

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION (TERMS AND CONDITIONS OF TARIFF) REGULATIONS, 2004

ELECTRICITY ACT, 2003

No. MERC/Legal/111/2004/1087 - In exercise of the powers conferred by clause (zd), (ze), (zf), (zg), (zh) and (zp) of sub-section (2) of section 181 read with Section 61, sub-sections (2) and (5) of Section 62, sub-sections (1) and (3) of Section 64 and Section 65 of the Electricity Act, 2003 (36 of 2003), the Maharashtra Electricity Regulatory Commission hereby makes the following regulations, namely:-

1. Short Title, extent and commencement

- (1) These Regulations may be called the Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004.
- (2) These Regulations shall extend to the whole of the State of Maharashtra.
- (3) These Regulations shall come into force from the date of their publication in the Official Gazette.

2. Definitions

- (1) In these Regulations unless the context otherwise requires:
 - (a) “**Accounting Statement**” means for each financial year, the following statements, namely-
 - (i) balance sheet, prepared in accordance with the form contained in Part I of Schedule VI to the Companies Act, 1956;
 - (ii) profit and loss account, complying with the requirements contained in Part II of Schedule VI to the Companies Act, 1956;
 - (iii) cash flow statement, prepared in accordance with the Accounting Standard on Cash Flow Statement (AS-3) of the Institute of Chartered Accountants of India;
 - (iv) report of the statutory auditors’ of the Licensee;
 - (v) cost records prescribed by the Central Government under Section 209(1)(d) of the Companies Act, 1956,

together with notes thereto, and such other supporting statements and information as the Commission may direct from time to time;

- (b) “**Act**” means the Electricity Act, 2003 (36 of 2003);
- (c) “**Applicant**” means a licensee or generating company who has made an application for determination of tariff in accordance with these Regulations and includes a licensee or generating company whose tariff is the subject of a review by the Commission either suo motu or, on a petition filed by any interested or affected person;
- (d) “**Commission**” means the Maharashtra Electricity Regulatory Commission;
- (e) “**Conduct of Business Regulations**” means such regulations as may be specified under clause (zl) of sub-section (2) of Section 181 read with sub-section (1) of Section 92 of the Act;
- (f) “**Officer**” means an officer of the Commission;
- (g) “**Secretary**” means the Secretary to the Commission.

(2) Words or expressions used herein and not defined shall have the meanings assigned to them in the Act.

3. Determination of tariff

3.1 The Commission shall determine tariff including terms and conditions therefor in the following cases:-

- (i) Supply of electricity by a generating company to a distribution licensee:

Provided that the Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in case of an agreement entered into between a generating company and a licensee or between licensees, for a period not exceeding one year;

- (ii) Intra-State transmission of electricity;
- (iii) Rates and charges for use of intervening transmission facilities, where these cannot be mutually agreed upon by the licensees;
- (iv) Wheeling of electricity;
- (v) Retail sale of electricity;

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity:

Provided further that where the Commission has allowed open access to certain consumers under Section 42, such consumers, notwithstanding the provisions of clause (d) of sub-section (1) of Section 62, may enter into any agreement with any person for supply or purchase of electricity on such terms and conditions (including tariff) as may be agreed upon by them;

(vi) Surcharge in addition to the charges for wheeling under the first proviso to sub-section (2) of Section 42 of the Act, in accordance with the regulations specified thereunder;

(vii) Additional surcharge on the charges for wheeling under sub-section (4) of Section 42 of the Act, in accordance with regulations specified thereunder.

3.2 Notwithstanding anything contained in Part X of the Act, the tariff for any inter-State supply, transmission or wheeling of electricity, as the case may be, involving the territories of the two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined by the Commission in cases where the licensee intending to distribute electricity and make payment therefor is under the Commission's jurisdiction.

