



बिहार गजट

असाधारण अंक

बिहार सरकार द्वारा प्रकाशित

30TH ASHWIN 1927(S)

(NO. 567)

PATNA, SATURDAY, 22ND OCTOBER, 2005

BIHAR ELECTRICITY REGULATORY COMMISSION, PATNA

CONDUCT OF BUSINESS REGULATIONS, 2005

NOTIFICATION

The 15th October, 2005

No. BERC/02/2005- In exercise of the powers conferred under Section 181 of the Electricity Act, 2003 (Act 36 of 2003) and all powers enabling it in that behalf, the Bihar Electricity Regulatory Commission hereby makes the following Regulations.

CHAPTER - I

GENERAL

1. Short Title, Extent and Commencement

These regulations may be called the Bihar Electricity Regulatory Commission (Conduct of Business) Regulations, 2005.

These Regulations extend to the whole of the State of Bihar.

These Regulations shall come into force on the date of their publication in the Official Gazette.

2 Definitions and Interpretation:

(1) In these Regulations, unless the context otherwise requires:

(a) "Act" means the Electricity Act, 2003.

(b) "Commission" means the Bihar Electricity Regulatory Commission.

- (c) "Chairman" means Chairman of the Bihar Electricity Regulatory Commission.
- (d) "Member" means a Member of the Bihar Electricity Regulatory Commission.
- (e) "Secretary" means Secretary of the Bihar Electricity Regulatory Commission.
- (f) "Officer" means an officer of the Bihar Electricity Regulatory Commission.
- (g) "Consultant" includes any individual, firm, body or association of persons, not in the employment of the Commission, who or which possesses or has access to any specialized knowledge, experience or skill who or which has been appointed to assist the Commission on any matter required to be dealt by the Commission under the Act.
- (h) "Petition" means and includes all petitions, applications, replies, rejoinders, supplemental proceedings, appeals and other papers and documents filed in relation thereto, and the word "Petitioner" shall be construed accordingly.
- (i) "Proceedings" means and include proceedings of all nature that the Commission may hold in the discharge of its functions under the Act.
- (j) "Regulations" means the Bihar Electricity Regulatory Commission (Conduct of Business) Regulations, 2005.

Words and expressions used and not defined in the Regulations but defined in the Act shall have the meanings assigned to them in the Act. Expressions used herein but not specifically defined in the Regulations or in the Act but defined under any law passed by a competent legislature and applicable to the electricity industry in the state shall have the meaning assigned to them in such law. Subject to the above, expressions used herein but not specifically defined in these Regulations or in the Act or any law passed by a competent legislature shall have the meaning as is generally assigned in the electricity industry.

- (2) In the interpretation of these Regulations, unless the context otherwise requires:
 - (a) words in the singular or plural term, as the case may be, shall also be deemed to include the plural or the singular term, respectively;
 - (b) references herein to the "Regulation" shall be construed as a reference to these Regulations as amended or modified by the Commission from time to time in accordance with the applicable laws in force.

- (c) the headings are inserted for convenience and may not be taken into account for the purpose of interpretation of these Regulations.
- (d) reference to the statutes, regulations or guidelines shall be construed as including all provisions consolidating, amending or replacing such statutes, regulations or guidelines, as the case may be, referred to.

3. Commission's Office, Office Hours and Sittings

- (1) The place of the offices of the Commission may, from time to time, be specified by the Commission, by an order made in that behalf. The present location of the headquarter shall be Vidyut Bhawan-II, Bailey Road, Patna-800 021.
- (2) Unless otherwise directed, the headquarters and other offices of the Commission shall open daily, except on Sundays and Government holidays notified by the State Government. However, no proceedings shall be conducted on Saturday.
- (3) The headquarters and other offices of the Commission shall be open at such hours as the Commission may direct.
- (4) Where the last day for doing of any act including the filing of any Petition or reply falls on a day on which the office of the Commission is closed and by reason thereof, such act cannot be done on that day, it may be done on the next day on which the office is open.
- (5) The Commission may hold sittings for hearing matters at the headquarters or at any other place on days and time to be specified by the Commission.

4. Language of the Commission

- (1) The proceedings of the Commission shall be conducted in English or Hindi.
- (2) No Petition, documents or other matters contained in any language other than English or in Hindi may be accepted by the Commission unless the same is accompanied by a translation thereof in English.

Provided that such translation may be dispensed with at the discretion of the Commission.

- (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 into English, may be accepted by the Commission as a true translation.
- (4) The Commission in appropriate cases may direct translation of the petitions, pleadings, documents and other material into English by an officer or person designated by the Commission for the purpose.

5. Seal of the Commission

- (1) (i) There shall be a separate seal indicating that it is the seal of the

Commission. The impression of the seal shall be certified and kept on record of the Commission.

