



Bihar Electricity Regulatory Commission
Vidyut Bhawan-II, J.L. Nehru Marg, Patna- 800021

Notice No. ...12.....

Dated: ..05/08/2021
PATNA

PUBLIC NOTICE

Suo-Motu Proceeding for inviting Comments/Suggestions/Objections from general Public and Stakeholders.

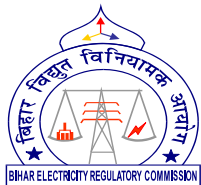
Bihar Electricity Regulatory Commission, empowered to make regulations under section 181 read with section 61,62,64 and 86 of the Electricity Act, 2003, has initiated a Suo-Motu Proceedings No. 07/2021 for making Bihar Electricity Regulatory Commission (Multi Year Transmission Tariff & SLDC Charges) Regulations, 2021.

Copy of draft regulations and consultative paper is available on Commission's **Website www.berc.co.in**. Interested person/organisation may obtain a copy of the draft Regulation free of cost from the office of the Commission on any working day.

Commission invites written Comments/Suggestions/Objections on the draft regulations from general public and stakeholders before 20.08.2021 addressed to **Secretary, Bihar Electricity Regulatory Commission, Vidyut Bhawan-II, Bailey Road, Patna-800021** and they may appear before Commission in the Public Hearing.

Commission also invites interested person/organizations/companies to appear in the Public Hearing scheduled on **24.08.2021 at 11:30 A.M.**

Rtm
Secretary



BIHAR ELECTRICITY REGULATORY COMMISSION

Vidyut Bhawan-II, JawaharLal Nehru Marg, Patna-800021

Consultative Paper on Draft BERC (Multi Year Transmission Tariff and SLDC Charges) Regulations, 2021

1 Introduction

1.1 Background:

Bihar Electricity Regulatory Commission is a statutory body responsible for regulation of the electricity sector in the State of Bihar consisting of generation, transmission, distribution and use of electricity. Its primary objective includes taking measures conducive to the development of the electricity industry, promoting competition therein, protecting the interest of consumers and ensuring supply of electricity to all areas. The powers and the functions of the Commission are as prescribed in the Electricity Act, 2003.

1.2 Electricity Act 2003:

The Electricity Act, 2003, requires the appropriate Commission to be guided by Multi-Year Tariff (MYT) principles while specifying the Terms and Conditions for determination of tariff. Section 61 of the Act, 2003 stipulates:

“The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

- (a) The principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;
- (b) The generation, transmission, distribution and supply of electricity are conducted on commercial principles;
- (c) The factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;
- (d) Safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;
- (e) The principles rewarding efficiency in performance;
- (f) Multi-year tariff principles;

- (g) That the tariff progressively reflects the cost of supply of electricity and also reduces cross subsidies in the manner specified by the Appropriate Commission;
- (h) The promotion of co-generation and generation of electricity from renewable sources of energy;
- (i) The National Electricity Policy and tariff policy

1.3 Tariff Policy and National Electricity Policy:

The Ministry of Power (MoP) has notified the National Electricity Policy and the Tariff Policy which provide guidelines for determination of tariff and Annual Revenue Requirement (ARR). The National Electricity Policy provides certain guidelines as regards performance norms, the need of tariff rationalization and also stipulates the need to provide incentives and disincentives, as reproduced below:

“5.8.5 All efforts will have to be made to improve the efficiency of operations in all the segments of the industry. Suitable performance norms of operations together with incentives and disincentives will need to be evolved along with appropriate arrangement for sharing the gains of efficient operations with the consumers. This will ensure protection of consumers’ interests on the one hand and provide motivation for improving the efficiency of operations on the other.

.....

5.8.7 It will be necessary that all the generating companies, transmission licensees and distribution licensees receive due payments for effective discharge of their operational obligations as also for enabling them to make fresh investments needed for the expansion programmes. Financial viability of operations and businesses would, therefore, be essential for growth and development of the sector. Concerted efforts would be required for restoring the financial health of the sector. For this purpose, tariff rationalization would need to be ensured by the SERCs. This would also include differential pricing for base, intermediate and peak power.”

