Commissions/Joint Electricity Regulatory Commissions.

Copy for information to:

1. All Joint Secretaries/Economic Adviser, Ministry of Power.
2. PS to MoS (I/C) for Power and NRE.
3. Sr. PPS to Secretary (Power), Sr. PPS to AS(R&R), Sr. PPS to AS (SKGR), Sr. PPS to JS (R&R) and PS to Director (R&R).