



CERC (Sharing of Inter-State Transmission Charges and Losses) (Second Amendment) Regulations, 2023 [Draft]

CERC notified draft (Sharing of Inter-State Transmission Charges and Losses) (Second Amendment) Regulations, 2023. The key highlights of the draft are mentioned below:

Objective: To determine the Yearly Transmission Charges (YTC) in case of an inter-State transmission system (ISTS) which has achieved deemed COD.

Deemed COD: COD of an ISTS where Date of Commercial Operation (COD) has been approved in terms of proviso (ii) of Clause (3) of Regulation 4 of CERC (Terms and Conditions of Tariff) Regulations, 2014 or Clause (2) of Regulation 5 of CERC (Terms and Conditions of Tariff) Regulations, 2019 or where deemed COD has been declared in terms of Transmission Service Agreement under Tariff Based Competitive Bidding.

The YTC for the inter-state transmission licensee which has achieved the deemed COD shall be treated in the following manner:

- 20% of YTC shall be paid to the inter-State transmission licensee for a period of 6 months from date of deemed COD or till commencement of actual power flow, which is earlier.
- 100% of YTC shall be paid to the inter-State transmission licensee from 7th month till commencement of actual power flow if actual power flow does not commence within a period of 6 months from deemed COD.
- The above mentioned YTC shall be disbursed from monthly transmission deviation charges under third bill. In case of shortfall, balance charges shall be recovered from charges collected under T-GNA. In case of further shortfall, balance charges shall be paid from Deviation and Ancillary Service Pool Account under DSM Regulations.
- If ISTS of an inter-State transmission licensee (say A) achieves deemed COD due to delay in commencement of power flow of in its ISTS because of other inter-State transmission licensee (say B), then B shall pay 20% YTC of its transmission system or 20% of YTC of the transmission system of A, whichever is lower till its delayed ISTS system achieves COD.
- If ISTS of an inter-State transmission licensee (say C) achieves deemed COD due to delay in commencement of power flow of in its ISTS because of an intra-state transmission licensee (say D, then D shall pay 20% YTC of the transmission system of C, till its delayed intra-state transmission system achieves COD.
- The reimbursement of transmission deviation charges to any user of Inter-State transmission system shall be done in proportion to their share in first bill in the following billing month.
- In case of inter-state transmission system under Tariff based Competitive Bidding, first year shall commence from the date when the licensee starts receiving 100% of YTC or under Regulation 5 to 8 of the Principle Regulations.

The document can be accessed [here](#).

CER Opinion

1. Inadequate Revenue for the inter-State transmission licensee to carry out its debt-service obligations: Proposed Clause 13(12)(a) in the draft document states “(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.

.” (emphasis added)

The debt component covers a major part of the capital cost. This is payable by the licensee to the banks/financial institutions in a timely manner. A payment of 20% of Yearly Transmission Charge (YTC) may be insufficient for the inter-State transmission licensee for carrying out its debt-service obligations. It is recommended to increase the percentage of YTC to be paid to the licensee for the first six months, in a manner such that the licensee shall not face the risk of debt default just after the beginning of the deemed COD.

2. COD delay attributable to third party (entity responsible for the development and commissioning of inter-State transmission system other than the generator) should be attributable to the inter-State transmission licensee.

A delay in the achievement of COD of the inter-State transmission project may occur due to multiple reasons, which also includes those attributable to third parties. The delay due to the inactions or actions taken by the third party should be part of the agreement of the licensee with the third party (for example the EPC contractor). Since the transmission licensee should follow prudent contractual arrangement ensuring that risks attributable to third party directly involved in setting up the transmission system or its component, then the transmission licensee should be held accountable as its risks are covered under its agreement with the third party.

3. Recovery of sufficient charges from Deviation and Ancillary Services Pool Account: Proposed Clauses 13(12)(d) in the draft document states *“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.”* (emphasis added)

It is not clear whether the inter-State transmission licensee shall pay the 20% of YTC charges to Regional Transmission Deviation Account or directly to the other inter-State transmission licensees whose system have achieved the deemed COD. Clarifications are required for the same.

The average transmission charges for two different transmission projects may vary. The inter-state transmission licensee (say A) which has achieved the deemed COD specifically due to delay caused by another inter-state transmission licensee (say B) shall be paid the lowest of 20% of YTC of A (say YTC_A) and 20% of YTC of B (say YTC_B). If the YTC_A comes significantly higher than YTC_B , then A will recover very less amount as compared to the amount it will receive due to delay caused due to its own. This seems unfair for A whose project is delayed due to reasons associated with B.

It is recommended to pay the amount of YTC_A from licensee B to licensee A. If the licensee B is not able to fully pay the required amount, then rest of the amount can be paid to A from Regional Transmission Deviation Account or Deviation and Ancillary Services Pool Account.

4. Delay in COD attributable to multiple inter-State transmission licensee: The draft document has not provided the provisions for the scenario where multiple inter-state transmission licensees are responsible for delay in COD. Accordingly, for the particular scenario, following provisions should be included in the Regulation:

- How the penalty attributable to the delay in achieving the COD would be divided among the multiple inter-state transmission licensees?



- How the penalties would be decided In case a part of these delayed transmission components achieve COD, while the rest are yet to achieve the COD?

5. COD delay attributable to Force Majeure event shall be used for penalty:

The delay in achieving the COD attributable to a Force Majeure event affecting the COD of another inter-State transmission licensee or intra-State transmission licensee shall be considered as delay due to an uncontrollable factor. Accordingly, such licensee should not be penalized into paying the 20% of YTC as applicable.

- 6. CERC jurisdiction on intra-State transmission licensee:** Proposed Clause 13(12)(e) in the draft document states *“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.”*

The intra-State transmission licensee comes under the jurisdiction of their respective State Electricity Regulatory Commissions (SERCs). Accordingly, the proposed Clause seems to suggest that the intra-State transmission licensee should be liable to pay for the delay to inter-State transmission licensee in achieving the COD. More details/ clarifications are required in the context of the jurisdiction over an intra-state transmission licensee.