(ii) Every order or communication made, notice issued or certified copy granted by the Commission shall be stamped with the seal of the Commission and shall be certified by the Secretary or any other officer designated for this purpose by the Commission.

6. Officers of the Commission

(1) (a) The Commission shall have the power to appoint the Secretary, Officers and other employees for discharging various duties.

(b) The Commission may appoint or engage Consultants to assist the Commission in the discharge of its functions.

(2) (a) The Secretary shall exercise his powers and perform his duties under the control of the Chairman.

(b) The Commission, in the discharge of its functions under the Act, may take such assistance from the Secretary as it may deem fit.

(c) In particular, and without prejudice to the generality of the provisions of sub-clauses (a) and (b) of Clause 6(2) above, the Secretary shall have the following powers and perform the following duties, viz:-

- (i) He shall have custody of the records and the seal of the Commission.
- (ii) He shall receive or cause to receive all documents, including, *inter alia*, petitions, appeals, applications or reference pertaining to the Commission.
- (iii) He shall scrutinize documents, including, *inter alia*, petitions, appeals, applications or references and shall be entitled to seek clarifications or rectifications upon the same and issue appropriate directions pertaining to the acceptance or rejection of such documents.
- (iv) He shall prepare or cause to be prepared briefs and summaries of pleadings presented by various parties in cases filed before the Commission.
- (v) He shall carry out such functions under the Act, as may be delegated to him by the Commission, by general or special order.
- (vi) He shall assist the Commission in the proceedings relating to the powers exercisable by the Commission, as directed by the Commission
- (vii) He shall provide notice for meeting, prepare the agenda for meetings and minute the proceedings of the Commission's meetings.
- (viii) He shall authenticate the orders passed by the Commission.

- (ix) He shall, so far as it is possible, monitor compliance of the orders passed by the Commission and shall forthwith bring to the notice of the Commission any non-compliance thereof.
 - (x) He shall have the right to collect from the State Government or other offices, companies and firms or any other party as may be directed by the Commission, such information and record, report, documents, etc., as may be considered necessary for the purpose of efficient discharge of the functions of the Commission under the Act and place the same before the Commission.
- (2) In the absence of the Secretary, such other Officer of the Commission as designated by the Chairman in this behalf, shall exercise the functions of the Secretary, as directed by the Commission.
 - (3) The Commission shall, at all times, have the authority, either on an application made by any interested or affected party or suo motu, to review, revoke, revise, modify, amend, alter or otherwise change any order issued or action taken by the Secretary or any Officer of the Commission, if considered appropriate.
 - (4) Save and except the powers exercised under sections 86 and 181 of the Act, the Commission may, by a general or special order in writing, delegate to any Member or Officers of the Commission such of its powers and functions under the Act as it may deem necessary, subject to such terms and conditions, if any, as may be stated in such order.

7. Participation of Consumer Associations and Other Persons

- (1) It shall be open to the Commission to permit any association or other bodies corporate or any group of consumers to participate in any proceedings before the Commission on such terms and conditions as the Commission may consider appropriate.
- (2) The Commission may notify a procedure for recognition of association, groups, forums or bodies corporate as registered consumer association for the purpose of representation before the Commission.
- (3) It shall be open to the Commission for the sake of timely completion of proceedings, to direct bunching up associations/groups/forums referred to above, for submission of affidavits/submissions collectively.
- (4) The Commission may authorize or appoint any officer or any other person, as it deems fit, to represent consumers' interests in the proceedings before it on such fees, costs and expense by such of the parties in proceedings as the Commission may consider appropriate.

Chapter- II

General Rules Concerning the Proceedings before the Commission

8. Proceedings, etc., before the Commission

- (1) The Commission may from time to time hold hearings, meetings, discussions, deliberations, inquiries, investigations and consultations as it may consider appropriate in the discharge of its functions under the Act and these Regulations.
- (2) All proceedings before the Commission shall be deemed to be judicial proceedings within the meaning of Section 193 and 228 of the Indian Penal Code (45 of 1860) and the Commission shall be deemed to be a Civil Court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).
- (3) To ensure timely and expeditious disposal of proceedings, the Commission may adopt suitable procedures for any proceeding, including but not limited to-
 - (a) joinder of cases for hearing;
 - (b) appoint a representative for a class of consumers/parties to present combined pleadings, affidavits and documents, as also to present the case of such class of consumers/parties;
 - (c) seek testimony or advice or opinion on specific issues; and/or
 - (d) appoint amicus curiae.