The relevant extract of the guidelines specified under the National Tariff Policy, 2016, are reproduced below:

“5.11 Tariff policy lays down the following framework for performance based cost of service regulation in respect of aspects common to generation, transmission as well as distribution.....

h) Multi Year Tariff

1) Section 61 of the Act states that the Appropriate Commission for determining the terms and conditions for the determination of tariff shall be guided, inter-alia, by Multi-Year Tariff (MYT) principles. The framework should feature a five-year control period. The initial control period may, however, be of 3 year duration for transmission and distribution if deemed necessary by the Regulatory Commission on account of data uncertainties and other practical considerations. ...”

1.4 CERC Tariff Regulations

CERC has notified the 2019 Tariff Regulations for the Control Period from April 1, 2019 to March 31, 2024. The Commission in accordance with Electricity Act, 2003 has been guided by the principles and methodologies specified by the CERC for determination of the tariff applicable to Generating Companies and Transmission Licensees. Accordingly, the Commission is guided by the principles and methodologies specified in the prevalent CERC Tariff Regulations wherever it has deemed it necessary and relevant.

2 Multi Year Tariff Overview

2.1 The Bihar Electricity Regulatory Commission ('BERC' or 'Commission') in exercise of powers conferred under section 181 read with sections 61, 62 and 86 of the Electricity Act, 2003 (36 of 2003) and all powers enabling it in that behalf notified BERC (Multi Year Transmission Tariff & SLDC Charges) Regulations, 2018 for three years control period starting from 1st April 2019. Now control period is ending on 31.03.2022. As such new MYT regulations for second control period need to be notified for filing MYT tariff petition by the licensee(s). Commission considers transmission MYT regulations, 2018 as base for governing this draft transmission MYT regulations 2021 with modifications in existing parameters as and where required whose rational has also been provided in subsequent paras.

2.2 General Principles of Multi-Year Tariff

This paper discusses the outlines of the Multi-Year Tariff (MYT) principles for formulation of Regulations for determination of tariff for the next Control Period beginning April 1, 2022. The broad objectives of any MYT framework are to:

- a) Provide regulatory certainty to the utilities, investors and consumers by promoting transparency, consistency and predictability of regulatory approach, thereby minimizing the perception of regulatory risk.
- b) Address the risk sharing mechanism between utilities and consumers based on controllable and uncontrollable factors.
- c) Ensure financial viability of the sector to attract investment, ensure growth and safeguard the interest of the consumers.
- d) Review operational norms for businesses.
- e) Promote operational efficiency

2.2.1 Outlines of Multi-Year Tariff

2.2.2 Duration of Control Period

In context of duration, 5.11 (h) (1) of the Tariff Policy, 2016 stipulates the following:

“Section 61 of the Act states that the Appropriate Commission for determining the terms and conditions for the determination of tariff shall be guided, inter-alia, by Multi-Year Tariff (MYT) principles. The framework should feature a five-year control period. The initial control period may, however, be of 3 year duration for transmission and distribution if deemed necessary by the Regulatory Commission on account of data uncertainties and other practical considerations. In cases of lack of reliable data, the Appropriate Commission may state assumptions in MYT for first control period and a fresh control period may be started as and when more reliable data becomes available.”

As the Control Period starting on April 1, 2022 will be the Second Control Period, the Commission proposes a 5-year Control Period in accordance with the recommendations of the Tariff Policy 2016. However, the Commission wants to deliberate and understand the stakeholders’ views on whether to continue with the existing 3-year Control Period or change the Control Period to 5-year considering the merits of 3-year visà- vis 5-year Control Period.

