

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Dated : 15.12.2023

NOTIFICATION

No.L-1/236/2018/CERC: In exercise of powers conferred under clause (s) of subsection (2) of section 178 of the Electricity Act, 2003 (36 of 2003) read with Section 61 thereof and all other powers enabling it in this behalf, and after previous publication, the Central Electricity Regulatory Commission hereby makes the following regulations, to amend the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter referred to as “the Principal Regulations”), namely:-

1. Short Title and Commencement: (1) These regulations may be called the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Third Amendment) Regulations, 2023.

(2) These regulations shall come into force from the date of publication of these Regulations in the official Gazette.

2. Amendment to Clause (4) under Appendix-II “Procedure for Calculation of Transmission System Availability Factor for a Month” of the Principal Regulations:

2.1 New sub-clause (iii) shall be added after sub-clause (ii) of Clause (4) under Appendix-II of the Principal Regulations as under:

“(iii) Shut down of a transmission line due to shifting or modification of such transmission line or otherwise because of the Project(s) of NHAI, Railways, and Border Road Organisation. Member Secretary, RPC may restrict the deemed availability period to that considered reasonable by him for the work involved;

Provided that DICs are not affected by the shutdown of such a transmission Line;”

3. Amendment to Clause (5) under Appendix-II “Procedure for Calculation of Transmission System Availability Factor for a Month” of the Principal Regulations:

3.1 Provisos to sub-clause (ii) to Clause (5) under Appendix-II of the Principal Regulations shall be deleted.

3.2 New sub-clause (iii) shall be added after sub-clause (ii) of Clause (5) under Appendix-II of the Principal Regulations as under:

“(iii) The outage period which can be excluded for the purpose of sub-clauses (i) and (ii) of this clause shall be declared as under:

- a) Maximum up to one month by Member Secretary, RPC
- b) Beyond one month and up to three months after a decision at RPC
- c) Beyond three months by the Commission for which the transmission licensee shall approach the Commission along with reasons, steps taken to mitigate the outage and restoration timeline.”

Sd/
(Harpreet Singh Pruthi)
Secretary

Note: (1) The Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 were published in Part III- Section 4, No.144 of the Gazette of India (Extraordinary) dated May 3, 2019.

(2) The Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment) Regulations, 2020 were published in Part III- Section 4, No.53 of the Gazette of India (Extraordinary) dated Feb 3, 2021.

(3) The Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Second Amendment) Regulations, 2021 were published in Part III- Section 4, No.394 of the Gazette of India (Extraordinary) dated September 13, 2021.

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

No.L-1/236/2018/CERC

Coram:

Shri Jishnu Barua, Chairperson

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date: 15.12.2023

In the matter of

Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Third Amendment) Regulations, 2023

Statement of Reasons

1. Introduction:

1.1 The Commission' had notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter referred to as "the Principal Regulations") specifying the terms and conditions for determination of tariff of the generating stations and inter-State transmission systems covered under its jurisdiction. The Principal Regulations in Appendix-II provide the "Procedure for Calculation of Transmission System Availability Factor for a Month."

1.2 Ministry of Power, vide letter dated 31.08.2021 and letters dated 16-06-2022 & 03-08-2022 respectively, has requested CERC to suitably modify/make necessary amendments in the CERC (Terms and Conditions of Tariff) Regulations, 2019 in order to enable the declaration of deemed availability for shifting of ISTS Transmission Lines for infrastructure projects of NHAI, Railways, BRO, etc., provided that transmission customers are not affected by the shutdown of the line.

1.3 Considering the above-mentioned letters of the MoP, the Commission notified the draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Third Amendment) Regulations, 2022 (hereinafter referred to as the "Draft Third

Amendment”) on 06.09.2022 seeking comments/ suggestions/ observations from the stakeholders/ public. Comments were received from 10 stakeholders, which included State Power utilities and inter-State transmission licensees in the central sector, State sector, and private sector. A list of stakeholders who submitted written comments is given in **Appendix-I**. The Commission conducted a public hearing on 23.11.2022 wherein INDIGRID and POWERGRID made their submissions. After due consideration of the comments/ suggestions/ objections received, the Commission has finalized the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Third Amendment) Regulations, 2023, (hereinafter referred to as the “2023 Third Amendment”).

