



# THE ASSAM GAZETTE

অসাধাৰণ

EXTRAORDINARY

প্ৰাপ্ত কৰ্তৃত্বৰ দ্বাৰা প্ৰকাশিত

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GOVERNMENT OF ASSAM  
ASSAM ELECTRICITY REGULATORY COMMISSION

## **NOTIFICATION**

**The 30th August, 2004**

### **ASSAM STATE ELECTRICITY REGULATORY COMMISSION (CONDUCT OF BUSINESS) REGULATIONS**

**No. AERC./2004/14.** -- In exercise of powers conferred by Section 181 and other provisions of the Electricity Act 2003 (36 of 2003) and all other powers enabling the Commission in this behalf the Assam State Electricity Regulatory Commission makes the following Regulations for conduct of its Proceedings and discharge of its functions:-

#### **CHAPTER I – GENERAL**

##### **1. Short title, commencement and interpretation:-**

- (1) These Regulations may be called the Assam State Electricity Regulatory Commission (Conduct of Business) Regulations, 2004.
- (2) These Regulations extend to the whole of the State of Assam.
- (3) These Regulations shall come into force on the date which the Commission may by notification appoint for the purpose
- (4) The Assam General Clauses Act, 1915 (Assam Act 2. of 1915) shall apply to the interpretation of these Regulations.

- (5) The Assam Electricity Regulatory Commission (Conduct of Business) Regulations, 2002, shall stand repealed from the date of appointment as stated in clause 1 (3) of these regulations.

## 2. Definitions

- (1) In these Regulations, unless the context otherwise require:
- (a) **'Act'** means The Electricity Act 2003 (No. 36 of 2003);
  - (b) **'Chairperson'** means the Chairperson of the Commission;
  - (c) **'Commission'** means the Assam Electricity Regulatory Commission constituted under section 17 of the Electricity Regulatory Commissions Act, 1998 and which continues to be so under section 82 of the Electricity Act, 2003 (no.36 of 2003);
  - (d) **'Member'** means a member of the Commission;
  - (e) **'Officer'** means an Officer of the Commission;
  - (f) **'Petition'** shall include all petitions, complaints, appeals, replies, rejoinder, supplemental pleadings and other papers and documents filed before the Commission;
  - (g) **'Proceedings'** means proceedings of all nature that the Commission may decide to initiate or hold in the discharge of its functions under the Act but any preliminary meeting or any action done by the Commission before such initiation shall not be a proceeding for the purposes of these Regulations;
  - (h) **'Receiving Officer'** shall mean the officer designated by the Chairperson for receiving the Petition;.
  - (i) **'Secretary'** means the Secretary of the Commission.
  - (j) **'State Government'** means the Government of the State of Assam.
- (2) Words or expressions occurring in these Regulations and not defined herein above shall bear the same meaning as in the Act.

## 3. Commission's offices, office hours and sittings:-

- (1) The headquarters of the Commission shall be at Guwahati. Unless otherwise directed, the headquarters and other offices of the Commission shall be open daily except on the second and fourth Saturday of the month, Sundays and other holidays as may be notified by the State Government from time to time.

- (2) The headquarters and other offices of the Commission shall be open at such times as the Commission may direct.
- (3) Where the last day for doing of any act falls on a day on which the office of the Commission is closed and by reason thereof, the act cannot be done on that day, it may be done on the next following day on which the office is open.
- (4) The Commission may hold sittings for hearing matters at the headquarters or at any other place on the day and time to be decided by the Commission.

**4. Language of the Commission:-**

- (1) The proceedings of the Commission shall be conducted in English, provided that the Commission may allow a person to plead and represent the case in Assamese.
- (2) No petition, documents or other matters contained in any language other than English shall be accepted by the Commission unless the same is accompanied by a translation thereof in English.
- (3) Any translation which is agreed to by the parties to the proceedings or which any of the parties may furnish with an authenticity certificate of the person, who had translated to English, may be accepted by the Commission in an appropriate case as true translation of the petition, document etc.
- (4) The Commission may in appropriate cases direct translation of any document relevant to the proceedings in English by an officer or person designated by the Commission for the purpose.

**5. Seal of the Commission:-**

- (1) There shall be a separate seal of the Commission.
- (2) Every order, decision or communication made, notice issued or certified copy granted by the Commission shall be stamped with the seal of the Commission and shall be authenticated by the Secretary or any other Officer of the Commission designated for the purpose.

**6. Functions and Duties of the Secretary:-**

- (1) The Secretary shall exercise such functions as are assigned to him by these Regulations or otherwise by the Chairperson.
- (2) In particular and without prejudice to the generality of the provisions of the clause (1) above, the Secretary shall have the following functions, namely:

- (i) to receive or cause to receive all petitions, applications, other filings or references to the Commission;
  - (ii) to prepare or cause to prepare the briefs and summaries of all such filings presented before the Commission;
  - (iii) to assist the Commission in proceedings conducted by the Commission;
  - (iv) to authenticate the orders passed by the Commission;
  - (v) to ensure compliance of the orders passed by the Commission; and
  - (vi) to collect from the State Governments, the Central Government and their agencies, the State Electricity Boards or other offices, licensees, companies and firms or any other person as may be directed by the Commission, such information records, documents, reports as may be considered useful for the purpose of efficient discharge of the functions of the Commission under the Act
- (3) The Secretary shall have the custody of the seal and records of the Commission.
  - (4) The Secretary may, with the approval of the Chairperson, delegate to any other Officer of the Commission any function required by these Regulations or otherwise, to be exercised by the Secretary.
  - (5) In the absence of the Secretary, such other Officer of the Commission, as may be nominated by the Chairperson, may exercise the functions of the Secretary.
  - (6) The Commission shall always have the authority, either on an application made by any person or suo motu, to review, revoke, revise, modify, amend, alter or otherwise change any order made or action taken by the Secretary or other Officers of the Commission, if the Commission considers it to be appropriate.
  - (7) Save as provided otherwise in Section 97 of the Act the Commission may delegate to Secretary and Officers such of the functions of the Commission and on terms and conditions as the Commission may direct for the purpose.
  - (8) The terms and conditions of the services of the Secretary, Officers and Staff of the Commission shall be subject to such regulations as may be specified by the Commission from time to time.