9. Quorum and Conduct of Meetings

- (1) Quorum for the proceedings before the Commission shall be two. ¹[However, in the event of vacancies of Members/Chairperson, even a single Member or Chairperson can conduct proceedings/meetings and in such a case quorum of proceedings of the commission shall be one.]
- (2) The Chairman shall preside over the meetings and conduct business. If he is unable to attend a meeting of the Commission, any other Member nominated by the Chairman in this behalf and, in the absence of such nomination, any Member chosen by the Members present from amongst themselves shall preside at the meeting.
- (3) All questions which come up before any meeting of the Commission shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairman or in his absence, the person presiding shall have a second or casting vote.
- (4) Save as otherwise provided in Clause 9(3) above, every Member shall have one vote.

1. Added by BERC (Conduct of Business) [1st Amendment] Regulations, 2014 vide Bihar Gazette No. 1 dated 1st January, 2015 (w.e.f. 01.01.2015)

- (5) No Member shall exercise his vote on a decision unless he is present during all the substantial hearings of the Commission on such matter.
- (6) The Commission may decide urgent matters by the procedure of circulation subject to the following conditions:

Where a matter is required to be decided by the Commission urgently, the Chairman may, instead of bringing the matter for discussion at a meeting of the Commission, direct that it may be circulated to the Members for opinion and if all the Members are unanimous and the Chairman thinks that a discussion at a meeting of the Commission is not necessary, the matter shall be decided without such discussion.

If the Members are not unanimous and if the Chairman thinks that a discussion at a meeting is necessary, the matter shall be discussed at a meeting of the Commission.

10. Authority to represent

- (1) A party may appear himself/herself or may authorise any of his/her employee to appear before the Commission and to act and plead on his behalf.
- (2) A party may authorise an advocate or a member of any statutory professional body holding a certificate of practice as the Commission may from time to time specify to represent him and act and plead on his behalf before the Commission.
- (3) The Commission may, from time to time, specify the terms and conditions subject to which a party may authorise any other person to represent for such party and to act and plead on his behalf.

11. Initiation of Proceedings

- (1) The Commission may initiate any proceedings *suo moto* or on a Petition filed by any affected person.
- (2) The notice of the initiation of the proceedings may be issued by the Commission, and the Commission may give such orders and directions as may be deemed necessary, for service of notices to the affected or interested parties, and for filing of Replies and Rejoinder in opposition or in support of the Petition in such form as the Commission may direct.
- (3) The Commission may, if it considers appropriate, issue orders for publication of the Petition or Rejoinder inviting comments on the issues involved in the proceedings in such form as the Commission may direct.²[While conducting suo-motu proceedings, a consultative paper, may also be circulated to facilitate effective participation of the stake-holders and to obtain specific and relevant suggestions and objections from the public.]

- (4) While issuing the notice of inquiry, the Commission may, in 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.

12. Petitions and Pleadings before the Commission

- (1) All Petitions to be filed before the Commission shall be typewritten, cyclostyled or printed neatly and legibly on one side of white paper and every page shall be consecutively numbered and signed. The Commission may in addition, seek copies of Petitions in electronic form on such terms and conditions, as the Commission direct. The contents of the Petition should be divided appropriately into separate paragraphs, which shall be numbered serially. The Petition shall be accompanied by such documents, supporting data and statements as the Commission may specify.
- (2) The Petition as far as possible, shall refer to the relevant provisions of the Act.
- (3) On receiving any application or complaint other than the Petition, the Commission shall have a right either to change such application or complaint into a Petition and initiate its proceedings, or send such application or complaint to the concerned licensee/utility for appropriate action.

13. General headings

The general headings in all Petitions before the Commission shall be made as per the format prescribed under Form-I, annexed hereto. Notices and communication pertaining to such Petitions and Replies shall also be in accordance with Form-I.

14. Affidavit in support

- (1) The Petition shall be supported by duly notarized affidavit which will be submitted with the Secretary or such Officer of the Commission, as may be designated. Every such affidavit shall be in Form-II annexed hereto.
- (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 authorized person.
- (3) Every affidavit shall clearly and separately indicate the statements which are true to the (a) knowledge of the deponent; (b) information received by the deponent; and (c) belief of the deponent.
- (4) Where any statement in the 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.

15. Those intentionally giving false evidence in proceeding before the Commission or fabricating evidence for purpose of being used in proceeding would be, in terms of Section 193 of Indian Penal Code, liable for imprisonment which may extend to seven years and shall also be liable to fine.