1.4 Deliberation on the comments/ suggestions offered by the stakeholders on the Draft Third Amendment and the rationale behind the decisions of the Commission are discussed in the succeeding paragraphs. While the Commission considered all the comments/ suggestions received, the names of all the stakeholders may not appear in the deliberations. However, the comments of all the stakeholders have been uploaded to the website of the Commission.

2. Amendment to Clause (4) under Appendix-II “Procedure for Calculation of Transmission System Availability Factor for a Month” of the Principal Regulations:

2.1 The addition of new sub-clause (iii) was proposed under Clause (4) under Appendix-II of the Principle Regulations as under:

“(iii) Shut down availed for shifting of Transmission Line for Project(s) of NHAI, Indian Railways and Border Road Organisation. Member Secretary, RPC may restrict the deemed availability period to that considered reasonable by him for the work involved;

Provided that such deemed availability shall be considered only for the period for which DICs are not affected by the shutdown of such a transmission Line.”

2.2 Comments have been received from ATIL, Tata Power, Powergrid, IndiGrid, Torrent Power Ltd, BYPL, MSEDCL, NBTCL DMTCL and KPTCL.

2.2.1 ATIL, Tata Power, Powergrid, IndiGrid and Torrent Power Ltd. have opined in favour of the inclusion of all infrastructure projects of the Irrigation Department, Airport Authority, other organizations/ departments of Central/ State Governments, or any other Government Authority or Private Company that is executing a project of a

public utility or under a mandate from Government Authority/Statute/law etc for deemed availability against the Shutdown availed for shifting of Transmission Line.

2.2.2 IndiGrid also suggested substituting the word “shifting” with the words “shifting/ modification/ alteration”. IndiGrid further suggested considering the deemed availability for shutdown availed for shifting of the transmission line due to Projects(s) such as roads, dams, ponds, mining etc., that are developed/identified post installation of the Transmission Line or the development of such projects that might infringe on the regular operation of the Transmission Line .

2.2.3 BYPL requested to elaborate the methodology for considering the deemed availability period, as in such a case, the outage may end up with DISCOM arranging additional power to meet demand from other sources and also paying more transmission charges due to more availability, which is not in favour of DISCOM.

2.2.4 MSEDCL suggested that the Member Secretary, RPC, ensure that the DICs are not affected by the shutdown of such transmission Lines.

2.2.5 Tata Power suggested that Member Secretary, RPC, may restrict the deemed availability period to that considered reasonable, including periods requiring outages during construction of the tower, stringing of conductors, execution of the project in phases involving longer shutdowns, delays on account of Right of Way/local issues/ extreme weather conditions, or any unforeseen situations, etc., for the work involved. Tata Power has also suggested that for the period of shutdown for which DICs are affected and it is necessary to shift the transmission line, the licensee may recover the transmission charges and loss of incentive from the Organization for which shifting is done. Tata Power further suggested that details of the extent to which DICs are getting impacted and the extent to which deemed transmission availability has been considered or declined may also be provided by the MS, RPC.

2.2.6 Torrent Power Limited suggested that in case availability is not considered by RPC for whatever reason, concessionaires, i.e., NHAI, Railways, Border Road Organisation, etc., shall compensate for transmission charges as well as incentives corresponding to availability, considering the deemed availability. Further, Torrent Power Limited also suggested that if an outage of any line for modification work results in revenue loss to the generator or the generator will have to be run on an auxiliary supply, or the beneficiary has to purchase replacement power, the cost of running the generator on such an auxiliary supply or the cost of replacement power

will be borne by NHAI/ Railway/ Border Road Organisation/ or any other concessionaries.

2.2.7 NBTL and DMTCL suggested including the provision that in case of a dispute regarding deemed availability, the matter may be referred to Chairperson CEA within 30 days. Further, NBTL and DMTCL suggested removing the condition that deemed availability shall be considered only for the period for which DICs are not affected by the shutdown of such a transmission Line.