**7. Authorised representative to appear before Commission:-**

- (1) A person may appear himself or may authorise any of his employees to appear before the Commission and to act and plead on his behalf.
- (2) A person may authorise an advocate or a member of any statutory professional body as the Commission may from time to time recognise for the purpose, to represent him and to act and plead on his behalf before the Commission.
- (3) The Commission may from time to time decide the terms and conditions subject to which a person may authorise any other person to represent him and to act and plead on his behalf and the type of authorisation to be provided to the Commission for the purpose.
- (4) Notwithstanding the above, the Commission may allow any consumer group or association or any person duly authorized by such consumer group or association to appear in any proceeding before the Commission or to participate in any meeting as the Commission may consider it to be appropriate.
- (5) The Commission specifies the following professional bodies for the purpose of sub-clause (2) above in addition to the legal practitioners/Advocates:
  - (i) Institute of Chartered Accountants of India
  - (ii) Institute of Cost and Works Accountants of India
  - (iii) Institute of Company Secretaries of India

**8. Appointment of Consultant**

The Commission may appoint Consultants to assist the Commission in the discharge of its functions. The terms and conditions of appointment shall be determined by the Commission by regulations from time to time.

## **CHAPTER II - GENERAL RULES CONCERNING PROCEEDINGS BEFORE THE COMMISSION**

**9. Proceedings before the Commission:-**

- (1) The Commission may from time to time hold such proceedings as

it may consider appropriate in the discharge of its functions under the Act.

- (2) The quorum for the proceedings of the Commission including any decision to be taken in any meeting shall be two except in circumstances where the Commission is currently only constituted with a Chairman.
- (3) The Commission may appoint an Officer or any other person whom the Commission considers appropriate to participate and assist the Commission in the proceedings.
- (4) All matters which the Commission is required under the Act to undertake and discharge through hearings shall be done through hearing in the manner specified under the Act and in these Regulations.
- (5) Except where the Commission may provide otherwise for reasons to be recorded in writing, all matters affecting the rights or interests of the licensee or any other person or class of persons shall be undertaken and discharged through hearing in the manner specified in these Regulations.
- (6) The Commission may hold hearings in matters other than those specified in sub-clauses (4) and (5) above, if the Commission considers it to be appropriate.
- (7) The Commission may hold consultation with the parties or any one or more of them before deciding on the initiation of a proceeding in any matter.

#### **10. Initiation of Proceedings:-**

- (1) The Commission may initiate any proceeding suo motu or on a petition filed by any affected or interested person.
- (2) When the Commission initiates the proceeding it shall be by a notice issued by the Office of the Commission and the Commission may give such orders or directions as may be deemed necessary, for service of notices to the affected or interested parties and for the filing of replies in opposition or in support of the petition in such form as the Commission may direct.
- (3) The Commission may, if it considers it to be appropriate, issue orders for issue of public notice inviting comments from the interested persons on the issues involved in the proceedings in such form as the Commission may direct.

- (4) While issuing the notice the Commission may, in suo motu proceedings and in other appropriate cases, designate an Officer of the Commission or any other person whom the Commission considers appropriate to present the matter in the capacity of a petitioner in the case.

**11. Petitions before the Commission:-**

- (1) All petitions shall contain a clear and concise statement of the facts with material particulars, the relief sought, the applicable provisions of law and the basis for such relief.
- (2) All petitions to be filed before the Commission shall be type written, cyclostyled or printed neatly and legibly on white paper and every page shall be consecutively numbered.
- (3) All petitions shall be filed in four copies or such other number of copies if the Commission so directs and all such copies shall be complete in all respects and the Commission may in addition seek copies of the Petition to be filed in an electronic form , on such terms and conditions, as the Commission may direct.
- (4) The contents of the petition shall be divided appropriately into separate paragraphs, which shall be numbered serially.
- (5) The petition shall be accompanied by such documents, supporting data and statements, as are relevant to the matters in issue in the petition.
- (6) The fee specified by the Commission shall be paid at the time of filing of the petition.

**12. General headings:-**

The general heading in all petitions before the Commission and in all notices including public notices shall be in the Form attached to these Regulations as Appendix 1.

**13. Affidavit in support:-**

- (1) All Petition filed shall be verified by an affidavit and every such affidavit shall be in the Form attached to these Regulations as Appendix 2.
- (2) Every affidavit shall be drawn up in the first person and shall state the full name, age, occupation and address of the deponent and the capacity in which he is signing and shall be signed and sworn before a person lawfully authorized to take and receive affidavits.
- (3) Every affidavit shall clearly and separately indicate the statements which are true to the -
  - (i) knowledge of the deponent;

- (ii) information received by the deponent; and
  - (iii) belief of the deponent.
- (4) Where any statement in affidavit is stated to be true to the information received by the deponent, the affidavit shall also disclose the source of the information and a statement that the deponent believes that information to be true.

**14. Presentation, Scrutiny and admission of the petitions:-**

- (1) All petitions shall be presented in person or by any duly authorized agent to the Receiving Officer at the headquarters of the Commission during working hours on all working days or at such other place or places and during the time as may be notified by the Commission from time to time. The petition may in the alternate be sent by registered post with acknowledgment due to the Commission at the places mentioned above.
- (2) The vakalatnama in favour of the Advocate and, in the event the petition is presented by the authorized agent or representative, the document authorizing the agent or representative shall be filed along with the petition.
- (3) The presentation and the receipt of the petition shall be duly entered in the register maintained for the purpose by the Receiving Officer.
- (4) Upon the receipt of the petition, the Receiving Officer shall acknowledge the receipt by stamping and endorsing the date on which the petition has been presented and shall issue an acknowledgment with stamp and date to the person filing the petition. In case the petition is received by registered post the date on which the petition is actually received at the office of Commission shall be taken as date of the presentation of the petition.
- (5) The Receiving Officer may decline to receive any petition and if the petition has already been received may return the petition if the petition is not in conformity with the provisions of the Act or these Regulations or directions given by the Commission or is otherwise defective.