The 5-year Control Period provides greater regulatory certainty for both consumers and Licensees. The various trajectories defined or to be defined by the Commission can be better streamlined. On the other hand, the 3-year Control Period has been observed to be relatively more effective for utilities with lower reliability and stability of data. Further, 3-year Control Period

allows for revision of performance of parameters and trajectories after a shorter period of time.

As per BERC (Multi Year Transmission Tariff and SLDC Charges) Regulations 2018	Provisions proposed under BERC (Multi Year Transmission Tariff and SLDC Charges) Regulations 2021
2.2. These Regulations shall be applicable for determination of transmission tariff and SLDC charges in all cases covered under these Regulations from 1st April 2019 and onwards up to FY 2022 (i.e. till 31st March 2022) or till these Regulations are amended.	2.2 These Regulations shall be applicable for determination of transmission tariff and SLDC charges in all cases covered under these Regulations from 1st April 2022 and onwards up to FY 2026-27 (i.e. till 31st March 2027) or till these Regulations are amended.

2.2.3 Cost-plus Regulation

The State Regulatory Commission`s (SERCs) have generally adopted the approach, whereby tariffs are determined in such a manner so as to enable the utilities to recover prudent expenses and earn a predetermined return on the equity investment. It should be noted that most SERCs do not approve same level of expenses as submitted by utilities and undertake prudence check on the expenditure with the objective of improving the utility’s efficiency and thereby reducing tariffs. This introduces an element of performance within the overall framework of ‘cost-plus’ regulation. This approach is being followed in the existing BERC Multi Year Regulations, 2018, is well understood by all the stakeholders. Hence, for providing regulatory certainty, it is proposed to continue same approach in line with the existing Regulations, 2018.

2.3 Business Plan

The BERC MYT Regulations, 2018 state the following:

“12.1 An application (alongwith soft copy) for approval of the Business Plan shall be made by 15th September of the year prior to the commencement of the Control Period, in accordance with the BERC (Conduct of Business) Regulations, 2005 and its amendments from time to time, and accompanied by such fee payable, as specified in the BERC (Fees, Fines and Charges) Regulations, 2005” as amended from time to time..... ”

The objective of requiring the filing of Business Plan around 2 to 6 months prior to the submission of the MYT Petition is that the utilities will be required to prepare a long-term plan for the critical aspects of their business, mainly, capital investment, sales projections etc., and also provide various scenarios for these aspects for the Commission's

consideration. Once the Commission issues an order on Business Plan after due regulatory process, the utilities are required to file their MYT Petition in accordance with the order of Commission. If the Commission is unable to issue an order in due time, the Licensees may file their MYT petition based on the submitted Business Plan.

In context of proviso to regulation 5.1 of BERC MYT Regulations, 2018 which empowers the Commission to determine separate fee for filing of a Business Plan, the Commission proposes to repeal the said proviso highlighting the provisions under serial no-35 of schedule to BERC (Fees, Fines and Charges) Regulations, 2019 that requires the licensees to pay a fee of 0.001% of the proposed CAPEX investment of MYT control period subject to a minimum of Rs. 10,00,000 (Ten lakh).

As per BERC (Multi Year Transmission Tariff and SLDC Charges) Regulations 2018	Provisions proposed under BERC (Multi Year Transmission Tariff and SLDC Charges) Regulations 2021
5.1 The Transmission Licensee or SLDC, as the case may be, shall file a Business Plan, for the Control Period by a Petition in accordance with BERC (Conduct of Business) Regulations, 2005 and its amendments from time to time, by 15th September of the year prior to the commencement of the Control Period and accompanied by such fee payable, as specified in the <u>BERC (Fees, Fines and Charges) Regulations, 2005</u> as amended from time to time. <u>Provided that where no separate fee has been specified for filling of a business plan, the applicant shall pay fees as may be determined by the Commission.</u>	5.1 The Transmission Licensee or SLDC, as the case may be, shall file a Business Plan, for the Control Period by a Petition in accordance with BERC (Conduct of Business) Regulations, 2005 and its amendments from time to time, by 15th September of the year prior to the commencement of the Control Period and accompanied by such fee payable, as specified in the <u>BERC (Fees, Fines and Charges) Regulations, 2019</u> as amended from time to time.

