



# केन्द्रीय विद्युत विनियामक आयोग

## CENTRAL ELECTRICITY REGULATORY COMMISSION



**Gireesh B. Pradhan**

Chairperson

D. O. No. 10/5/2013-Statutory Advice/CERC  
14<sup>th</sup> October, 2016

**Sub: Advice to facilitate development of transmission capacity in an efficient and economical manner under TBCB route.**

Dear *Sunil Pranjani*,

I am writing to you on challenges being faced by transmission projects under tariff based competitive bidding route and the suggested way forward with specific reference to the standard bidding guidelines for transmission services notified by the Ministry of Power, Government of India.

### Background:

2. The Electricity Act, 2003 provides for grant of transmission licenses by the Central Electricity Regulatory Commission (CERC) as well as State Electricity Regulatory Commissions (SERCs). In pursuance of the provisions under Section 63 of the Electricity Act, 2003 and the National Electricity Policy, the Ministry of Power notified the bidding Guidelines for procurement of transmission services for transmission of electricity through tariff based competitive bidding (TBCB). The guidelines stipulate *inter alia*, the mechanisms to select transmission service provider for a new transmission line and to build, own, maintain and operate the specified transmission system elements.
3. As per the bidding guidelines, the Central Electricity Authority monitors the progress of the execution of the project as per the conditions of the license issued by the Central Electricity Regulatory Commission. The dispute, if any, regarding Transmission Service Agreement (TSA) or tariff, is subject to jurisdiction of the appropriate Regulatory Commission under the provisions of the Electricity Act 2003.
4. Several transmission projects have been awarded through TBCB route. However, over time, the Commission has received a number of petitions seeking adjudication in the matters of transmission projects under TBCB route which *inter alia* include, determination of the date of commercial operation, recovery of transmission charges in case of early commissioning or delays in establishing upstream / downstream assets etc.

**Existing Provisions:**

5. The TSA provides for specific dates as Scheduled CoD in respect of different elements of the transmission system. Further, payment of transmission charges of certain assets, irrespective of their dates of commissioning, is linked to the successful commissioning of certain pre-required assets as mentioned in the Schedule 3 of TSA. However, there is neither a provision in the TSA for commissioning of any assets before the Scheduled COD without the mutual agreement with Long Term Transmission customers nor a provision for the cases when the element of transmission system has achieved deemed COD and not put into use due to failure in establishing upstream and downstream assets. Article 18.17 of TSA provides for revision of CoD only through a supplementary written agreement between the parties and after obtaining approval of the Appropriate Commission.
6. The guidelines / TSA do not provide a process of coordinating with developers of the upstream or downstream assets and commercial implications thereof in case of non availability of such systems. Non availability of upstream or downstream assets may lead to a commissioned asset getting stranded/unutilized.
7. As regards early commissioning of transmission elements, the Commission in the Order dated 28.1.2015 in Petition No.284/ADP/2015 had directed that the Central Electricity Authority should certify that the commissioning of the asset will be in the interest of the safety and security of the grid and the asset can be put to useful service after its commissioning. (details enclosed as **Annexure-I**).
8. In this context, I draw your attention to the CERC (Indian Electricity Grid Code) Regulations, 2010, wherein the date of commercial operation for transmission system has been clearly defined while factoring in the delays on account of commissioning of upstream or downstream elements. An extract of relevant provisions is enclosed as **Annexure-II**.
9. In order to streamline the process further, the CERC (Terms & Conditions of Tariff) Regulations, 2014 provided for implementation agreement, which is entered into (i) between transmission licensee and generating station or (ii) between transmission licensee and developer of the associated transmission system for the execution of project in coordinated manner. The Regulations provide for determination of impact of time over-run or cost over-run as per provisions of the implementation agreement. An extract of relevant provisions is enclosed as **Annexure-III**.

**Issues:**

10. The present bidding guidelines do not provide for any implementation agreement between the transmission project developer and developers / licensees of upstream / downstream elements. Therefore, it may be necessary to amend the guidelines to provide for implementation agreement initially between the Bid Process Coordinator and developers / licensees of upstream / downstream elements.. Subsequent to selection of transmission project developer through TBCB, the implementation agreement may be transferred to the transmission project developer for the execution of project in a coordinated manner. The implementation agreement should necessarily provide for determination of impact of time over-run or cost over-runs, in case of delays, realigning SCOD based on the progress of the transmission systems, sharing of debt service obligation in case of delay in commercial operation and sharing of transmission charges in case of deemed COD in case of non commissioning of upstream / downstream system

11. In addition to the above, reference is also invited to the policy for incentivizing early commissioning of transmission projects issued by the Ministry of Power vide Order No. 15/1/2013-Trans., dated 15.7.2015. This policy provided for entitlement of transmission charges for the early commissioned transmission projects from the actual date of commercial operation (CoD) prior to the original scheduled CoD. In this context, the Commission is of the view that the above policy provision should also be suitably incorporated in the bidding guidelines.