Provided however that no petition shall be refused for defect in the pleading or in its presentation, without an opportunity to the person filing the petition to rectify the defect within the time, which may be allowed for the purpose. The Receiving Officer shall advise in writing the person filing the petition of the defects in the petition and the time within which the defects should be rectified and the petition be presented again.



The Receiving Officer shall be entitled to reject the petition if the person filing the petition fails to rectify the defect within the time allowed under Clause (5).

- (6) A party aggrieved by any order of the Receiving Officer in regard to the presentation of the petition may request the matter to be placed before the Secretary for appropriate orders.
- (7) The Chairperson or any Member as the Chairperson may designate for the purpose, shall be entitled at any time to call for the petition presented by the party and give such directions regarding the presentation and acceptance of the petition as he considers appropriate.
- (8) If on scrutiny, the petition is not refused or any order of refusal is modified by the Secretary or by the Chairperson or the Member designated for the purpose, the petition shall be duly registered and given a number in the manner directed by the Commission.
- (9) As soon as the petition and all necessary documents are lodged and the defects and objections, if any, are removed and the petition has been scrutinized and numbered, the petition shall be placed before the Commission for admission.
- (10) Provided, however, that in the case of complaints of individual consumers, class of consumers or any consumer organizations, the Commission may, if it considers appropriate direct the return of the petition with the observation that the person filing the petition may refer the matter to the Forum for redressal of the grievances of the Consumers established for the purpose in terms of sub-section (5) of section 42 of the Act and the regulations specified by the Commission under the said provision.
- (11) The Commission may admit the petition for hearing without requiring the attendance of the party filing the petition. The Commission shall not pass an order refusing admission of the petition without giving the party concerned an opportunity of being heard. The Commission may, if it considers appropriate, issue notice to such person or persons as it may desire to hear on the petition for admission.
- (12) If the Commission admits the petition, it may pass such orders or directions as may be considered necessary, for service of notices to the respondent and other affected or interested parties and for the filing of replies in opposition or in support of the petition in such form as the Commission may direct.

**15. Service of notices and processes issued by the Commission:-**

- (1) Any notice or process to be issued by the Commission may be

served by any one or more of the following modes as may be directed by the Commission:

- (i) service by the party filing the petition;
  - (ii) by hand delivery through a messenger;
  - (iii) by registered post with acknowledgment due; and
  - (iv) by publication in newspaper in cases where the Commission is satisfied that it is not reasonably practicable to serve the notices or process on any person in the manner mentioned above.
- (2) Every notice or process required to be served on or delivered to any person may be sent to the person or his agent empowered to accept service at the address furnished by him for service or at the place where the person or his agent ordinarily resides or carries on business or personally works for gain.
  - (3) In the event any matter is pending before the Commission and the person to be served has authorized an agent or representative to appear for or represent him or her in the matter, such agent or representative shall be deemed to be duly empowered to take service of the notice or process on behalf of the party concerned in all matters and the service on such agent or representative shall be taken as due service on the person to be served. It shall be the duty of such agent or representative to duly inform the person whom he represents of the service of the notices.
  - (4) Where a notice or process is served by a party to the proceedings either in person or through registered post, an affidavit of service shall be filed by such party with the Commission giving details of the proof of service.
  - (5) Where any petition is required to be published in newspapers it shall be done in the manner specified in Regulation 37.
  - (6) The Commission may also effect service or give directions for effecting service in any other manner it considers appropriate.
  - (7) The Commission shall be entitled to decide in each case the person(s) who shall bear the cost of service or publication of the notice or process.
  - (8) Save as otherwise provided in the Act or in these Regulations and subject to any direction which the Commission or the Secretary or the Officer designated for the purpose may issue, the Petitioner or any other person whom the Commission may make responsible, shall arrange for service or publication of notice or process required to be served or published.

- (9) In default of compliance with the requirements of these Regulations or directions of the Commission as regards the service or publication of notice or process, the Commission may either dismiss the petition or give such other or further directions, as it thinks fit.
- (10) No service or publication required to be done shall be deemed invalid by reason of any defect in the name or description of a person provided that the Commission is satisfied that such service is in other respect sufficient and the person served will not be adversely affected by reason of such defect.
- (11) No proceeding shall be invalidated by reason of any defect or irregularity in the service or publication unless the Commission, on an objection taken, is of the opinion that substantial injustice has been caused by such defect or irregularity.

**16. Filing of reply, opposition, objections, etc.:-**

- (1) Each person to whom the notice of any petition or proceedings is issued (hereinafter called the respondent), who intends to oppose or support the petition shall file the reply and the documents relied upon within such period and in such number of copies as may be directed by the Commission.
- (2) In the reply filed, the respondent shall specifically admit, deny or explain the facts stated in the petition and may also state such additional facts as he considers necessary for a just decision of the case.
- (3) The reply shall be signed and verified and supported by affidavit in the same manner as in the case of the petition. The respondent shall also indicate whether he wishes to participate in the proceedings and be orally heard.
- (4) The respondent shall before filing the reply, serve a copy of the reply along with the documents duly attested to be true copies on the petitioner or his authorized representative and file proof of such service with the office of the Commission at the time of filing the reply.
- (5) Where the respondent states additional facts, the Commission may allow the petitioner to file a rejoinder to the reply filed by the respondent. The procedure mentioned above for filing of the reply shall apply mutatis mutandis to the filing of the rejoinder.
- (6) Every person (other than the persons to whom notices, processes, etc. have been issued calling for reply) who intends to file objection or comments in regard to a matter pending before the Commission, pursuant to the public notice issued for the purpose

shall deliver to the Receiving Officer the statement of the objection or comments with copies of the documents and evidence in support thereof within the time fixed for the purpose.

