



MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

EXPLANATORY MEMORANDUM

ON

**DRAFT MAHARASHTRA ELECTRICITY REGULATORY
COMMISSION (TRANSACTION OF BUSINESS AND FEES AND
CHARGES) REGULATIONS, 2022**

June, 2022

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1. Background and Regulatory Framework

- 1.1. Section 92 and Section 181 of the Electricity Act, 2003 (EA, 2003) (36 of 2003), as amended in 2007 (hereinafter referred to as “the EA, 2003” or “the Act”), confer upon Maharashtra Electricity Regulatory Commission (hereinafter referred to as “the Commission”) the power, inter alia, to specify the procedure for transaction of business of the Commission.
- 1.2. Accordingly, the Commission notified (No. MERC/Legal/111/2004/1084) the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 (herein after referred to as “CBR 2004”), which came into effect from 10 June, 2004 which governs the procedure for the transaction of business of the Commission.
- 1.3. The CBR 2004 broadly deals with, inter alia, the following aspects of the working of the Commission as specified in the Act:
 - (a) Powers and Duties of the Secretary
 - (b) Functioning and Processes of the Commission
 - (c) Proceedings and Orders of the Commission
 - (d) Other Miscellaneous Provisions
- 1.4. Subsequently, over the years, the Commission has issued various Practice Directions relating to the CBR, 2004 from time to time.
- 1.5. Further, significant changes in the functioning of the Commission considering various technological initiatives that have permeated the industry are required to be considered to conduct the business in efficient, just and fair manner with greater transparency.
- 1.6. In this changing scenario, the need of the Commission is to develop and update the regulatory framework so that it enables and facilitates digital transformation, adapt and apply technologies and communication tools making the justice delivery system more efficient and thus benefitting its various stakeholders.
- 1.7. Further, as already stated above, various Practice Directions have been issued by the Commission from time to time and hence these are also required to be consolidated and captured into the Regulations. The proposed amendments to the CBR 2004 intend to ensure transparency through automation and digitisation with an objective to achieve efficient,

consumer centric, accessible, cost effective, and accountable justice delivery system along with improvement in process. The amendments also include the additional clauses so as to implement the judgments of higher Courts.

- 1.8. Taking the above facts and developments into consideration, the Commission feels that there is a need to amend the existing CBR 2004. This is required in order to update the Regulations to the present context, merge the various practice directions into main Regulations and generally to make the whole regulatory framework more operationally relevant, efficient and achieve greater transparency.
- 1.9. Furthermore, in exercise of its powers under Section 86(1)(g) read with Section 181 of the Electricity Act, 2003, the Commission had notified the “Maharashtra Electricity Regulatory Commission (Fees and Charges) Regulations, 2017” (hereinafter “Fees and Charges Regulation”). These Regulations specify the Fees and Charges payable to the Commission for different types of Applications made and Licences sought or granted by the Commission under the provisions of the Act and the relevant Rules and Regulations. As CBR 2004 deals with procedure in respect of filing of Petitions/Applications etc and Fees and Charges Regulations deals with fee payable for filing such Petitions/Applications, the Commission is of the view that the two Regulations may be combined. Also, it is easier for all stakeholders to refer to one comprehensive Regulation.
- 1.10. The Commission has hence, formulated the draft MERC (Transaction of Business and Fees and Charges) Regulations, 2022 (hereinafter “draft Transaction of Business Regulations, 2022”).
- 1.11. The Commission has proposed modifications to certain clauses based on the experience in implementation of these Regulations over the previous years, and in order to simplify/clarify/amend certain provisions as considered reasonable. The rationale for the major changes proposed in the draft Transaction of Business Regulations, 2022 have been elaborated in this Explanatory Memorandum (hereinafter “EM”). In clauses where no material change is proposed, the same has not been explicitly mentioned. Generally, only the clauses where any addition/modification is proposed in the existing CBR 2004 and Fees and Charges Regulations have been discussed in this Explanatory Memorandum.
- 1.12. Before the issuance of the final Regulations, appropriate consultation with all stakeholders is required so that the proposed amendments are effective, practical, ensure consumer

interest is protected, while balancing the same with the various operational requirements of the Electricity business. Hence, the draft Transaction of Business Regulations, 2022 are being issued, along with this EM. The intent of this EM is to explain the need and justification for major proposed amendments, so that the stakeholders can appropriately participate in this exercise.