16. Presentation and scrutiny of the pleadings, etc.

- (1) All Petitions shall be filed with six copies and each set of Petition may be shall be complete in all respects. The fees as may be prescribed by the Commission and revised from time to time shall be payable along with the Petition.
- (2) The Secretary of the Commission shall be authorized to carry out a preliminary scrutiny of the petition, application or appeal, in order to ensure that it satisfies the following requirements :-
 - (a) The petition, application or appeal is couched in decorous language befitting the nature of the quasi-judicial proceedings and does not contain any references which are unbecoming in respect of any organization or agency or any person employed in government, public or private sector; and be free from insinuations, imputations and allegations of a personal nature against any individual or functionary whether from government, public or private sector.
 The Secretary shall ensure that such petitions or applications or appeals are registered only after appropriate rectification. If the concerned petitioner, applicant or appellant fails to carry out the needed rectification within a period of one week from the receipt of notice from the Secretary that such modifications are required, the application, petition or appeal shall not be registered. No further correspondence or oral submission in regard to such a petition will be entertained by the Commission, provided that nothing contained herein shall operate to extinguish the right of the petitioner, applicant or appellant to approach the Commission with a fresh petition, application or appeal on the same subject matter.
 - (b) The Secretary shall ensure that the application, petition or appeal is supported by references to the provisions of the Electricity Act, 2003 or any other statutes under which it is filed.
 - (c) The Secretary shall not register any application or petition or appeal which, prima facie, is totally unconnected with the Commission's jurisdiction. The Secretary shall not register an application or petition or appeal which, prima facie, relates to matters pending before any other judicial or quasi-judicial authorities.

- (d) The Secretary shall not register an application or petition or appeal, if any judicial authority is seized of matters between the same parties relating to the same subject matter, wherein the points at issue, are substantially similar to those arising in the petition or application or appeal.
 - (e) The Secretary shall not register an application, petition or appeal, if in another proceeding before the Commission, the issues arising in such application, petition or appeal has already been adjudicated between the same parties and in respect of the same subject matter.
- (3) A copy of all Petitions shall be served upon all the other parties to the proceedings, simultaneously with filing of the same before the Commission.
 - (4) All Petitions shall be presented in person or by any duly authorised agent or representative at the headquarters or such other filing centre or centres as may be notified by the Commission from time to time and during the time notified. The Petitions, may also be sent by registered post acknowledgement due/speed post/ courier to the Commission at the places mentioned above. The vakalatnama in favour of the advocate and, in the event the Petitions are presented by an authorised agent or representative, the document authorising the agent or representative shall be filed along with the Petition, if not already filed on the record of the case.
 - (5) Upon the receipt of the Petition, the Officer of the Commission designated for the purpose of receiving the Petition (hereinafter referred to as Receiving Officer) shall issue an acknowledgement with stamp and date to the person filing the Petition. In case the Petition is received by registered post/speed post/courier, the date on which the Petition is actually received at the office of the Commission shall be taken as the date of the presentation of the Petition.
 - (6) The presentation and the receipt of the Petition shall be duly entered in the register maintained for the purpose by the office of the Commission. Such register shall be maintained in form and manner as may be prescribed by the Commission, showing serial no. of Petition, date of its receipt, names and address of the parties, brief subject matter of the Petition, claim/relief sought, interim relief, if any, and date of disposal with final result thereof.
 - (7) The Receiving Officer may refuse to register any Petition which is not in conformity with the provisions of the Act or regulation or is otherwise defective or which is presented otherwise than in accordance with these Regulations or directions of the Commission. However no petition shall be refused for defect in the pleading or its presentation without giving an

opportunity to the person filing the Petition to rectify the defect within the time subject to further extension as directed by Secretary. On failure to remove objections within time allowed, the Petition shall stand dismissed.

- (8) 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 Chairman of the Commission for appropriate orders.
- (9) The Chairman or any Member as the Chairman may designate for the purpose, shall be entitled 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.
- (10) If on scrutiny, the Petition is not refused or any order of refusal is rectified by the Chairman or a Member of the Commission designated for the purpose, the Petition shall be duly registered and given a number in the manner to be specified by the Commission.
- (11) 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 put up before the Commission for preliminary hearing and admission.
- (12) The Commission may admit the Petition for hearing without requiring the attendance of the party. Provided that the Commission shall not pass an order refusing admission 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 the Petition for admission.
- (13) If the Commission admits the Petition, it may give such orders and directions, as may be deemed necessary, for –
 - (a) service of notices to the respondent(s) and other affected or interested parties;
 - (b) the filing of reply and rejoinder in opposition or in support of the Petition in such form as the Commission may direct and
 - (c) the Petition to be placed for hearing before the Commission or a Bench, as the case may be.