3.3 Notwithstanding anything specified in this Regulation, the Commission shall adopt the tariff if such tariff has been determined through a transparent process of bidding in accordance with the guidelines issued by the Central Government.

4. Principles for tariff determination

4.1 The Commission, while specifying the terms and conditions for the determination of tariff under these Regulations, shall be guided by the principles contained in Section 61 of the Act:

Provided that the Commission may keep in view, among others, the following additional factors while determining the tariff, namely-

- (a) the need to link tariff adjustments to increases in the productivity of capital employed and improvement in efficiency so as to safeguard the interests of the consumer;
- (b) the need to rationalise tariffs on the basis of the actual cost of generation, transmission, distribution and supply;

- (c) the unbundling of costs so as to enable the rational allocation of costs;
- (d) the need to provide transparently the appropriate incentives, in a non-discriminatory manner, for a continuous enhancement in the efficiency of generation, transmission, distribution and supply and upgradation in the levels of service;
- (e) the simulation of competitive conditions where markets do not exist and the progressive introduction of competitive conditions;
- (f) the need for healthy growth of the industry;
- (g) any other matter relevant in the opinion of the Commission.

4.2 The Commission may work out appropriate incentive schemes for licensees and generating companies for better performance, which shall be notified from time to time.

4.3 The Commission shall not, while determining the tariff under the Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

5. Procedure for making applications for determination of tariff

5.1 An application for determination of tariff under the Act shall be made in accordance with the manner specified in these Regulations, and accompanied by such fees as may be specified.

5.2 The Commission shall, at all times, have the authority, either suo motu or on a petition filed by any interested or affected party, to determine the tariff, including terms and conditions thereof, of any licensee or generating company and shall initiate the process of such determination in accordance with the procedure as may be specified.

Provided that the proceedings for such determination of tariff, including terms and conditions thereof, shall be in the same manner as set out in the Conduct of Business Regulations:

Provided further that licensees and generating companies shall prepare, for each financial year, full details of their calculation of the expected revenue from tariff and

charges which they believe they are permitted to recover pursuant to the terms of their licence or power purchase agreement, as the case may be, in such format as may be directed by the Commission, and such licensees and generating companies shall put such details on their respective internet websites at the commencement of the financial year.

5.3 The applicant shall provide, as part of the application to the Commission, in such format as may be required by the Commission, full details of its calculation of the expected revenue from tariff and charges which it believes it is permitted to recover pursuant to the terms of its licence or power purchase agreement, as the case may be, and thereafter it shall furnish such further information as the Commission may reasonably require to assess such calculation.

5.4 The Commission or the Secretary or any Officer designated for the purpose by the Commission may, upon scrutiny of the application, require the applicant to furnish such additional information or particulars or documents as may be considered necessary for the purpose of processing the application.

5.5 Upon receipt of a complete application accompanied by all requisite information, particulars and documents in compliance with all the requirements, the application shall be deemed to be received and the Commission or the Secretary or the Officer designated for the purpose by the Commission shall intimate to the applicant that the application is ready for publication, in such abridged form and manner, as may be specified.

5.6 The applicant shall, within three (3) days of such intimation under Regulation 5.5, publish a notice in at least two (2) English and two (2) Marathi language daily newspapers widely circulated in the area to which the application pertains, outlining the proposed tariff and inviting objections from the public:

Provided that in case of an application by a generating company, the publication shall be in such newspapers as are widely circulated in the area of supply of the licensee to whom the electricity is proposed to be supplied in terms of such application.

5.7 The applicant shall furnish to the Commission all such books and records (or certified true copies thereof), including the Accounting Statements, operational and cost data, as may be required by the Commission for determination of tariff.

5.8 The Commission may, if it deems necessary, make available to any person, at any time, such information as has been provided by the applicant to the Commission including abstracts of such books and records (or certified true copies thereof).