- (7) The Commission may permit such person or persons as it may consider appropriate to participate in the proceedings before the Commission, if the Commission considers that the participation of such person or persons will facilitate the proceeding and the decision in the matter.
- (8) Unless permitted by the Commission, the person filing objections or comments pursuant to the public notice shall not be entitled to participate in the proceedings. However, the Commission shall take into account the objections and comments filed after giving such opportunity to the petitioner and the respondents in the proceeding to deal with the objections and suggestions.

**17. Hearing of the matter:-**

- (1) The Commission may determine the manner, the place, the date and the time of the hearing of the matter as the Commission considers to be appropriate, consistent with such specific timing requirements as are set forth in the Act or otherwise the need to expeditiously decide the matter.
- (2) The Commission may decide the matter on the pleadings of the parties or may call the parties to produce evidence by way of affidavit or lead oral evidence in the matter.
- (3) If the Commission directs evidence of a party to be led by way of affidavit, the Commission may, as and when the Commission consider it to be necessary, allow the other party to cross-examine the deponent of the affidavit.
- (4) The Commission may direct the parties to file written note of arguments or submissions in any proceeding before the Commission as the Commission considers it to be appropriate.

**18. Power of the Commission to call for information etc.:-**

- (1) The Commission may, at any time before passing orders on the matter, require the parties or any one or more of them or any other person whom the Commission considers appropriate, to produce such documentary or other material objects as evidence as the Commission may consider necessary for the purpose of enabling it to pass orders.
- (2) The Commission may direct the summoning of the witnesses, the discovery and production of any document or other material

objects producible in evidence, the requisition of any public record from any office, the examination by the Officer of the books, accounts or other documents or information in the custody or control of any person which the Commission considers relevant for the matter.

- (3) The Commission may, if it considers appropriate, allow any of the parties or others specified in sub-clauses (1) or (2) above, to adduce such further documentary or other evidence in regard to evidence made available by any of the parties or other persons under the said sub-clauses.
- (4) The Commission may, at any time, summon and enforce the attendance of any person and examine him on oath.
- (5) The Commission may receive evidence by way of affidavit.

**19. Reference of issues to others:-**

- (1) At any stage of the proceedings, the Commission shall be entitled to refer such issue or issues in the matter as it considers appropriate to persons including, but not limited to, the Officers and consultants of the Commission whom the Commission considers as qualified to give expert or specialized advice or opinion.
- (2) The Commission may nominate from time to time any person including, but not limited to, the Officers and consultants to visit any place or places for inspection and give a report on the existence or status of the place or any facilities therein.
- (3) The Commission, if it thinks fit, may direct the parties to the proceedings to appear before the persons designated in sub-clause (1) or (2) above to present their views on the issues or matters referred to.
- (4) The report received from the person shall form a part of the record of the case and parties shall be given the copies of the report. The parties shall be entitled to file their version either in support or in opposition to the report.
- (5) The Commission shall duly take into account the report given by the person and the replies filed by the parties while deciding the matter and if considered necessary, examine the person giving the report:
- (6) Provided that the Commission shall not be bound by the report given and shall be entitled to take such decision as it may consider to be appropriate.

**20. Procedure to be followed where any party does not appear:-**

- (1) If, on the date fixed for hearing or any other date to which such

hearing may be adjourned, if any party or his authorized agent or representative does not appear when the matter is called for hearing, the Commission may, in its discretion, postpone the hearing to another date or dismiss the petition for default when the petitioner or the person who moves the Commission for hearing is absent or proceed *ex parte* to hear and decide the petition if the other party is absent.

- (2) Where a petition is dismissed in default or decided *ex parte*, the person aggrieved may file an application within 30 days from the date of such dismissal or being proceeded *ex parte*, as the case may be, for recall of the order passed, and the Commission may recall the order on such terms as it thinks fit, if the Commission is satisfied that there was sufficient cause for the non-appearance of the person when the petition was called for hearing on the date of hearing under clause (1) above.

#### **21. Orders of the Commission:-**

- (1) The Commission shall pass orders on the petition and the Chairperson and the Members who heard the matter shall sign the orders.
- (2) The reasons given by the Commission in support of the orders, including those by the dissenting member, if any, shall form a part of the order and shall be available for inspection and supply of copies in accordance with these Regulations.
- (3) The Commission may from time to time pass such interim orders in any proceeding, hearing or matter before the Commission, as the Commission may consider it to be appropriate. The Commission may from time to time amend, vary or vacate the interim order earlier passed in the matter as the Commission may consider it to be appropriate.
- (4) All orders and decisions issued or communicated by the Commission shall be certified by the Secretary or an Officer empowered in this behalf by the Chairperson or the Secretary and bear the official seal of the Commission.
- (5) All final orders of the Commission shall be communicated to the parties in the proceeding under the signature of the Secretary or an Officer empowered in this behalf by the Chairperson or the Secretary.

#### **22. Inspection of records and supply of certified copies**

- (1) The records of every proceeding shall be open, as of right, to the inspection of the parties or their authorised representatives at any time either during the proceeding or after the orders are passed,

subject to payment of fees and compliance with such other terms as the Commission may direct.

- (2) The records of every proceeding, except those parts which for reasons directed by the Commission to be confidential or privileged, shall be open to inspection by any person other than the parties to the petition either during the proceeding or after the orders have been passed, subject to such person complying with such terms as the Commission may direct from time to time including in regard to time, place and manner of inspection and payment of fees.
- (3) A person shall be entitled to obtain certified copies of the orders, decisions, directions and reasons in support thereof given by the Commission as well as the pleadings and papers and other parts of the records of the Commission to which he is entitled, subject to payment of fees and compliance with such other terms as the Commission may direct.