Further, in order to have consistency with the provisions of the Bihar Electricity Regulatory Commission (Procedure for filing Capital investment and Capitalisation plan) Regulations 2018, the Commission also proposes to repeal regulation 3.1(25), 3.1(39) and make slight modification in regulation 5.3 of BERC Transmission MYT Regulations, 2018.

As per BERC (Multi Year Transmission Tariff and SLDC Charges) Regulations 2018	Provisions proposed under BERC (Multi Year Transmission Tariff and SLDC Charges) Regulations 2021
3.1(25): “Detailed Project Report Scheme” (or “DPR Scheme”) means a capital expenditure Scheme with projected capital cost exceeding the	

<p>limits specified in these Regulations, for which the Transmission Licensee or SLDC, as the case may be, is required to obtain prior in-principle approval by submitting a Detailed Project Report (DPR) in accordance with the Guidelines of the Commission for In-Principle Clearance of proposed Investment Schemes</p> <p>3.1(39): “Non-DPR Scheme” means a capital expenditure Scheme with projected capital cost within the limits specified in these Regulations, for which the Transmission Licensee or SLDC, as the case may be, is not required to obtain prior in-principle approval of the Commission.</p> <p>5.3(a) The Transmission Licensee or SLDC, as the case may be, shall make assessment of infrastructure requirement and prepare capital investment plan in accordance with BERC (Procedure for Filing Capital Investment and Capitalization Plan) Regulations, 2018 that will spill into the year(s) under review and new projects that will commence and may be completed within or beyond the tariff period. Provided that all the new intra-state transmission projects costing above a threshold limit to be notified separately, shall be developed through Tariff Based Competitive Bidding.....</p> <p>5.3(d) <u>Capital expenditure shall be incurred by the Licensee after the approval of the Business Plan Order. In case the capital expenditure is required for emergency work, the Licensee may take up the work upto Rs.20 Crore prior to receiving the approval from the Commission provided the emergent nature of the scheme has been certified by its Board of Directors.</u></p>	<p>REPEALED</p> <p>REPEALED</p> <p>5.3. The Transmission Licensee or SLDC, as the case may be, shall make assessment of infrastructure requirement and prepare capital investment plan in accordance with BERC (Procedure for Filing Capital Investment and Capitalization Plan) Regulations, 2018 that will spill into the year(s) under review and new projects that will commence and may be completed within or beyond the tariff period. Provided that all the new intra-state transmission projects costing above a threshold limit to be notified separately, shall be developed through Tariff Based Competitive Bidding..... <u>Provided also that, It is the duty of the Licensee to ensure optimization of investments to enhance efficiency, productivity and meet performance standards prescribed by the Commission.....</u></p> <p>5.6 <u>The Transmission Licensee shall normally get prior approval of every capital investment. In case the capital expenditure is required for emergency work arisen due to unforeseen circumstances, the Licensee may take up the work upto Rs.20 Crore prior to receiving the approval from the Commission provided the emergent nature of the scheme has been certified by its Board of Directors or by the Authority delegated by the Board of Directors.</u></p>
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<p><u>5.3(e) The Licensee shall submit an application within 15 days of occurrence of cause for such emergent work, containing all relevant information along with reasons justifying the emergent nature of the proposed work, seeking post facto approval by the Commission</u></p>	<p><u>5.7 The Licensee shall submit an application showing detailed justification along with supporting documents for emergent nature of expenses within 15 days of occurrence of cause for such emergent work, seeking post facto approval by the Commission.</u></p>
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2.4 Sharing of gains or losses/incentive

2.4.1 In order to have more clarity and transparency in understanding of calculation of gains or losses, an explanation have been added to Regulation 10.2 of BERC MYT Regulations, 2018, reproduced below:

As per BERC (Multi Year Transmission Tariff and SLDC Charges) Regulations 2018	Provisions proposed under BERC (Multi Year Transmission Tariff and SLDC Charges) Regulations 2021
<p>10.2 The Licensee and SLDC, as the case may be, shall submit such details of variation for sharing of approved aggregate gain or loss on account of controllable factors along with the detailed computations and supporting documents as may be required for verification by the Commission.</p>	<p>10.2 The Licensee and SLDC, as the case may be, shall submit such details of variation for sharing of approved aggregate gain or loss on account of controllable factors along with the detailed computations and supporting documents as may be required for verification by the Commission.</p> <p><u>Explanation: For the purpose of variation for sharing of approved aggregate gain or loss on account of norms based expenditure, variation will be calculated as a difference between normative expenditure as re-calculated in truing up and actual expenses booked in the audited books of accounts.</u></p>

2.4.2 The Commission proposes to insert regulation 10.3 to exclude sharing of gain or loss on account of incentive/disincentive granted specifically under other regulations on the logic that, if incentive/disincentive further shared under regulation 10 of BERC Transmission MYT Regulation, it would tantamount to treating the same items twice on account of same performance.

As per BERC (Multi Year Transmission Tariff and SLDC Charges) Regulations 2018	Provisions proposed under BERC (Multi Year Transmission Tariff and SLDC Charges) Regulations 2021
	<p><u>10.3 In case, there are other regulations which specifies for incentive/disincentive, gains/losses will not be shared under this</u></p>

	<u>regulation.</u>
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2.5 Operation & Maintenance Expenses

In order to have more clarity and transparency in understanding of calculation of escalation on account of Wholesale Price Index and Consumer Price Index based inflation, a proviso to Regulation 21(g) of BERC MYT Regulations, 2018 have been inserted as reproduced below:

As per BERC (Multi Year Transmission Tariff and SLDC Charges) Regulations 2018	Provisions proposed under BERC (Multi Year Transmission Tariff and SLDC Charges) Regulations 2021
21. Operation and Maintenance Expenses ----- (g) The norms shall be determined at constant prices of base year and escalation on account of inflation shall be over and above the baseline.	21. Operation and Maintenance Expenses ----- (g)The norms shall be determined at constant prices of base year and escalation on account of inflation shall be over and above the baseline. <u>Provided that for the purpose of escalation based on Wholesale Price Index(WPI_n) and Consumer Price Index(CPI_n),WPI_n is to be computed based on the average yearly inflation derived based on the monthly Wholesale Price Index of the respective past three financial years (including the year of Truing-up) as per the Office of Economic Advisor Ministry of Commerce & Industry Government of India and CPI_n is to be computed based on the average yearly inflation derived based on the monthly Consumer Price Index for Industrial Workers (all-India) of the respective past three financial years (including the year of Truing-up) as per the Labour Bureau Government of India, at the time of filing of Petition.</u>

2.6 Contribution to Contingency Reserve

Regulation 28 of BERC MYT Regulations, 2018 gives liberty to the Licensee to make an appropriation towards Contingency Reserve of a sum not less than 0.25 percent and not more than 0.5 percent of the original cost of fixed assets. The Commission, observing that utilities are not contributing towards Contingency Reserve, it has been proposed to give liberty to contribute even a smaller sum than 0.25 percent as reproduced below:

As per BERC (Multi Year Transmission Tariff and SLDC	Provisions proposed under BERC (Multi Year Transmission Tariff and
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Charges) Regulations 2018	SLDC Charges) Regulations 2021
28. Contribution to Contingency Reserve (a) If the Transmission Licensee or SLDC, as the case may be, has made an appropriation to the Contingency Reserve, <u>a sum not less than 0.25 per cent and not more than 0.5 per cent of the original cost of fixed assets</u> shall be allowed annually towards such appropriation in the calculation of ARR.	28. Contribution to Contingency Reserve (a) If the Transmission Licensee or SLDC, as the case may be, has made an appropriation to the Contingency Reserve, <u>a sum not more than 0.5 per cent of the original cost of fixed assets at the beginning of the year</u> shall be allowed annually towards such appropriation in the calculation of ARR.