2.2.8 KPTCL commented that while providing a deemed availability certificate for the shutdown period availed by transmission licensees for shifting of their transmission lines due to Project(s) of NHAI, Railways, and Border Road Organisation, it is to be ensured that the impact of congestion charges and benefit of deemed availability both should not fall on DISCOMs. KPTCL further commented that due to the non-availability of the lines/elements, the particular control area will lose flexibility and reliability, and ATC/TTC and export and import capabilities may also be restricted, which results in DISCOMs having to pay additional charges, Regional Transmission Deviation Account (RTDA) charges etc., or curtail demand/generation thus causing a loss of the revenue for the Generators/DISCOMs without any fault from their side. Accordingly, KPTCL suggested incorporating the provision that if the Total Transfer Capability (TTC)/ Available Transfer Capability (ATC) of the region is reduced, the RPC shall not certify the deemed availability.

2.3 Analysis and Decision

- (1) We have considered the submissions of all the stakeholders.
- (2) The aspect of allowing deemed availability leads to a situation where the Discoms pays for the transmission line that is under shutdown without availing of any power flow benefit over the line. Accordingly, the Draft Third Amendment proposes to allow such deemed availability only for the projects of NHAI, BRO, and Railways.
- (3) Some stakeholders have suggested allowing deemed availability for all infrastructure projects. Per contra, some discoms have suggested that such an outage may lead to DISCOM arranging additional power to meet demand from other sources and also paying more transmission charges and that the licensee may recover the transmission charges and loss of incentive from the Organization for which shifting is done. Considering the suggestions, we are of the view that the deemed availability cannot be allowed for shutdown for all

infrastructure projects, and the licensee may recover the transmission charges and loss of incentive from the organization for which shifting is done, as per its mutual arrangement.

- (4) Indigrid has suggested including modification/alteration of the transmission line in the deemed availability period. We observe that there may be cases where a transmission line may need to go under shutdown due to works other than the shifting of the line. Accordingly, the word “modification” has been included. We agree with Indigrid suggestions that shutdown may be availed of for projects of NHAI, Railways, and BRO even when no shifting or modification of the transmission line is to be carried out. Considering these suggestions, modifications have been made to the amendment.
- (5) The suggestion of DMTCL to allow deemed availability even if DICs are affected is not acceptable, keeping in view counter submissions of DISCOMs that if DICs are affected by the shutdown of a transmission line, charging them with transmission charges when otherwise no compensation is paid to them for such a period when they are affected, is not appropriate. We agree with KPTCL’s suggestion that if the Total Transfer Capability (TTC)/ Available Transfer Capability (ATC) of the region is reduced, the RPC shall not certify the deemed availability. Further, the Member Secretary should provide details of the period considered under deemed availability, along with reasons thereof, along with the availability certificate. However, in such cases where the transmission line has to undergo shutdown due to Railways, BRO, or NHAI and the same is not covered under deemed availability, the transmission licensee can take such charges for availability loss from the concerned entity (Railways, BRO, or NHAI, as applicable) as per their mutual agreement.
- (6) Torrent Power Limited has suggested that if an outage of any line for modification work results in revenue loss to the generator, the cost of such loss or replacement power should be borne by NHAI/ Railway/ Border Road Organisation/ or any other concessionaire. In this regard, it is clarified that a generator is also a DIC, and in case a DIC is affected due to shutdown, the Member Secretary, RPC, shall not allow the deemed availability of such a transmission line. Accordingly, the concerns of Torrent Power are addressed.

3. Amendment to Clause (5) under Appendix-II “Procedure for Calculation of Transmission System Availability Factor for a Month” of the Principal Regulations:

3.1 Provisos to sub-clause (ii) to Clause (5) under Appendix-II of the Principal Regulations were proposed to be deleted.

3.1.1 Comments have been received from NBTL and DMTCL.

(1) NBTL and DMTCL suggested retaining the prevailing clause (mechanism of redressal) to address the event of disagreements.