17. 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:
 - (a) service by any of the party to the proceedings;
 - (b) by hand delivery through a messenger;
 - (c) by speed post/courier/registered post with acknowledgement due;
 - (d) by publication in newspaper in cases where the Commission is

satisfied that it is not reasonably practicable to serve the notices, process, etc on any person in the manner mentioned above;

- (e) in any other mode of service as considered appropriate by the Commission.
- (2) The Commission shall be entitled to decide in each case the persons who shall bear the cost of such service/publication.
- (3) 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.
- (4) In the event any matter is pending before the Commission and the person to be served has authorised 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 notices and processes 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 responsibility of such agent or representative to duly inform the person whom he represents.
- (5) Where a notice is served by a party to the proceedings either in person or through any other mode an affidavit of service shall be filed by the party with the Commission giving details of the date and manner of service of notices and processes.
- (6) Where any Petition is required to be published in newspaper, it shall be done within such time as the Commission may direct and unless otherwise directed by the Commission such publication shall be made in one issue each of a daily newspaper in English language and in Hindi language having wide circulation in the area as decided by the Commission.
- (7) In default of compliance with the requirements of the Regulations or directions of the Commission as regards the service of notices, summons or processes or the advertisement and publication thereof, the Commission may either order to dismiss the Petition or give such other or further directions as it thinks fit.
- (8) 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 respects sufficient.
- (9) No proceedings shall be invalidated by reason of any defect or irregularity unless the Commission, on an objection taken, is of the opinion that substantial injustice has been caused by such defect or irregularity or there

are otherwise sufficient reasons for doing so.

18. Filing of reply, opposition, objections, etc.

- (1) Each person to whom the notice of inquiry or the Petition is issued (hereinafter referred to as the 'respondent') who intends to oppose the Petition, shall file a reply and the documents relied upon within such period and in such number of copies as may be fixed by the Commission.
- (2) In the reply filed, the respondent shall specifically admit, deny or explain the facts stated in the notice of inquiry of the Petition and may also state such additional facts as he considers necessary for just decision of the case. The reply shall be signed and verified and supported by affidavit in the same manner as in the case of the Petition.
- (3) The respondent shall serve a copy of the reply along with the documents duly attested to be true copies on the Petitioner or his authorised representative and file proof of such service with the office of the Commission at the time of filing of the Reply.
- (4) Where the respondent states additional facts as may be necessary for the just decision of the case, the Commission may allow the Petitioner to file a rejoinder to the reply filed by the respondent(s). The procedure mentioned above for filing of the reply shall apply *mutatis mutandis* to the filing of the rejoinder.
- (5) Every person who intends to file objection or comments in regard to a matter pending before the Commission, pursuant to the publication issued for the purpose (other than the persons to whom notices, processes etc. have been issued calling for reply) shall deliver to an Officer designated by the Commission for the purpose the statement of the objection or comments with copies of the documents and evidence in support thereof within the time fixed for the purpose.
- (6) The Commission may permit or invite such person or persons including the associations, forums and bodies corporate holding the certificate of registration 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 proceedings and the decision in the matter.
- (7) Unless permitted and/or invited by the Commission, the person filing objection or comments shall not be entitled to participate in the proceedings to make oral submissions. However, the Commission shall be entitled to take into account the objections and comments filed after giving such opportunity to the parties to the proceedings as the Commission considers appropriate to

deal with the objections or comments.

19. Hearing of the matter:

- (1). The Commission may determine the stages, manner, the place, the date and time of the hearing of the matter as the Commission considers appropriate for expeditious disposal.
- (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, as the Commission may consider appropriate.
 - (a) If the Commission directs evidence of a party to be led by way of an affidavit, the Commission may provide a reasonable opportunity to the other party to counter the same by way of affidavit.
 - (b) If the Commission directs evidence of a party to be led orally, the Commission may provide a reasonable opportunity to the other party to the proceedings to cross-examine the person adducing such oral evidence.
 - (c) The Commission may, if considered necessary or expedient, direct that the evidence of any of the parties be recorded by an Officer or person designated for the purpose by the Commission.
 - (d) The Commission may direct the parties concerned to file written note of arguments and/or submissions in any proceeding before it.

20. Powers of the Commission to call for further information, evidence, etc.

- (1) The Commission may, at any time before passing orders on any matter, require any one or more of the parties or any other person whom the Commission considers appropriate, to produce such documentary or other evidence as the Commission may consider necessary for the purpose of enabling it to pass orders.
- (2) The Commission may direct the summoning of witnesses, discovery and production of any document or other material objects producible in evidence, requisition of any public record from any office, examination by an Officer or nominee of the Commission the books, accounts or other documents or information in the custody or control of any person which the Commission considers relevant to the matter.
- (3) The Commission or any Officer authorised in this behalf by the Commission, may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of Section 100 of the Code of Criminal Procedure, 1973.

The Commission may also exercise the aforesaid power if it has a reason to believe that any document relevant to the inquiry or the proceedings pending before it may be destroyed, mutilated, altered, falsified or secreted.