Provided that the Commission may, by order, direct that any information, documents and papers / materials maintained by the Commission, shall be confidential or privileged and shall not be available for inspection or supply of certified copies, and the

Commission may also direct that such document, papers, or materials shall not be used in any manner except as specifically authorised by the Commission.

6. Tariff Order

6.1 The Commission shall, within one hundred and twenty (120) days from the receipt of a complete application and after considering all suggestions and objections received from the public:

(a) issue a tariff Order accepting the application with such modifications or such conditions as may be specified in that order; or

(b) reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of the Act and the rules and regulations made thereunder or the provisions of any other law for the time being in force:

Provided that an applicant shall be given a reasonable opportunity of being heard before his application is rejected.

6.2 The applicant shall publish the tariff or tariffs approved by the Commission in at least two (2) English and two (2) Marathi language daily newspapers having circulation in the area of licence and shall put up the approved tariff on its internet website and make available for sale, a booklet containing such tariff or tariffs, as the case may be, to any person upon payment of photocopying charges:

Provided that where the applicant is a generating company, the publication shall be in such newspapers as are widely circulated in the area of supply of the licensee to whom the electricity is proposed to be supplied in terms of the tariff Order and shall also be put up on the internet website of such licensee.

6.3 The tariff so published shall be in force from the date specified in the said Order and shall, unless amended or revoked, continue to be in force for such period as may be specified in the said Order.

7. Adherence to the Tariff Order

7.1 No tariff or part of any tariff may be ordinarily amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as specified by the Commission.

7.2 The Commission, may, after satisfying itself for reasons to be recorded in writing, may allow for the revision of tariff.

7.3 Subject to the provisions of Section 49 and the proviso to clause (d) of sub-section 1 of Section 62 of the Act, any licensee or generating company found to be charging a tariff different from the one approved by the Commission shall be deemed to have not complied with the directions of the Commission and shall be liable to penalties under Section 146 of the Act, without prejudice to any other penalty to which it may be liable under any other provisions of the Act.

7.4 The licensee shall submit periodic returns as may be specified, containing operational and cost data to enable the Commission to monitor the implementation of its order and reassess the basis on which tariff was approved.

8. Grant of subsidies by the State Government

8.1 If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the Commission, the State Government shall pay in advance the amount to compensate the licensee/ person affected by the grant of subsidy in the following manner:

8.2 The amount of subsidy agreed to by the State Government may be provided in the form of grant or by book adjustment of net dues payable by the licensee to the State Government.

8.3 To the extent to which the subsidy is provided by book adjustment of various dues payable by the licensee to the State Government, such adjustment shall be done on the basis of cash in hand with the licensee and not on an accrual basis in respect of dues to be collected by the licensee from consumers on behalf of the State Government, such as electricity duty.

Provided that the total requirement shall be adjusted on this basis before the subsidy can be operationalised and reflected in the bills issued by the licensee to the eligible consumers.

8.4 The subsidy shall be passed on to eligible consumers only in proportion to the extent to which the total requirement of the licensee is paid by the State Government by financial releases or by way of book adjustment.

Provided that in case of shortfall in such adjustment and/ or actual release of subsidy, either because of errors in estimation or because of the difference between earlier computations on accrual rather than cash basis, or any other reason, such shortfall, shall

be shown clearly in the consumers' bill and shall be distributed on a pro rata basis between the concerned eligible consumers until such time as it is reduced or eliminated.

8.5 The licensee shall clearly indicate in the consumer's bill (a) the tariff determined by the Commission; (b) the amount of State Government subsidy and the rate and period thereof; (c) the net amount payable.

9. Power to amend

The Commission may, at anytime, vary, alter, modify or amend any provisions of these Regulations.

10. Power to remove difficulties

If any difficulty arises in giving effect to the provisions of these Regulations, the Commission may, by general or specific order, make such provisions not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty.

A.M. Khan,
Secretary,
Maharashtra Electricity Regulatory Commission,
Mumbai.

Mumbai, 10th June, 2004