**Way forward:**


12. To summarize, in pursuance of facilitating smooth and rapid development of transmission capacity in an efficient and economical manner, particularly under TBCB route, there is an urgent need for time-bound implementation of certain measures as discussed above. Therefore, the Central Electricity Regulatory Commission in exercise of its powers under Section 79(2) of the Electricity Act, 2003, advises the Ministry of Power as per the following:

- a. In case of new transmission network, splitting the network into components and award of project through TBCB complicates the execution of project. Therefore, it is advisable to identify the entire network for development through TBCB, instead of comparatively smaller elements, commissioning of which depends upon commissioning of all upstream / downstream elements.

- b. Suitable provisions as per the Grid Code be made in the bidding guidelines to provide for entering into an implementation agreement initially between the Bid Process Coordinator and generating station or the developer of the upstream / downstream transmission system, as the case may be. Subsequent to selection of project developer through TBCB, the implementation agreement may be transferred to the project developer for the execution of project in coordinated manner.
- c. In case of delays by any party (the developer or the upstream / downstream transmission system developer), the implication of time over run on project cost or the transmission charges due to early commissioning or the deemed COD may be settled through the implementation agreement entered into by the transmission project developer and developer of the upstream / downstream transmission system, as the case may be.
- d. In order to factor in the policy for incentivizing early commissioning of transmission projects issued by the Ministry of Power vide its Order dated 15.7.2015, the provision related to entitlement of transmission charges for the early commissioned transmission projects from the actual date of commercial operation (CoD) prior to the original scheduled CoD till the scheduled CoD should be suitably incorporated in the bidding guidelines as well as the implementation agreement keeping in view observations of Commission in various Orders.

*With warm regards,*

Yours sincerely,



(Gireesh B. Pradhan)

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As regards early commissioning of transmission elements, the Commission in the Order dated 28.1.2015 in Petition No.284/ADP/2015 had directed as follows:

“29. We have noted the submission of the petitioner. The Policy for incentivizing early commissioning of Transmission Projects issued by Ministry of Power vide its letter dated 15.7.2015 is extracted as under:

“The undersigned is directed to say that the Hon`ble Minister of State (IC) for Power has approved the Policy for incentivizing early commissioning of Transmission projects w.e.f.12.6.2015 as given below:

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) 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. for 25/35 years, as the case may be.

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.

Thus, the Policy provides for grant of incentive in the form of admissibility of the transmission charges from the date of actual COD which takes place before the scheduled COD. In our view, the above Policy needs to be read in the context of the TSA. Commercial Operation Date has been defined in the TSA as “the date as per Article 6.2; provided that the COD shall not be a date prior to the Scheduled COD mentioned in the TSA, unless mutually agreed to by all parties. Scheduled COD has been defined as under:

‘Scheduled COD’ in relation to an Element(s) shall mean the date(s) as mentioned in Schedule 3 as against such Element(s) and in relation to the Project, shall mean the date as mentioned in Schedule 3 as against such Project, subject to the provisions of Article 4.4 of this Agreement, or such date as may be mutually agreed among the Parties.

Scheduled COD has been given in Schedule 3 of the TSA with overall SCOD as 40 months from the effective date and certain elements have been pre-required for declaring the COD. At the end of the Schedule 3, the following has been mentioned:

“The payment of Transmission Charges for any Element irrespective of its successful commissioning on or before its Scheduled COD shall only be considered after successful commissioning of the Element(s) which are pre-required for declaring the commercial operation of such Element as mentioned in the above table.”

Article 6.2.1 of the TSA provides as under:

“6.2.1 An Element of the Project shall be declared to have achieved COD seventy (72) hours following the connection of the Element with the Interconnection Facilities or seven (7) days after the date on which it is declared by the TSP to be ready for charging but is not able to be charged for reasons not attributable to the TSP or seven (7) days after the date of determent, if any, pursuant to Article 6.1.2:

Provided that the Element shall be declared to have achieved COD only after all the Element(s), if any, which are pre-required to achieve COD as defined in Schedule 3 of this Agreement, have been declared to have achieved their respective COD.”