21. 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 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 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 appear before the persons designated in sub-clause (1) or (2) above to present their respective views and/or make presentation on the issues or matters referred to.
- (4) The report or the opinion received from such person shall form a part of the record of the case and the parties shall be given the copies of the report or opinion given by the person designated by the Commission. The parties shall be entitled to file their version either in support or in opposition to the report or the opinion, as the case may be.
- (5) The Commission shall duly take into account the report or the opinion given by the person, the reply filed by the parties while deciding the matter and if considered necessary, the examination before the Commission of the person giving the report or the opinion.

Provided that the Commission shall not be bound by the report or the opinion given and shall be entitled to take such decision as it may consider to be appropriate.

- (6) The Commission may, if deems appropriate, refer matters to other agencies and bodies dealing with consumer disputes, restrictive and unfair trade practices and management and administration of the affairs of the licensees.

22. 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, either 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.

23. Orders of the Commission:

- (1) On conclusion of hearing of the matter before the Commission, Chairman and/or Member(s) of the Commission, who heard the matter, shall pronounce judgement and sign the orders.
- (2) In case, after hearing and while giving judgement or decision, the Chairman or any Member of the Commission dissents, he shall give his dissenting judgement with reasons. Majority view of the Commission shall be final in the judgement.
- (3) All orders and decisions issued or communicated by the Commission shall be certified by the signature of the Secretary or an Officer empowered in this behalf by the Chairman and bear the official seal of the Commission.
- (4) All final orders of the Commission shall be communicated to the parties to the proceeding under the signature of the Secretary or an officer empowered in this behalf by the Chairman.

24. Interim Orders:

- (1) The Commission may pass such interim orders in any proceeding as the Commission may consider appropriate, having regard to the facts and circumstances of the case.

25. Non compliance of orders and directions:

- (1) In case any complaint is filed before the Commission by any person or if the Commission is satisfied that any person has contravened any provisions of the Act or rules or regulations made thereunder, or any direction issued by the Commission, the Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under the Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.
- (2) Any amount payable under sub-clause (1) above, if not paid, may be recovered as if it were an arrear of land revenue.

Chapter- III

Arbitration of Disputes

26. Arbitration:

- (1) The 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 adjudicated and 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 arbitration request, pass an order directing that the disputes be referred for adjudication and settlement through arbitration either by the Commission or by a person or persons to be nominated by the Commission.

27. Nomination of Arbitrators :

- (1) If the Commission decides to refer the matter to arbitration by a person or persons other than the Commission, the reference shall be:
 - (a) to a sole arbitrator if the parties to the dispute agree on the name of the sole arbitrator; or
 - (b) if the parties are unable to agree on the name of the arbitrator, to a sole arbitrator to be designated by the Commission or to three persons as the Commission may direct taking into account the nature of the dispute and the value involved and, if the decision is to refer to three arbitrators, one to be nominated by each of the parties to the dispute and the third by the Commission:

Provided that if any of the parties fails to nominate the arbitrator or if any arbitrator nominated by the parties or the Commission, fails or neglects to act or continue as arbitrator, the Commission shall be entitled to nominate any other person in his place.

- (2) 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.

28. Procedure for adjudication, settlement and passing of award :

- (1) In case the Commission acts as the arbitrator, 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 of these Regulations.

- (2) In case the Commission nominates an arbitrator or arbitrators to adjudicate and settle the disputes, such arbitrator or arbitrators may follow 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 and shall follow specific directions issued by the Commission.
- (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 adjudication and forward the award with relevant documents to the Commission within such time as the Commission may direct.
- (4) Pursuant to receipt of award, the Commission shall issue notice to the parties concerned giving opportunity to file objection to the award and rejoinder to such objection if any, within the time specified by the Commission.
- (5) The award made by the Commission or the arbitrators, as the case may be, shall be an award under the Arbitration and Conciliation Act, 1996.

29. Cost of arbitration and proceedings:

- (1) The cost of the arbitration and proceedings before the Commission shall be borne by such parties and in such sums as the Commission may direct.

Chapter- IV

Investigation, Inquiry, Collection of Information, etc.

- (1) The Commission may make such order or orders as it thinks fit for collection of information, inquiry, investigation, entry, search, and seizure and without prejudice to the generality of its powers in regard to the following:
 - (a) The Commission may, at any time, specially authorize the Secretary or any one or more Officers or Consultants or any other person as the Commission considers appropriate (hereinafter referred to as "Investigating Authority") to study, investigate or to inspect any matter within the purview of the Commission under the Act.
Provided that the Investigating Authority may, wherever necessary, employ any auditor or any other person for the purpose of assisting him in any investigation or inspection.
 - (b) The Commission may for the above purpose give such other directions as it may deem fit and specify the time within which the report is to be submitted or information furnished.
 - (c) In 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 license or the provisions of the Act or the rules or regulations made thereunder, at any time, by order in writing, direct an Investigating Authority 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.