2. Short Title, Object, Commencement and Extent

2.1. In view of the fact that the proposed Regulations would repeal the existing CBR 2004 and to take into account the fact that proposed Regulations would also include aspects related to Fees and Charges, title of the CBR 2004 is proposed to be revised as under:

“1.

(a) *These Regulations may be called the “Maharashtra Electricity Regulatory Commission (Transaction of Business and Fees and Charges) Regulations, 2022”*

3. Definitions

3.1. Certain definitions contained in the existing CBR 2004 have been modified or new definitions have been inserted in view of the new Regulations coming into force to provide more clarity to the defined term.

3.2. The Commission, in the draft Transaction of Business Regulations, 2022 has added some definitions as under:

3.2.1. The Commission has added the definition of ‘Advocate’ in view of the fact that Advocates are appearing before the Commission. The proposed definition is as given below:

“2 (a) (iii) *“Advocate” means a person who is entitled to practice the profession of law under the Advocates Act, 1961 (25 of 1961)”*

3.2.2. The definition of ‘Registry’ is being added as the said terminology is commonly used for filing the Petition and various documents related to the matters before the Commission. The proposed definition is as follows:

“2 (a) (xviii) *Registry” means the Office of the Commission designated by the Commission for the purpose of receiving Petitions/Applications and related documents;”*

3.2.3. The Commission has also added the definition of ‘Interlocutory Application’ as relevant clauses related to filing and processing of Interlocutory Application are added in the draft Regulations. The proposed definition is given below:

“2 (a) (x) “Interlocutory Application” means an application in any Petition or proceeding already instituted before the Commission, but does not include an application for review;”

3.2.4. As the Commission has proposed to add new Regulations related to e-filing, hybrid mode of hearing, various definitions are proposed to be added as mentioned in the draft Transaction of Business Regulations, 2022, in consonance with the definitions as provided in the Model Rules issued by the e-committee of Supreme Court of India in relation to e-Filing, Live Streaming and Video Conferencing. The definitions proposed to be included are as given below:

“2 (a) ...

(vii) “Designated Video Conferencing Software” means software or digital platform provided by the Commission from time to time to conduct its business through video conferencing;

(viii) “Electronic Filing (e-Filing)” means e-filing as prescribed through the Internet at the web portal of the Commission;

(ix) “Electronic mail (e-mail)” means a message or information created or transmitted or received on any digital/electronic equipment including (but not limited to) computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message;

(xi) “Live-stream/Live-streamed/Live-streaming” means and includes a live audio/video link, webcast, audio-video transmissions via electronic means or other arrangements whereby any person can view and/or hear the Proceedings as permitted under these Regulations;

(xiv) “PDF” means an electronic document filed in a portable document format;

(xv) “PDF/A” means an ISO-standardized version of the Portable Document Format (PDF) specialized for the digital preservation of electronic documents;

(xxii) “Video Conference” means a system of interactive telecommunication technologies, which permits two (2) or more sites / locations, to interact via video & audio transmission, simultaneously.”

4. Language of the Commission

- 4.1. The Regulation 9 of CBR 2004 stipulates that any translation which is agreed by the parties to the proceedings may be accepted by the Commission. In order to ascertain the veracity of the translation, it is proposed to modify the existing clause and submit the translation along with authenticity certificate. The modified Regulation proposed in draft Transaction of Business Regulations, 2022 is as under:

“4.....

(c) Any translation which any of the parties furnish, shall be accompanied with an authenticity certificate of the person who is authorised to translate and who had translated the same in Marathi or English. The same may be accepted by the Commission as a true translation:

Provided that the Commission may get the same authenticated independently.”

5. Proceedings of the Commission

- 5.1. As per Section 95 of the Act, all the 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. Accordingly, the Commission has proposed to include the said clause of the Act in the draft Transaction of Business Regulations, 2022. The proposed clause is as given below:

“9

(b) 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)”

- 5.2. The existing CBR 2004 also included various clauses related to meetings of the Commission (Clause 22 to 26 of CBR 2004). In view of fact that meetings relate to internal administrative matters of the Commission, the said clauses of CBR 2004 are proposed to be deleted.