### **23. Confidentiality:-**

- (1) The Records of the Commission, except those parts which for reasons directed by the Commission are confidential or privileged, shall be open to inspection by all, subject to the payment of fees and compliance with such other terms as the Commission may direct.
- (2) The Commission may, on such terms and conditions as it considers appropriate, provide for the supply of the certified copies of the documents and papers available with the Commission to any person.
- (3) The Commission may, by order, direct that any information, documents and other papers and materials produced before it or any of its Officers, consultants, representatives or otherwise which may otherwise come into their possession or custody, shall be confidential or privileged and shall not be available for inspection or supply of copies, and the Commission may also direct that such document, papers or materials shall not be used in any manner except as specifically authorized by the Commission.

## **CHAPTER III - ARBITRATION OF DISPUTES**

### **24. Arbitration:-**

- (1) The adjudication or arbitration of disputes which under the Act are within the scope of the jurisdiction of the Commission may be

commenced on an application made by any of the parties to the dispute.

- (2) The Commission shall issue notice to the concerned parties to show cause as to why the disputes between the parties should not be either adjudicated or by the Commission or settled through arbitration.
- (3) The Commission may, after hearing the parties to whom notices have been issued and if satisfied that no reason or cause has been shown against the request for adjudication or for arbitration, pass an order directing that the disputes shall be adjudicated by the Commission or that the Commission shall refer the matter to arbitration of a person or persons to be nominated by the Commission.

**25. Nomination of Arbitrators:-**

- (1) If the Commission decides to refer the matter to arbitration the Commission shall decide whether the reference shall be to a sole arbitrator or to a panel of arbitrators in such number as the Commission may decide and also the manner of appointment of the sole arbitrator or the panel of arbitrators, as the case may be:
- (2) If any arbitrator appointed fails or neglects to act or continue as arbitrator, the Commission shall be entitled to appoint any other person in his place in the same manner as provided in clause(1) above.
- (3) The Commission shall not nominate a person as arbitrator to whom any of the parties to the arbitration has a reasonable objection on grounds of possible bias or similar such reasons and the Commission considers the apprehension to be justified.

**26. Procedure for adjudication, settlement and passing of award:-**

- (1) In case the Commission decides to adjudicate the matter raised by the parties, the procedure to be followed shall be as far as possible the same as in the case of hearing before the Commission provided in Chapter II above and the order of the Commission shall be an adjudication by the Commission and not an award in arbitration.
- (2) In case the Commission nominates an arbitrator or arbitrators to settle the disputes, the arbitrator or arbitrators may follow specific directions issued by the Commission and also such procedure as they may consider appropriate, consistent with the principles of natural justice and fair opportunity to be given to the parties to arbitration.
- (3) The arbitrator or arbitrators, as the case may be shall, after hearing the parties pass an award giving reasons for the decision



on all issues arising for decision and forward the award with relevant documents to the Commission within such time as the Commission may direct.

- (4) The award made by the arbitrators shall be an award under the Arbitration and Conciliation Act, 1996.

**27. Cost of arbitration and proceedings:-**

- (1) The cost of the arbitration including the preliminary and adjudicatory proceedings before the Commission shall be borne by such parties and in such sums as the Commission may direct.
- (2) Any person intending to apply for license shall duly comply with the conditions and requirements laid down by the Commission.

## **CHAPTER IV INVESTIGATION, INQUIRY, COLLECTION OF INFORMATION, ETC.**

**28. Collection of information:-**

- (1) The Commission may make such order or orders as it thinks fit in terms of the provisions of the Act for collection of information, inquiry, investigation, entry, search, seizure and without prejudice to the generality of its powers undertake the following:
  - a) the Commission may specially authorize any Officer, to enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry or adjudication under the Act, may be found and may seize any such document or take extracts or copies there from.
  - b) in the exercise of powers conferred on it by section 128 of the Act, the Commission may, on being satisfied that a licensee or a generating company has failed to comply with any of the conditions of the licence or the provisions of the Act or the rules or any of the regulations made there under, at any time, by order in writing, direct an Investigating Authority specified in the order to investigate the affairs of the licensee or generating company and report to the Commission. For this the Commission may direct the minimum information to be maintained by the licensees and generating companies in their books and also direct the manner in which such information shall be maintained and the checks and verifications to be adopted;

- c) the Commission may, at any time, direct the Secretary or any one or more Officers or consultants or any other person as the Commission considers appropriate to study, investigate or furnish information with respect to any matter within the purview of the Commission;
  - d) the Commission may for the above purpose give such other directions as it may deem fit and direct the time within which the report is to be submitted or information furnished;
  - e) the Commission may issue or authorize the Secretary or an Officer on its behalf to issue directions to any person to produce before it and allow to be examined and kept by an Officer of the Commission specified in this behalf the books of accounts as provided in the Act;
  - f) the Commission may, for the purpose of collecting any information particulars or documents which the Commission consider necessary in connection with the discharge of its functions, issue such directions and follow any one or more of the methods provided for in the Act as the Commission consider it to be appropriate;
  - g) if any such report or information obtained as specified in the Act or in these regulations appears to the Commission to be insufficient or inadequate, the Commission or the Secretary or an Officer authorised for the purpose may give directions for further inquiry, report and furnishing of information; and
  - h) the Commission may direct that such incidental, consequential and supplemental matters which may be considered relevant in connection with the above, be attended to.
- (2) In the discharge of the functions and powers under the Act and these Regulations, the Commission may, if it thinks fit, direct a notice of inquiry to be issued and proceed with the matter in a manner provided under Chapter II of these Regulations.
- (3) On receipt of the report from the appointed Investigating Authority, and after giving an opportunity to the licensee or generating company, as the case may be, to make a representation in connection with the report, the Commission may make an order to require the licensee or the generating company to take such action in respect of any matter arising out of the report as the Commission may think fit;

- (4) The Commission may, after giving reasonable notice to the licensee or the generating company, as the case may be, publish the report submitted by the Investigating Authority or such portion(s) thereof as may appear to the Commission to be necessary.