2.7 Delayed Payment Charge and Interest on Delayed Payment

Late Payment Surcharge

The Commission, in order to remove contradiction with Electricity (Late Payment Surcharge) Rules, 2021; proposes to repeal regulation 30 and regulation 40 of BERC (Multi Year Tariff) Regulation, 2018.

However, the Commission wants to deliberate and understand the stakeholders' views.

As per BERC (Multi Year Transmission Tariff and SLDC Charges) Regulations 2018	Provisions proposed under BERC (Multi Year Transmission Tariff and SLDC Charges) Regulations 2021
30. Delayed Payment Charge and Interest on Delayed Payment: In case the payment of bills of transmission charges or SLDC Fees and Charges by the Beneficiary, as the case may be, is delayed beyond a period of 60 days from the date of billing, Delayed Payment Charge at the rate of 1.25% per month on the billed amount shall be levied for the period of delay by the Transmission Licensee or SLDC, as the case may be, notwithstanding anything to the contrary as may have been stipulated in the Agreement or Arrangement with the Beneficiaries	REPEALED
40. Late Payment Surcharge In case the payment of any bills for charges payable under these Regulations is delayed by a beneficiary (ies) beyond a period of 60 days from the date of billing a late payment surcharge at the rate of 1.25% per month on billed amount shall be levied for the period of delay by the Transmission Licensee.	REPEALED

3. The draft BERC (Multi Year Transmission Tariff and SLDC Charges) Regulation, 2021 which is enclosed here with is also uploaded on the

Commission website www.berc.co.in. The Commission invites Comments/Suggestions/ Objections, on this draft regulations, from all stakeholders and general public so as to reach before the Secretary Bihar Electricity Regulatory Commission, Ground Floor, Vidyut Bhawan-II, Jawahar Lal Nehru Marg, Patna-800021 on or before 20.08.2021.

4. The Commission shall hear this matter on 24.08.2021 at 11:30 A.M in the courtroom of the Commission. Interested persons may attend the hearing in person on the dates of hearing.

Sd/-
Secretary

DRAFT
Bihar Electricity Regulatory Commission
(Multi Year Transmission Tariff and SLDC Charges) Regulations,
2021

In exercise of powers conferred by sub section (1) of section 181 and clauses (zd), (ze) and(zf) of sub section (2) of section 181, read with sections 32, 61, 62, and 86, of the Electricity Act, 2003 (36 of 2003) and all other powers enabling it in that behalf, the Bihar Electricity Regulatory Commission hereby makes the following Regulations.

PART-I
PRELIMINARY

1. Short Title, Commencement and Extent.

- 1.1 These Regulations shall be called the **Bihar Electricity Regulatory Commission (Multi Year Transmission Tariff and SLDC Charges) Regulations, 2021.**
- 1.2 These Regulations shall come into force from the date of their notification in the Official Gazette.
- 1.3 These Regulations shall extend to the whole of the state of Bihar.

2. Scope and Extent of Application

- 2.1 These Regulations shall apply to all the Transmission Licensees and SLDC in the State of Bihar
- 2.2 These Regulations shall be applicable for determination of transmission tariff and SLDC charges in all cases covered under these Regulations from 1st April 2022 and onwards up to FY 2026-27 (i.e. till 31st March 2027) or till these Regulations are amended.
- 2.3 These Regulations shall be applicable where the cost based/ Aggregate Revenue Requirement (ARR) based tariff is determined by the Commission.
- 2.4 These Regulations shall not be applicable whose tariff has been discovered through tariff based competitive bidding in accordance with the guidelines issued by the Central Government and adopted by the Commission under Section 63 of the Act.

3. Definitions