- (d) The Commission may issue or authorize the Secretary or any Officer 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, accounts, registers, other documents, etc or to furnish information to the designated officer.
 - (e) The Commission may issue such directions for the purpose of collecting any information, particulars or documents which the Commission consider necessary in connection with the discharge of its functions under the Act.
 - (f) If any such report or information obtained appears to the Commission to be insufficient or inadequate, the Commission or the Investigating Authority may give directions for further inquiry, report and furnishing of information.
 - (g) The Commission may direct such incidental, consequential and supplemental matters, be attended to which may be considered relevant in connection with the above.
- (2) 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 as may appear to it to be necessary.
 - (3) The Commission may, at any time, take the assistance of any institution, consultants, experts and such other technical and professional persons, as it may consider necessary, and ask 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.
 - (4) If the report or information obtained in terms of the above Clauses or any part thereof is proposed to be relied upon by the Commission for forming its opinion or view in any proceedings, the parties to the proceedings shall be given a reasonable opportunity for filing objections and making submissions

on the report or information. The Commission may order the following in writing:-

- (a) 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; or
 - (b) cancel the license; or
 - (c) direct the generating company to cease to carry on the business of generation of electricity.
- (5) All expenses of, and incidental to, any investigation made shall be defrayed by the licensee or generating company, as the case may be, and shall have priority over that debts due from the licensee or the generating company and shall be recoverable as an arrear of land revenue.

Chapter- V

Miscellaneous

30. Advisory Committee

- (1) The Commission in accordance with Section 87 of the Act may establish from such date as it may specify by notification a Committee known as the State Advisory Committee.
- (2) The Advisory Committee envisaged under the Act shall consist of such number of members not exceeding 21 representing the various interests as referred to in the Act, as may be decided by the Commission.

31. Review of the decisions, directions, and orders

- (1) The Commission may on its own motion, or on the application of any of the person or parties concerned, within 60 days of the making of any decision, direction or order, review such decision, directions or orders and pass such appropriate orders as the Commission thinks fit.

Provided that the Commission may, if it is satisfied, that the petitioner was prevented by sufficient cause from filing the review petition within the said period, allow it to be filed within a further period not exceeding 30 days, subject to such terms and conditions which commission may consider appropriate.

- (2) An application for such review shall be filed in the same manner as a petition under Chapter II of these Regulations.
- (3) The application shall be accompanied by such fee, if any, as may be laid down by the Commission.

32. Continuance of proceedings after death, etc.

- (1) Where in any proceeding any of the parties to the proceedings dies or is adjudicated as an insolvent or in the case of a company, is under liquidation

or being wound up, the proceedings shall continue with the successors-in-interest, the executor, administrator, receiver, liquidator or other legal representative of the party concerned, as the case may be.

- (2) The Commission may, for reasons to be recorded, treat the proceedings as abated in case the Commission so directs and dispense with the need to bring the successors-in-interest, etc. on the record.
- (3) In case any person wishes to bring on record the successors-in-interest, etc, 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.

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

33. Proceedings to be open to public

- (1) The proceeding before the Commission shall be open to the public provided that the admission to the room of hearing shall be subject to availability of sitting accommodation. The Commission may, if it thinks fit, and for reasons to be recorded in writing, order at any stage of the proceedings of any particular 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.
- (2) If any party or person in proceedings before the Commission intentionally insults the Chairman or any Member or misbehaves or deliberately cause interruption of such proceedings and/or disobeys order or direction of the Commission, such party or person, in accordance with the Section 228 of the Indian Penal Code, 1860, shall be punishable with simple imprisonment for a term which may extend to six months or with fine which may extend to Rs.1,000/- or with both.
- (3) Who ever intentionally offers any insult or causes any interruption in the presence of the Commission, the Commission in terms of Section 345 of Criminal Procedure Code may cause the offender to be detained in custody and may at any time before the close of the business day of the Commission's office 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 Rs.200/- and in default of payment of fine, simple imprisonment for a term which may extend to one month unless such fine be sooner paid.

- (4) If the Commission in any case as referred to in the above Clause considers that a person accused of any of the offences referred to thereunder and committed in its view or presence should be imprisoned otherwise than in default of payment of fine or with a fine exceeding Rs.200/- should be imposed on him may forward the case to a Magistrate having jurisdiction to try the same and may require security 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.