### **29. Assistance of Experts**

- (1) The Commission may, at any time, take the assistance of any institution, consultants, experts, engineers, chartered accountants, advocates, surveyors and such other technical and professional persons, as it may consider necessary, and authorise them to study, investigate, inquire into any matter or issue and submit report or reports or furnish any information. The Commission may determine the terms and conditions for engagement of such professionals.
- (2) If the report or information obtained in terms of the above Regulations or any part thereof is proposed to be relied upon by the Commission in forming its opinion or view in any proceedings, the parties in the proceedings shall be given a reasonable opportunity for filing objections and making submissions on the report or information.

## **CHAPTER V – FINES AND CHARGES**

### **30. Imposition of Fines and Charges:-**

- (1) The Commission may initiate a proceeding for imposition of fines and charges and award of compensation upon receiving a complaint or on its own if the Commission is of the view that the facts made known prima-facie constitute non-compliance or violation by a generating company, a licensee or other person of any provision or requirement of the Act or of any of the rules or regulations framed there under or of directions or orders of the Commission.
- (2) If the Commission decides on the basis of the information received that there is a prima-facie cause to proceed in the matter, a case shall be registered and notice shall be issued to the person responsible for non compliance or violation under sub-clause (1) above to show cause within a reasonable time as to why the Commission should not impose the fines or charges on him. The notice shall state the substance of the allegation against such person with specific reference to the alleged non-compliance or violation.

- (3) On the date fixed in the notice for appearance, the Commission shall explain to the person responsible for non compliance or violation or his authorised representative, the nature of non-compliance or violation committed by such person.
- (4) Where the person responsible for non compliance or violation appears in response to the notice and admits the truth of the allegation by a memorandum in writing, the Commission shall record the response and may impose such fines or charges as the Commission may consider appropriate in accordance with the provisions of the Act and the Regulations framed by the Commission for the purpose and may also award compensation to the affected person.
- (5) Where the person responsible for non compliance or violation on appearance does not admit the alleged violation or non-compliance and demands a hearing, the Commission shall proceed to hear the case in accordance with the provisions of the Act and these regulations.
- (6) If any person to whom a notice has been issued fails without reasonable cause to appear before the Commission on the date fixed for hearing or any subsequent date to which the proceeding may have been adjourned, the Commission may at its discretion proceed with the case ex parte in the absence of such person.
- (7) The Commission shall proceed to hear the complainant and take such evidence, oral or documentary, or by way of affidavit, as may be produced in support of the case and take all such evidence as may be produced by the complainant or the person responsible for non compliance or violation in his defense. Where the proceeding has been initiated upon information received by the Commission, it may direct any of its officers to act as complainant in the matter and present the evidence in the case.
- (8) The Commission, at any stage of the proceeding, shall have the power to summon and enforce the attendance of any person who appears to be acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the Commission appears to be material or relevant to the subject matter of the proceeding.

### **31. Process for levy and recovery of Fines and Charges:-**

- (1) If on the conclusion of any proceeding under Regulation 30, the Commission is satisfied that a person is liable to fines or charges, it may by order in writing impose such fines or charges in

accordance with the provisions of the Act and the Regulations specified for the purpose and may also award compensation.

- (2) While determining the quantum of fines or charges, the Commission shall, amongst other, consider the following factors:
  - a) the nature and extent of non-compliance or violation,
  - b) wrongful gain or unfair advantage derived as a result of the non-compliance or violation,
  - c) loss or degree of harassment caused to any person(s) as a result of the non-compliance or violation, and
  - d) the repetitive nature of the non-compliance or violation.
- (3) While passing an order under these regulations, the Commission may award compensation to the complainant or affected party to be paid by the person found to be guilty of non-compliance or violation.
- (4) The Commission may direct the time within which the fines, charges or compensation should be paid by the concerned person.
- (5) Unless otherwise varied by special order, the fines, charges or compensation ordered by the Commission under Regulation 30 shall be paid within 30 days of the order of the Commission imposing the fine, charge, or compensation or within such extended date as allowed by the Commission.
- (6) The fine or charge shall be payable and the amount deposited in the same manner as provided under Regulation 39 of these regulations.

### **32. Withdrawal and Disposal of Complaint:-**

- (1) If a complainant, at any time before a final order is passed in any proceedings satisfies the Commission that there are sufficient grounds for permitting him to withdraw his complaint against the respondent named in the complaint, or if there be more than one respondent, against all or any of them, the Commission may permit the complainant to withdraw the same.
- (2) If the Commission, is of the opinion that it will not be appropriate to allow the withdrawal of the complaint, the Commission may make orders for the proceedings in the complaint being continued by such other person in the place of the complainant and in such manner as the Commission may consider appropriate.
- (3) Where the Commission is of the opinion that the continuance of the proceeding under these regulations is unnecessary or is an abuse of the process, it may at any stage, terminate the proceeding for reasons to be recorded in writing.

## **CHAPTER – VI APPLICATION OF CERTAIN PROVISIONS OF INDIAN PENAL CODE AND CRIMINAL PROCEDURE CODE**

### **33. Applicability of provisions of Indian Penal Code and Criminal Procedure Code:-**

- (1) In terms of section 95 of the Electricity Act, the proceedings before the Commission shall be deemed to be judicial proceedings and Commission shall be deemed to be a Civil Court as specified in the said Section read with applicable provisions of the Indian Penal Code and the code of Criminal Procedure 1973.
- (2) The extracts of the relevant provisions of the Indian Penal Code and Criminal Procedure Code are contained in Appendix 3 to these regulations.