Note: The above incentive will be applicable

From the above provisions, it emerges that certain elements can be considered for grant of transmission charges on completion of their successful commissioning on or before its Scheduled COD only after the successful commissioning of the pre-required elements. Therefore, the commissioning of the elements of the transmission system for the purpose of incentive should take into account the pre-required commissioning of the elements as per scheduled COD. Further there may be upstream or downstream assets which are executed by PGCIL on cost plus basis or by any other transmission licensee through competitive bidding. Since the SCOD of the transmission elements mentioned in Schedule 3 have been decided matching with the commissioning of the upstream or downstream assets, that is a requirement of matching commissioning of these upstream or downstream assets with the commissioning of the transmission system in case of early commissioning for the purpose of availing incentives as per the Policy direction of Ministry of Power. If the matching commissioning does not take place, then the transmission assets which have commissioned before the SCOD for the purpose of availing incentive will remain unutilized and in the absence of the assets being put into service, it will not be appropriate to load the DICs with the transmission charges. It is, therefore, directed that the

petitioner should realistically forecast early commissioning of the element, liaise with the developer of the upstream and downstream assets and mutually decide the COD of the transmission assets matching with the COD of the upstream or downstream assets so that both can be benefited by the Policy of the Govt. for incentivizing the early commissioning of the transmission assets. In case of an element which can be put to use without the commissioning of the pre-required asset, the same can be commissioned, if the CEA certifies that the commissioning of the asset will be in the interest of the safety and security of the grid and the asset can be put to useful service after its commissioning."

achieved their respective COD.

4. Date of commercial operation in relation to an inter-State Transmission System or an element thereof shall mean the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful trial operation for transmitting electricity and communication signal from the sending end to the receiving end: Provided that: (i) In case of inter-State Transmission System executed through Tariff Based Competitive Bidding, the transmission licensee shall declare COD of the ISTS in accordance with the provisions of the Transmission Service Agreement. (ii) Where the transmission line or substation is dedicated for evacuation of power from a particular generating station and the dedicated transmission line is being implemented other than through tariff based competitive bidding, the concerned generating company and transmission licensee shall endeavour to commission the generating station and the transmission system simultaneously as far as practicable and shall ensure the same through appropriate Implementation Agreement in accordance with relevant provisions of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 or any subsequent amendment or re-enactment thereof. In case the transmission line or sub-station dedicated to a generator is being implemented through tariff based competitive bidding, then matching of commissioning of the transmission line/sub-station and generating station shall be monitored by Central Electricity Authority. (iii) Where the transmission system executed by a transmission licensee is required to be connected to the transmission system executed by any other transmission licensee and both transmission systems are executed in a manner other than through tariff based competitive bidding, the transmission licensee shall endeavour to match the commissioning of its transmission system with the transmission system of the other licensee as far as practicable and shall ensure the same through an appropriate Implementation Agreement. Where either of the transmission systems or both are implemented through tariff based competitive bidding, the progress of implementation of the transmission systems in a matching time schedule shall be monitored by the Central Electricity Authority. (iv) In case a transmission system or an element thereof is prevented from regular service on or before the Scheduled COD for reasons not attributable to the transmission licensee or its supplier or its contractors but is on account of the delay in commissioning of the concerned generating station or in commissioning of the upstream or downstream transmission system of other transmission licensee, the transmission licensee shall approach the Commission through an appropriate application for approval of the date of commercial operation of



such transmission system or an element thereof. (v) An element shall be declared to have achieved COD only after all the elements which are pre-required to achieve COD as per the Transmission Services Agreement are commissioned. In case any element is required to be commissioned prior to the commissioning of pre-required element, the same can be done if CEA confirms that such commissioning is in the interest of the power system. (vi) The transmission licensee shall submit a certificate from the CMD/CEO/MD of the Company that the transmission line, sub-station and communication system conform to the relevant Grid Standard and Grid Code, and are capable of operation to their full capacity. Note: Transmission Licensee referred to in this Sub-Regulation shall include "Deemed Transmission Licensee" as per the provision of the Act.

Where the transmission system executed by a transmission licensee and generating station shall be monitored by Cent

*"12. Controllable and Uncontrollable factors:*

*.....  
Provided that no additional impact of time overrun or cost over-run shall be allowed on account of non-commissioning of the generating station or associated transmission system by SCOD, as the same should be recovered through Implementation Agreement between the generating company and the transmission licensee:*

*Provided further that if the generating station is not commissioned on the SCOD of the associated transmission system, the generating company shall bear the IDC or transmission charges if the transmission system is declared under commercial operation by the Commission in accordance with second proviso of Clause 3 of Regulation 4 of these regulations till the generating station is commissioned:*

*Provided also that if the transmission system is not commissioned on SCOD of the generating station, the transmission licensee shall arrange the evacuation from the generating station at its own arrangement and cost till the associated transmission system is commissioned."*