6. Adjudication Proceedings

6.1. The present CBR 2004 provide that bench of the Commission shall consist of the full strength of the Commission, including the Chairperson, unless otherwise required under the Act and that Commission may, direct that specific matters or issues be heard and decided by a bench constituted by less than the full strength of the Commission. However, the existing CBR 2004 does not specify the quorum for the proceedings to be conducted by the Commission. Accordingly, it is proposed to add proviso related to quorum and the minimum quorum is being specified as two (2). Also, further proviso is added that quorum of the Commission could be one (1) in case only one Member is functional due to vacancy or Member(s) having recused himself or unavailability of any member(s) for any other reason, resulting in only one Member to continue with proceedings. The Hon'ble Appellate Tribunal for Electricity in its judgment dated 2 December, 2013 in OP No 1 of 2011 has held that even single Member of the Commission can conduct proceedings. The relevant extract of the judgment is as follows:

“11. In our view, since the quorum depends upon the number of Members in the office, even single Member of the Commission including the Chairperson of such a Commission can conduct the proceedings of the appropriate Commission.”

Accordingly, the revised clause along with proposed proviso to be added is as given below:

*“11
(b) The bench of the Commission shall be the full strength of the Commission or as per the quorum, unless otherwise required under the Act:*

Provided that quorum for the Proceedings before the Commission shall be Two (2):

Provided further that quorum could be One (1) in the event only one Member is functional due to vacancies in the Commission or unavailability of Member for any reason or in case any Member(s) has recused himself from a proceeding due to reasons stated by such Member:”

7. Authority to Represent

7.1. The present CBR 2004 provides that the person appearing on behalf of any person in any proceeding before the Commission shall file a Memorandum of Authorisation as specified by the Commission. The Commission has proposed to add a proviso to the existing Regulations to bring distinction between legal practitioner/Advocate and others who are appearing before the Commission and has accordingly proposed that legal practitioner/Advocates shall file the vakalatnama on behalf of the person for whom they are appearing. The said practice is being followed in various Commissions across the country. The proposed proviso is as under:

"13 (a)

Provided further that a legal practitioner/Advocate/Law Firm appearing and acting in the proceedings on behalf of any person before the Commission shall file a vakalatnama, duly executed by or on behalf of that person for whom he/she appears:

Provided also that the person, other than the legal practitioner, appearing on behalf of any person in any proceeding before the Commission shall file a Memorandum of Authorisation, in Form I herein:

Provided also that the Companies / Partnership Firm shall file their Board Resolution that they have given power/ authority to file Petition and appear before the Commission as per their Board Resolutions / Power of Attorney as the case may be:

Provided also that the Parties to the Petition shall provide the relevant documents, as may be required, necessary to check the authenticity of the Petition."

8. Presentation and Scrutiny of Pleadings, etc.

8.1. The Commission is adopting digital technologies in its functioning for easy, user friendly and improved working, transparency, and efficiency. The Commission has developed 'E-filing Application' for online filing of petitions and other documents. Through this 'E-filing Application', users can file their petitions/replies/rejoinders/other documents online and can track/view the status of their petitions. This application has enabled easy access of the system to all stakeholders and will also strengthen the Commission's on going efforts in making

continuous improvements by progressively increasing the use of digital technologies in its working. The Commission has issued Practice Directions and has already made the filing of all Petitions through e-filing portal only. The said system is operational and is smoothly functioning giving a big relief to the stake holders in terms of convenience, time saving and money saving. The Commission has proposed to remove the requirement of filing one hard copy of the Petition as mentioned in the Practice Directions. The parties while filing the Petition through e-filing portal are required to file the complete scanned copy of the Petition including summary/synopsis of Petition, facts and grounds of the case, Annexures along with Affidavit as per Forms specified in the Regulations. Further, the same procedure is to be followed for filing of Interlocutory Application. Accordingly, it is proposed to incorporate the said provisions in the draft Transaction of Business Regulations, 2022. The proposed clauses are as given below:

“18

(a) The Petition shall be filed through ‘E-filing Portal’ only and the same shall be applicable mutatis mutandis to the Respondents / impleaded parties to file their Reply / Rejoinder etc. to the Petition:

Provided that the pleadings shall be filed in soft copy (Word and PDF) on E-Filing Portal:

Provided further that in case any person is having difficulty in accessing digital technology, the Commission’s staff will assist in converting such petition to digital format and then process it through ‘E-filing Portal’:

Provided also that the Commission, as and when required, will issue operational procedure and protocol from time to time to be followed for e-filing.