## **CHAPTER VII – MISCELLANEOUS**

### **34. Review of the decisions, directions and orders:-**

- (1) Any person aggrieved by a decision or order of the Commission, from which no appeal is preferred or allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decision/ order was passed by the Commission or on account of some mistake or error apparent from the face of record, or for any other sufficient reason, may apply for review of such order within 60 days of the date of decision/ order of the Commission.
- (2) An application for review shall be filed in the same manner as a petition under Chapter II of these regulations.
- (3) When it appears to the Commission that there is no sufficient ground for review, the Commission shall reject such review application.
- (4) The application for review shall be accompanied by such fee as may be specified by Commission.

### **35. Continuance of proceedings after death, etc.:-**

- (1) Where in any proceeding any of the parties to the proceeding dies

or is adjudicated as an insolvent and in the case of a Company it being under liquidation or winding up or subject to amalgamation, merger etc, the proceedings shall continue with the successors-in-interest of the party concerned. The Commission may, for reasons to be recorded, treat the proceeding as abated in case the Commission so directs and dispense with the need to bring the successors-in-interest to come on record.

- (2) In case any person wish to bring on record the successors-in-interest, the application for the purpose shall be filed within 90 days from the event requiring the successors-in-interest to come on record.

Provided that the Commission may, if it is satisfied that there is sufficient cause for not filing the application within the time allowed, condone the delay subject to such terms and conditions, as the Commission may consider appropriate.

- (3) If the person fails to bring on record the successor-in-interest within the time allowed under clause (3) and in the event the application for condoning the delay in bringing on record the successor-in-interest is filed but not condoned under the proviso to clause (3) the proceedings against the deceased person shall abate,

### **36. Proceedings to be open to public:-**

The proceedings before the Commission shall be open to the public subject to availability of sitting accommodation.

Provided that the Commission may, if it thinks fit, and for reasons to be recorded in writing, order at any stage of the proceedings of a case that the public generally or any particular person or group of persons shall not have access to or be or remain in, the room or building used by the Commission for the purpose of conduct of the proceeding.

### **37. Publication of petition:-**

- (1) Where any application, petition, or other matter is required to be published under the Act or these Regulations or as per the directions of the Commission, it shall, unless the Act or these Regulations otherwise provide, be advertised within such time as the Commission may direct and in the absence of any specific direction to the contrary not less than 5 days before the date fixed for hearing and further unless otherwise directed by the Commission such publication shall be done in newspapers one each in English and Assamese having circulation in the area concerned..

- (2) Except as otherwise provided, such advertisements shall give a heading describing the subject matter in brief.
- (3) Such advertisement to be published shall be approved by the Officer of the Commission designated for the purpose.

**38. Issue of orders and practice directions:-**

Subject to the provisions of the Act and these regulations, the Commission may, from time to time, issue orders and practice directions in regard to the implementation of the Regulations and procedure to be followed on various matters which the Commission has been empowered by these regulations to lay down.

**39. Fees on Petition, Application etc.**

Every petition/application etc. filed before the Commission shall be accompanied by the fee as specified in the schedule given at Appendix 4. The fee can be revised at any time at the sole discretion of the Commission. The fee shall be payable by Account payee draft/pay order/banker's cheque payable at Guwahati in favour of the Assam Electricity Regulatory Commission. Payment in cash may be accepted up to an amount of Rs. 1000/ - (Rupees One Thousand) in each case.

Provided further that no fee is payable on filing of objections or replies in response to a filed petition or application.

**40. Saving of inherent power of the Commission:-**

- (1) Nothing in these regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Commission.
- (2) Nothing in these regulations shall bar the Commission from adopting a procedure, which is at variance with any of the provisions of these regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing deems it necessary or expedient.
- (3) Nothing in these regulations shall, expressly or impliedly, bar the Commission to deal with any matter or exercise any power under the Act for which no Regulations have been framed, and the Commission may deal with such matters and exercise powers and functions in a manner it thinks fit.

**41. General power to review and rectify:-**

- (1) The Commission may on its own motion review any decision, direction or orders and pass such appropriate orders as the Commission thinks fit.



- (2) The Commission may, at any time rectify any defect or error in any proceeding before it.

**42. Power to remove difficulties:-**

If any difficulty arises in giving effect to any of the provisions of these regulations, the Commission may, by general or special order, do anything not being inconsistent with the provisions of the Act which appears to it to be necessary or expedient for the purpose of removing the difficulties.

**43. Power to dispense with the requirement of the Regulations:-**

The Commission shall have the power, for reasons to be recorded in writing and with notice to the affected parties to dispense with the requirements of any of the Regulations in a specific case or cases subject to such terms and conditions as may be directed by the Commission.

**44. Extension or abridgment of time allowed:-**

Subject to the provisions of the Act, the time allowed by these regulations or by order of the Commission for doing any act may be extended by order of the Commission.

**45. Effect of non-compliance:-**

The failure to comply with any requirement of these regulations shall not invalidate any proceeding merely by reason of such failure unless the Commission is of the view that such failure has resulted in miscarriage of justice.

**46. Costs**

- (1) Subject to such conditions and limitations as may be directed by the Commission, the cost of all proceedings shall be awarded at the discretion of the Commission and the Commission shall have powers to determine by whom or out of what funds and to what extent such costs are to be paid and give all necessary directions for the aforesaid purposes.
- (2) The costs shall be paid within 30 days from the date of the order or within such time as the Commission may, by order, direct. The order of the Commission awarding costs shall be executed in the same manner as the decree or order of a Civil Court.

**47. Enforcement of orders passed by the Commission:-**

The Secretary shall have the powers to enforce the compliance of the orders passed by the Commission, by the persons concerned in accordance with the provisions of the Act and these regulations.

**48. Recognition for Consumer Association and consumer interest:-**

- (1) It shall be open to the Commission to permit any recognised association, forum or other bodies corporate or any group of consumers to participate in any proceeding before the Commission and permit them to make such representation or participate in the proceeding before the Commission in such manner as the Commission considers appropriate.
- (2) It shall be open to the Commission for the sake of timely completion of proceedings, to direct grouping of the consumers, associations, forums referred to in clause (1) above so that collective representation can be made by such group.
- (3) The Commission may appoint any officer or any other person to represent consumers' interest, if considered necessary.
- (4) The Commission may, for the purpose of clauses (1) or (3) above direct payment of such fees, costs and expense by such of the parties in the proceedings, as the Commission may consider appropriate.