34. Publication of Petition

- (1) Where any Petition is required to be published under the Act or these Regulations or as per the directions of the Commission, it shall, unless the Commission otherwise orders or the Act or Regulations otherwise provide, be published not less than 7 days before the date fixed for hearing.
- (2) Except or otherwise provided, such publication shall give a heading describing the subject matter in brief.
- (3) Such publication to be published shall be approved by the Officer of the Commission designated for the purpose.

35. Inspection of Commission's records and confidentiality

- (1) Records of every proceeding, information, documents etc. which are produced before the Commission, its officers, representatives or consultants except those parts of it which for reasons specified by the Commission are declared by the Commission to be confidential or privileged or otherwise not to be disclosed to any person, shall be open to inspection by all the parties to the proceedings subject to such party complying with such terms as the Commission may direct from time to time including terms in regard to time, place, and manner of inspection and payment of such fees as the Commission may specify.
- (2) Any person shall be entitled to obtain certified copies of the orders, documents and papers from the Commission subject to payment of such fee and compliance with such other terms as the Commission may direct.

36. Issue of orders and directions

Subject to the provisions of the Act and these Regulations, the Commission may, from time to time, issue orders and directions in regard to the implementation of the Regulations and procedure to be followed and various

matters which the Commission has been empowered by these Regulations to specify or direct.

37. 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 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 in conformity with the provisions of the Act, 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 for dealing with such a matter or class of matters.
- (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, powers and functions in a manner it thinks fit.

38. General Power to amend

The Commission may, at any time and on such terms as to costs or otherwise, as it may think fit, rectify any defect or error in any proceeding before it, and all acts shall be done for the purpose of determining the real question or issue arising in the Proceedings.

39. 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.

40. Extension or abridgement of time prescribed

Subject to the provisions of the Act, the time prescribed by these Regulations or by order of the Commission for doing any act may be extended (whether it has already expired or not) or abridged for sufficient reason by order of the Commission.

41. Effect of non-compliance

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.

42. Costs

- (1) Subject to such conditions and limitation as may be directed by the

Commission, the cost of, and incidental to, all proceedings shall be awarded at the discretion of the Commission and the Commission shall have full power 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/order of a Civil Court.

43. Enforcement of orders passed by the Commission

The Secretary shall ensure enforcement and compliance of the orders passed by the Commission, by the persons concerned in accordance with the provisions of the Act and Regulations and if necessary, may seek the orders of the Commission for directions.

44. Delegation

The Commission may, by general or special order in writing, delegate to any Member, Secretary, Officer of the Commission or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and powers and functions under the Act (except the powers to adjudicate disputes under the Act and the powers to make regulations under the Act) as it may deem necessary.

45. Regulations to be in addition to and not in derogation of other laws

These Regulations are in addition to and not in derogation of any provision laid under the Act, rules or regulations framed thereunder or under any other laws.

By order of the Commission,

Secretary,

Bihar Electricity Regulatory Commission.

FORM I
(See Clause 13)
General Heading for Proceedings
BEFORE THE BIHAR ELECTRICITY REGULATORY COMMISSION
PATNA

FILING NO.
CASE NO.
(To be filled by the office)

IN THE MATTER OF:

(Gist of the purpose of the Petition/Reply or application)

AND

(Names, full addresses, phone no., fax no, and email address of the petitioners/applicants and names, full addresses, phone no., fax no., and email address of the respondents)

Fact of the case/petition be stated in short

Submission/Ground in support of the case.

Relief clause: Relief prayer made in the Petition/Reply be stated shortly and specifically

Declaration that the subject matter of the petition has not been raised by the petitioner before any other competent forum, and that no other competent forum is currently seized of the matter or has passed any orders in relation thereto.

Place

Date

Signature of the Petitioner/Respondent

FORM II
(See Clause 14)
General Heading for Proceedings
BEFORE THE BIHAR ELECTRICITY REGULATORY COMMISSION
PATNA

FILING NO.
CASE NO.
(To be filled by the office)

IN THE MATTER OF:

(Gist of the purpose of the Petition or application)

AND

(Names, full addresses, phone no., fax no, and email address of the petitioners/applicants and names, full addresses, phone no., fax no., and email address of the respondents)

Affidavit verifying the Petition/reply/application

I, _____, son of _____ aged _____ residing at _____ do solemnly affirm and say as follows:

follows:

1. I am the petitioner/applicant/respondent etc. or I am a Director/Secretary/Partner of, the petitioner/applicant/respondent in the above matter and am duly authorised by the said petitioner/applicant/respondent to make this affidavit.

2. The statements made in paragraphs of the petition/application/reply 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 and I believe them to be true.

Solemnly affirm at on this day of that the contents of the above affidavit are true to my knowledge, no part of it is false and nothing material has been concealed therefrom.

()

Identified before me

Patna:

Deponent

Date: