

Comments¹ on CERC's "Draft Regulations on grant of licence for inter-state transmission of electricity"

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1. [(6 & 4 (12) (ii) (e))] – In case transmission charges are established through a bidding process [6], should there still be a need to provide justification of estimated completion cost of the transmission asset [4 (12) (ii) (e)]? In case the transmission charges result in higher rate of return to the project developer, would it be subjected to a regulatory review?

I feel that the whole idea of competitive bidding is to let competing project developers optimize on their costs either through better technology and/or business acumen. Bringing such competitively bid projects back to cost review defeats the whole purpose of bidding. This also enhances regulatory risk and would require undesirable regulatory costs.

2. [5 (2)] – Financial Capability - To demonstrate financial capability (in terms of net worth), the applicant would have to estimate annual transmission charges as per Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004. Understandably, such a projection would be subjected to various assumptions especially about rate of interest and availability linked incentives. Such assumptions could be debatable unless specified beforehand by the Commission for all such projections. Given such a situation, one can not avoid uncertainty in calculating desired net worth, unless reviewed generously by the Commission.

Alternatively, net worth can be benchmarked to that currently reflected in the industry. This number can be worked out by the commission and revised periodically. This would be easy to administer and avoid potential uncertainty. The Commission may further discuss desirability of such an alternative on its merit.

3. [8 (2)] – Prohibited Activities - It is understood that 'area' of the licensee refers to the two regions inter-connected by the transmission licensee. In case of a system embedded transmission licensee, implications of Merger and Acquisition would be far and wide, and hence notice of such activities should not be limited to the participants in the 'area' of the licensee. Also, given trading licensees may also be interested to be notified about actions which may also impact their business interest.

A broad based notification could be provided through publication in national and local dailies.

¹ Each comment begins with the regulation number in square parentheses []. Regulations have been reproduced in quotes “ “ wherever required. Appropriate suggestions for deletion has been made by striking through the text, and additions have been placed in square parentheses [].

4. [8 (5)] – Engaging in Other Businesses – Engaging in other business activities would not only be limited to physical assets. This would also involve utilization of other resources including human resources. Transmission charges, which would include cost of such resources and licensee's assets, should not be utilized to cross-subsidise other activities of the licensee.
5. [8 (5)] – Engaging in Other Businesses - Financial viability of other businesses by the licensee utilizing its transmission assets would also depend on the “proportion” of revenues to be parted from such activities and be utilized to reduce transmission and wheeling charges. This would also have implications on pricing of such activities.

Commission may specify the “proportion” of revenues or a basis to determine the same. This would reduce business uncertainty for the existing as well as new licensees. Given the PGCIL's foray into other business activities
6. [8 (5) & 13] – Engaging in Other Businesses & Separation of Accounts – In case where licensee wishes to utilize its assets for engaging in other business activities, it should incorporate a separate subsidiary for the same. Such a legal separation would automatically facilitate separation of accounts [13] and bring in much needed transparency in such cases.

The licensee can charge a lease amount for utilisation of its assets. This, together with a ‘proportion’ of profits from such subsidiaries, should be utilised to reduce transmission charges. This avoids the complexity arising out of need to ‘apportion’ various accounting heads. A similar situation is encountered in the case of SEBs / licensees while working out cost of service to various consumer categories. Apportionment of costs is debatable.
7. [8 (7)] – What would constitute ‘engaging’ in trading businesses? Can a transmission licensee hold a stake in a trading or distribution licensee? If yes, then up to what extent? What if a transmission licensee and a trading licensee have a common promoter? (this is most likely to happen) While this would not mean ‘transmission licensee’ having a stake in ‘trading licensee’, commercial interests leave scope for positive ‘engagement’.
8. [9 & 18] – Terms of License – Should activities under clause 8 (5) also cease to be performed with the expiry of the license period? Similarly, In case of revocation of license, can the licensee continue to perform ‘other business activities’? Both the cases should be appropriately dealt with in the regulations and status of ‘other business’ activities may specifically be spelled out.
9. [16] – Prudential Reporting –

“(a) Any significant changes in its circumstances, which may affect the licensee's ability to meet its obligations under the Act, the rules and regulations framed pursuant to the Act such as Grid Code and Standards, orders and directions issued by the Commission and Regional Load Despatch Center from time to time [,] and the licence.”

“(b) Any material breach of the provisions of the Act, the rules and regulations framed pursuant to the Act and the orders and directions issued by the Regional Load Despatch Center from time to time [and the] licence.”

10. [16 (c)] – Change in shareholding, ownership or management -

Further clarification needs to be provided in this regard. For e.g. ‘shareholding’ and ‘ownership’ would generally mean the same thing. Changes in majority / promoters’ holding would only be of vital interest. Otherwise, shareholding patterns are very dynamic for a publicly listed companies

Similarly, it may be desirable to take note of change in top management (Board of Directors) or functional heads. Such clarifications can be spelled clearly in the regulations.

11. [17] - Amendment of Licence – The provision to effect change in the license condition with the ‘consent’ of the licensee may have serious legal repercussions and may handicap the Commission for bringing about any change in public interest or to meet provisions on account of legislative changes in future. I feel that ‘consent’ could be replaced with ‘consultation’.

12. [18 (1) (a)] - Revocation of Licence –

“(a) Where the licensee in the opinion of the Commission, makes willful ~~and~~ [or] prolonged default in doing anything required of him by or under the Act, or the rules or the regulations made thereunder;”

In this context, it may also be useful to define ‘prolonged default’ as considered appropriate by the commission.

13. [18 (7)] - Revocation of Licence -

“If the Commission is satisfied that the Project has been abandoned by the licensee, thereby affecting construction or operation and maintenance of the Project, the Commission may direct the Central Transmission Utility or any other person found eligible by the Commission, to immediately take over [construction, up gradation,] operation and maintenance of the Project even before the licence is revoked.”

14. [21] - Power to Relax – While the Commission retains its powers to change conditions of the license without public hearing, it could consider bringing out a ‘public notice’ in public interest.