**49. Repeal and Savings:-**

- (1) The provisions of the Assam State Electricity Regulatory Commission (Conduct of Business) Regulations, 2002 as amended from time to time shall stand repealed with the coming into force of these Regulations.
- (2) Notwithstanding such repeal anything done or any action taken or purported to have been done or taken including any order or notice made or issued or any instrument executed or direction given under the repealed regulations shall be valid and shall be deemed to have been done or taken under the corresponding provisions of these regulations.

**(By the Order of the Commission)**

**Sd/-  
Secretary  
Assam Electricity Regulatory Commission**

**APPENDIX - 1**

**FORM I**

**(See Regulation 12)**

**General Heading for Proceedings**

**BEFORE THE ASSAM STATE ELECTRICITY REGULATORY COMMISSION,  
GUWAHATI**

FILE NO.

CASE NO.

(To be filled by the Office)

**IN THE MATTER OF :**

(Gist of the purpose of the petition or application)

AND

**IN THE MATTER OF :**

(Names and full addresses of the petitioners/applicants and names and full addresses of the respondents)

**APPENDIX-2**  
**FORM 2**  
**(See Regulation 13)**

**BEFORE THE ASSAM STATE ELECTRICITY REGULATORY COMMISSION,  
GUWAHATI**

FILE No.  
CASE NO. (To be filled by the Office)

**IN THE MATTER OF :** (Gist of the purpose of the petition or application) AND

**IN THE MATTER OF :**

(Names and full addresses of the petitioners/applicants and names and full addresses of the respondents)

Affidavit

I, AB, son of ..... aged ..... residing at ..... do hereby solemnly affirm and state as follows :

1. I am a Director / Secretary / ..... of ..... Ltd., the petitioner in the above matter and am duly authorised by the said petitioner to make this affidavit on its behalf.

Note: This paragraph is to be included in cases where the petitioner is the Company.

2. The statements made in paragraphs ..... of the petition herein now shown to me and marked with the letter 'A' are true to my knowledge and the statements made in paragraphs ..... are based on information received from ..... (based on the records of .....) and I believe them to be true.

Deponent

Verification:

I, the deponent above named do hereby verify that the contents of my above affidavit are true to my knowledge; no part of it is false and nothing material has been concealed there from

Verified at ..... on the day of .....

Place: Guwahati

Deponent

**APPENDIX 3****Applicability of provisions of Indian Penal Code and Criminal Procedure Code****(See Regulation 33)****(i) Section 193. (of Indian Penal Code)****Punishment for false evidence:-**

Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

And whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

**Explanation 1.** A trial before a Court-martial <sup>a</sup> [\* \* \*] is a judicial proceeding.

**Explanation 2.** An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

**(ii) Section 219. (of Indian Penal Code)****Public servant in judicial proceeding corruptly making report, etc., contrary to law:-**

Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

**(iii) Section 228. (of Indian Penal Code)****Intentional insult or interruption to public servant sitting in judicial proceeding:-**

Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(iv) **Section 345. (of Code of Criminal Procedure)**

**Procedure in certain cases of contempt:-**

(a) When any such offence as is described in Section 175, Section 178, Section 179, Section 180 or Section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of any civil, criminal or revenue Court, the Court may cause the offender to be detained in custody and may, at any time before the rising of the Court on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to fine not exceeding two hundred rupees, and, in default of payment of fine, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

(b) In every such case the Commission shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(c) If the offence is under Section 228 of the Indian Penal Code (45 of 1860), the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

(v) **Section 346. (of Code of Criminal Procedure)**

**Procedure where Court considers that case should not be dealt with under Section 345:-**

(a) If the Court in any case considers that a person accused of any of the offences referred to in Section 345 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under Section 345, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such person before such Magistrate, or if sufficient security is not given shall forward such person in custody to such Magistrate.

**APPENDIX 4 SCHEDULE OF FEES**

<b>Sl. No.</b>	<b>Nature of petition/application etc.</b>	<b>Fees</b>
1.0	Petition for determination of tariff except transmission tariff	Rs. 2,00,000/- (Rupees Two Lakh)
2.0	Petition for determination of transmission tariff	Paisa 1.0 for each 100 KWH of energy proposed to be transmitted
3.0	Petition / Application for review of tariff order	50% of the above as the case may be
4.0	Petition / Application for approval of Power Purchase or procurement process.	Rs. 1,00,000/- per 20.0 MW (Rupees One Lakh per twenty MW)
5.0	Petition / Application for review of order for approval of Power Purchase agreement or procurement process	Rs. 50,000/- (Rupees Fifty Thousand)
6.0	Request for inspection of documents permitted to be inspected	Rs. 100/- per day or part thereof (Rupees One Hundred)
7.0	Request for obtaining certified copies as may be permitted	Rs. 2/- per page of copy allowed Plus Rs. 10.00 as Application Fee
8.0	Application for rectification of order on ground of the typographical or clerical error / mistake	Rs. 100/- (Rupees One Hundred)
9.0	Complaint against the working of a utility by the end user / consumer	Rs. 25/- (Rupees Twenty Five)
10.0	Application for Distribution, Transmission or Trading Licence	Rs. 20,000 (Rupees Twenty Thousand)
11.0	Miscellaneous applications i.e. applications not covered by any other listed category	Rs. 100/- (Rupees One Hundred)
12.0	Fines / Penalties for non-compliance or violation of the Act or orders / directives passed by the Commission	May be levied up to Rs. 1,00,000/- and additionally a daily fine up to Rs. 6,000/- for continuing non-compliance or violation.

**(By order of Commission)**

**Sd/- ILLEGIBLE  
Secretary,  
Assam Electricity Regulatory Commission.**