.....

(c) Upon successful e-filing of the Petition, Dairy number will be generated by the system and confirmation will be send to the registered e-mail.

(d) Any person seeking urgent listing of the Petition or amendment in pleading shall have to file Interlocutory Application justifying the urgency along with the affidavit and requisite fees as may be specified by the Commission or prescribed by the State Government, as the

case may be, from time to time. The procedure for filing Interlocutory Application shall the same as of the filing of a Petition.”

- 8.2. The Commission has observed that common Petition involving multiple Petitioners seeking similar relief and same cause of action is filed. To provide clarity on payment of fees for such Petitions being filed before the Commission, it is necessary that each Petitioner pays the separate fees as may be specified by the Commission in the MERC (Fees and Charges Regulations), 2017, as amended from time to time or prescribed by the State Government, as the case may be, from time to time. Further, to provide clarity, it is also proposed that fees paid shall not be refunded in any circumstances except the excess payment made by the Petitioner/Applicant. The proposed clauses are as follows:

“18 (b)

Provided that several persons having similar but separate and distinct interest or cause of action in the subject matter involving common questions of law and facts may file a common Petition but each Petitioner shall pay separate fees:

Provided further that fee once paid shall not be refunded under any circumstances except in case of excess payment made thereto:

Provided also that where the whole or any part of any fee prescribed for any document by the law/Regulations for the time being in force relating to fees has not been paid, the Commission may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such fee; and upon such payment the document, in respect of which fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.”

- 8.3. The Commission notes that it receives multiple complaints/applications from various stakeholders in the form of letters/e-mails etc. The Commission is of the view that there are various provisions of the Act, Regulations made by the Commission which are framed specifically for the Consumers so as to raise the complaints before the respective Distribution Licensees and if the same are not addressed by them, the Consumer can also approach CGRF. In view of the same, the Commission has proposed to include the clause so as to clarify that the Commission will take limited cognizance of any such complaints/letters received by it unless the Petition is filed seeking specific relief under the relevant provisions of the Act, Rules and Regulations made thereunder. If found suitable, the Commission can only forward

these complaint letter to respective utility for appropriate action at their level. The proposed clause is as under:

“18

(e) On receiving any application or complaint other than the Petition or Interlocutory Applications, if found suitable, the Commission may at its sole discretion only forward such application/complaint received to concerned utility for appropriate action at their level. No other action will be taken by the Commission on these communications.”

9. Admission of the Petition

9.1. The Hon’ble Supreme Court in its judgment dated 18 October 2012 in Civil Appeal No. 7524 of 2012 has clearly held that State Commissions and Tribunals are expected to hear the matter in a common hearing and should not waste their time in dealing with objections of different hues at different times (avoid multiple hearings). Extracts of the said judgment of the Hon’ble Supreme Court is reproduced below:

*“We have considered the argument of the learned senior counsel but have not felt impressed. Since, one of the objectives of the new enactment is to ensure expeditious adjudication of the disputes raised by the parties, there is no warrant for entertaining preliminary/interlocutory objections raised by either party and decide the same by long-drawn hearing and by recording lengthy orders. **The State Commission and the Tribunal should, while deciding the main matter consider all objections including the one relating to their jurisdiction to entertain the matter. Any attempt by the parties to delay adjudication of the dispute deserves to be deprecated and the State Commission and the Tribunal are not expected to waste their time in dealing with objections of different hues.**”*

9.2. In view of above judgment of Apex court, each matter filed before the Commission need not be compulsorily first decided on admissibility, the Commission can hear the admissibility and merits together. Accordingly, the existing clause is being modified as under:

“19

(a) As and when the Petition and all necessary documents are lodged and the defects and objections, if any, are removed by the party concerned, and the Petition has been scrutinised

and numbered, the Petition shall, as far as possible, within a period of Thirty (30) working days be put up before the Commission for further directions:

Provided that the Commission under its discretionary powers may either hear the Petition for admission/maintainability or commence the hearing in the matter and decide the Petition on admissibility/maintainability and on merits together.”