3.1.2 Analysis and Discussion

(1) The reason for the proposed amendment has been provided in the Explanatory Memorandum (EM). Accordingly, no changes have been made in the proposed amendment.

3.2 New sub-clause (iii) was proposed to be added after sub-clause (ii) of Clause (5) under Appendix-II of the Principal Regulations as under:

“(iii) The outage period which can be excluded for the purpose of sub-clauses (i) and (ii) of this clause shall be declared as under:

a) Maximum up to one month by Member Secretary, RPC

b) Beyond one month and up to three months after decision at RPC

c) Beyond three months by the Commission for which the transmission licensee shall approach the Commission along with reasons, steps are taken to mitigate the outage and restoration timeline.”

3.2.1 Comments have been received from ATIL, MSEDCL, Powergrid, IndiGrid, NBTL and DMTCL.

(1) ATIL suggested increasing the duration up to six months for decision at the RPC level.

(2) MSEDCL suggested including the provision that the RPC will take the decisions after due consideration of the views of the beneficiaries.

(3) Powergrid has submitted that many a time, restorations of transmission lines take more than a month, depending on actual site conditions. Despite the best efforts of the transmission licensee, restoration of Transformer/ Reactors after failure may also take 2-3 months. Powergrid has suggested increasing the duration up to three months for a decision by the Member Secretary,

beyond three to five months for a decision by the RPC, and beyond five months by the Commission. Powergrid has also suggested that the existing provision of the principal regulation for referring the case to the chairperson, CEA, in case of disagreement with the transmission licensee regarding the reason for the outage may be continued for the outages for up to three months for proper resolution of the case.

- (4) IndiGrid has suggested that decisions for beyond one month and up to three months should be made at the RPC OCC Forum. In case of difficulty or delay beyond sixty days, in arriving at a conclusion based on the proposed three approaches, the Member Secretary of the concerned RPC may allow the outage hours on a provisional basis till the final view under respective approaches is arrived at.
- (5) NBTL and DMTCL suggested removing the provision to approach the CERC, and CEA or CERC may be approached only in case there is any dispute/disagreement.

3.2.2 Analysis and Discussion

- (1) The suggestion to consider an outage on a provisional basis in cases where difficulty or delay beyond sixty days is involved is not acceptable. Since, with deemed availability, Discoms are levied transmission charges without the line being available, any such deemed availability cannot be considered if consensus is not arrived at RPC. Accordingly, any provisional basis consideration cannot be given to deemed availability.
- (2) The suggestion to remove the provision to approach CERC in cases of delay beyond three months is not acceptable. Three months is a reasonable time in which the transmission system should be restored. All efforts should be made for such restoration. Since the transmission charges are paid by all India DICs, if the transmission charges are being billed on such DICs for a system that is under outage, it is necessary to hear all such DICs before such a prolonged outage may be allowed. Accordingly, the provision of approaching the Commission has been retained for delay beyond three months.

- (3) We have considered suggestions from Powergrid that it may take 2-3 months in a few cases. Such cases will be decided at the RPC level. RPC can make a Standard Operating Procedure for the speedy disposal of such cases.

Sd/	Sd/	Sd/	Sd/
(P. K. Singh)	(Arun Goyal)	(I.S. Jha)	(Jishnu Barua)
Member	Member	Member	Chairperson

Appendix-I

List of Stakeholders who submitted written Comments/Suggestions

Sl. No.	Stakeholders Name	Short Name used in this Document
1	Adani Transmission (India) Limited	ATIL
2	BSES Yamuna Power Limited	BYPL
3	Darbhangha-Motihari Transmission Company Limited	DMTCL
4	IndiGrid	IndiGrid
5	Karnataka Power Transmission Corporation Limited	KPTCL
6	Maharashtra State Electricity Distribution Company Limited	MSEDCL
7	NRSS XXXI (B) Transmission Limited	NBTL
8	Power Grid Corporation of India Limited	Powergrid
9	Tata Power Company Limited	Tata Power
10	Torrent Power Ltd	Torrent Power Ltd