10. Serving of notices and processes issued by the Commission

10.1. The Commission notes that Hon’ble High Court of Judicature at Mumbai in its Order in the matter of Notice No. 1148 of 2015 in Execution Application No. 1196 of 2015 dated 11 June, 2018 has taken on record the Whatsapp message sent to serve notice on the Respondent and ruled that the same is sufficient for the purposes of service of Notice. The Commission has also included the said provision of serving the notices through digital means in Supply Code/SOP Regulations notified by the Commission in February 2021. Further, the Commission has modified the existing clause for serving notices as per ‘The means of Delivery of Notice, Order or Document Rules, 2004’. The proposed changes/additions in the draft Transaction of Business Regulations, 2022 are as given below:

“20

(a) Any notice or process to be issued by the Commission to any person may be served on him by delivering the same after obtaining signed acknowledgement receipt thereof or by registered post or such other means of delivery as may be prescribed by the State Government under Section 171 and clause (n) of sub-section (2) of section 180 of the Act:

Provided that any person can serve notice through digital mode such as Whatsapp message, e-mail, SMS on registered email ID and/or Mobile number:

Provided further that it shall be responsibility of the person serving the notice to ensure the delivery of notice through digital mode is complete.

.....

(e) Where a party is not found at the address furnished by him to the Commission and after making a reasonable enquiry, a notice shall be deemed to have been received if it is sent to the addressee’s last known place of business or work, habitual residence or mailing address by registered letter or by any other means including digital mode such as Whatsapp message,

e-mail, SMS etc, which provides a record of the attempt to deliver the notice by the Commission, the communication is deemed to have been received on the day it is so delivered.

(f) Where, after a notice has been issued to the other side, and returned unserved, and the Petitioner fails to take necessary steps within a period as ordered by the Commission from the date of return of the notice on the Respondent(s), the Case shall be put up before the Commission for further directions.”

10.2. One of the main objectives of the proposed amendment is to adopt digital technologies for user friendly working and increase efficiency. Accordingly, it is proposed that, in future all the objections/comments to be filed before the Commission shall only be on e-filing portal. Presently, there is provision of filing the Petition and related pleadings on the e-filing portal. However, the Commission will make necessary changes in the portal to make provision for filing the objections/comments on the portal itself and such date will be notified separately by the Commission. The proposed additions are as given below:

“21

(d) Any person who intends to file objection or comments with regard to a matter pending before the Commission, (and who is not a party to the pending proceedings), pursuant to notice (or public notice) published for the purpose, shall file its objections/comments through the link provided on the E-filing Portal on the website of the Commission and evidence in support thereof within the time period fixed by the Commission, which shall not normally be less than Three (3) weeks from the date when objections or comments are invited:

Provided that the date of filing of objections/comments on the E-filing Portal will be notified by the Commission separately:

Provided further that till the date of filing of objections/comments on the E-filing Portal is notified by the Commission, the objections/comments shall be filed by any Person as per details given in the notice (or public notice)”

11. Hearing of the Matter

11.1. Considering COVID-19 pandemic, the Commission had issued Practice Directions on 11 May 2020 for conducting e-Hearing for urgent matters. Subsequently, vide Practice Explanatory Memorandum for Draft MERC (Transaction of Business and Fees and Charges) Regulations, 2022

Directions on 13 July 2020 the Commission has extended facility of E-Hearing to all cases to be heard. The Commission has successfully conducted E-Hearings. Parties have been able to participate in these hearing and present their matters effectively. Further to enable general public to access such proceedings, all E-Hearings were streamed live for public at large through the link provided on website of the Commission. Considering successful adoption of digital technology in proceedings before the Commission without insistence on physical presence in court room, some of the parties have requested to continue such E-Hearings in future also on permanent basis. Although the restrictions are gradually lifted by the Government and physical activities are gradually allowed, in the opinion of the Commission, successful utilization of digital technology established during COVID-19 pandemic needs to be adopted appropriately in daily routine. The use of Digital platform is resulting in saving of time, money and travel apart from ensuring seamless data storage. Therefore, the Commission apart from continuing the Remote Access (E-Hearing) as the default option, has enabled the HYBRID (combination of In Person (Physical) and Remote Access (Digital) Hearing for all the activities of the Commission including hearing of the cases by issuing Practice Directions. The Commission notes that e-committee set up by the Hon'ble Supreme Court of India has also put thrust on the e-courts/virtual courts to make justice delivery system efficient, affordable, transparent and cost effective. Accordingly, the Commission has proposed to include the aforesaid Practice Directions in the draft Transaction of Business Regulations, 2022. The proposed clauses are as under:

“22

(a) The Commission shall conduct proceedings by remote access (e-hearing) through video conferencing as a default option using Designated Video Conferencing Software:

Provided that any party can opt for physical hearing and remain present in the Court Room of the Commission or at any other venue as mentioned in the notice for hearing:

Provided further that all hearing in cases filed before the Commission may be Live-streamed to the extent possible through the link to be provided on the website of the Commission:

Provided also that Commission may restrict Live-streaming of hearing in some particular cases as it may deem fit for the reasons to be recorded in writing:

Provided also that the Commission will issue operational procedure and protocol from time to time to be followed for e-hearing.

(b) The proceedings before the Commission shall be open to the public:

Provided that admission to the place of hearing, in case of physical hearing, shall be subject to availability of sitting accommodation:

Provided further that the Commission may, if it thinks fit, and for reasons to be recorded in writing, order that the proceedings of any particular case shall not be open to the public or any particular person or group of persons.

(c) In accordance with Section 228 of the Indian Penal Code, 1860, whoever intentionally offers any insult or causes any interruption in any of the proceedings of the Commission, 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.

(d) In accordance with Section 345 of the Code of Criminal Procedure, 1973, where any one intentionally offers insult or causes any interruption in the presence of the Commission, the Commission may cause the offender to be detained in custody and may, at any time before the raising of the bench on the same day take cognisance of the offence and after giving the offender a reasonable opportunity of show 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 is sooner paid.

(e) If the Commission, in any case as referred to it, considers that a person accused of any of the offences referred to these Regulations, should be imprisoned on account of default of payment of fine, it 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 send such person in custody to such Magistrate.

(f) The Provisions of the Information Technology Act, 2000 shall be applicable to the remote access (e- hearing) conducted before the Commission through video conferencing:

Provided that any offence committed by any person during the e-hearing which has been prohibited by the Commission or any act which is contrary to the applicable Laws in India, it shall punishable as per the provisions of the Information Technology Act, 2000 and relevant and applicable Laws in India and Rules framed there under from time to time by the Central and State Government:

Provided further that if any person breaches the provisions of Section 43 and Chapter XI of the Information Technology Act, 2000, then he shall be liable to pay damages or penalty as per the provisions of the Information Technology Act, 2000.

.....

(j) 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 or recorded through Designated Video Conferencing Software.”

11.2. The Commission has included the clauses as per Order VI Rule 16 and 17 of CPC in relation to allow parties to alter or amend pleadings and to struck out the pleadings and also added clause to allow /struck out parties at any stage of the proceedings as per Order I Rule 10(2) of CPC. The proposed clauses are as given below:

“22 ...

(k) The Commission may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, within the time limit fixed by the order for that purpose, and all such amendments shall be made as may be necessary for the purpose of deciding the matter.

(l) The Commission may at any stage of the proceedings order, that any matter in any pleadings to be struck out or amended;

- i. which may be unnecessary, frivolous or vexatious or*
- ii. which may tend to prejudice, embarrass or delay the proceedings or,*
- iii. which is otherwise an abuse of the process of the Commission.*

(m) The Commission may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Commission to be just, order that the name of any party improperly joined, whether as Petitioner or Respondent(s), be struck out, and that the name of any person who ought to have been joined, whether as Petitioner or Respondent(s), or whose presence before the Commission may be necessary in order to enable the Commission effectually and completely to adjudicate upon and settle all the questions involved in the matter, be added.”

11.3. There are no provisions in the Regulations in respect of mentioning of the matters which were addressed by the Commission in the Practice Directions. Accordingly, the Commission has proposed to include the relevant provision in respect of mentioning of the matters. The proposed addition in the draft Regulation is as given below:

“22 ...

(n) In the matter involving urgency, the Advocate on Record / Party in Person / authorised Representative is required to file application for mentioning the matter not less than Three (3) days in advance:

Provided that the Commission may at its discretion, considering the urgency of the matter may allow mentioning of the matter:

Provided further that the Commission will issue operational procedure and protocol from time to time to be followed for mentioning the matter.”

11.4. During public hearing, oath is being administered before making the submission during the hearing. The Commission has proposed to include the clause in respect of the same as given below:

“22 ...

(o) The Commission may direct any person other than those exempted under the law, to administer an oath by the officer as may be designated by the Commission.”

12. Withdrawal and Disposal of the Petition

12.1. The Commission proposes to include explicit provision in respect of allowing withdrawal of Petition before the Commission. The proposed clauses are as given below:

“26

(a) If a Petitioner, 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 Petition against any or all of the Respondent(s), the Commission may by Order permit the Petitioner to withdraw the same.

(b) Where the Commission is of the opinion that the continuance of the proceeding under this Regulation is unnecessary or is an abuse of the process, it may at any stage, terminate

the proceedings for reason to be recorded in writing and impose costs, as the Commission may deem fit.”

13. Orders of the Commission

13.1. The Hon’ble Appellate Tribunal for Electricity in its judgment dated 27 September, 2011 in Appeal No 88 of 2011 has issued directions for issuance of Daily Orders to all the Commissions by invoking power under Section 121 of the Act in respect of hearings held before the Commission. Accordingly, the Commission has proposed to include the following clause as per the said directions.

“27

(b) *The Daily Orders, as far as possible, may be uploaded on the website of the Commission soon after the hearing but not later than Three (3) working days from the date of the hearing:”*

Provided that the Daily Order/s may be uploaded on the website of the Commission later than Three (3) working days from the date of hearing in exceptional or unavoidable circumstances of the particular Case.

13.2. Section 92 (3) of the Act specifies that decision/order of the Commission shall be decided by majority and majority view of the Commission shall be final. Also, the said section specifies that if the if the Members of a bench of the Commission consisting of two Members (including the Chairperson) differ in their view on any point, the Chairperson or in his absence, the Member presiding shall have second or casting vote. Accordingly, the existing clause proposed to be amended by the Commission is as given below:

“27

(d) *In case, after hearing and while giving order or decision, the Chairperson or any Member of the Commission dissents, he/she shall give his dissenting order with reasons. Majority view of the Commission shall be final in the order:*

Provided that if the Members of a bench of the Commission consisting of two Members (including the Chairperson) differ in opinion on any point, the Chairperson or in his absence, the Member presiding shall have second or casting vote.”

14. Commission's records –documentation, inspection, confidentiality and accessibility

14.1. The existing CBR 2004 has provision for supply of certified copies (hard copy) of documents and papers available with the Commission to any person subject to the payment of fee. As mentioned herein above, the Commission has taken multiple digital initiatives in the proposed amendment. Continuing with the same, the Commission has proposed enabling provision to provide such documents through online mode as and when digitization of documents is complete and necessary changes are done in the IT system to provide such facility for making online application. The Commission has also included clauses in respect of preservation and destruction of office records of the Commission. The documents that are required to be maintained shall be preserved considering their importance, usefulness and information. The preservation of records is important in order to ensure immediate access to the records, its retrieval and authentication. The Commission has already started conversion of existing records in electronic form. However, the destruction of physical records after conversion into electronic form is an essential step to not only reduce maintenance and storage costs but also improve the efficiency of paper and electronic records systems. Also, the Allahabad High Court (Amendment) Rules, 2017 dated 24 August, 2017 and The Rules of the High Court of Orissa (Amendment) Rules, 2021 dated 13 September, 2021 has permitted destruction of physical records after the said records are retained in electronic form in accordance with Section 7 of The Information Technology Act, 2000 and its amendment from time to time. Accordingly, the he proposed clauses to be added are as given below:

“30

(c)

Provided that as and when the Commission completes digitization of records, any person can apply online for certified copy of Orders/ documents available from the record of the Commission online and the copies will be provided on payment to the parties through online mode, as per the procedure notified by the Commission separately.

.....

(f) The office record of the Commission may be destroyed after it is converted to electronic form in accordance with Section 7 of the Information Technology Act, 2000 as per operational procedure and protocol approved by the Commission from time to time:

Provided that the officer as may be designated by the Commission shall supervise the conversion of records into electronic form and destruction of physical records:

Provided further that office record to be destroyed shall be effectively shredded:

Provided also that a register of records in electronic form shall be maintained by the officer designated by the Commission and all entries regarding destruction shall be made therein

(g) In case of loss or missing of any file or record of the Commission, it shall take all efforts to reconstruct of that file or record as may be decided by the Commission from time to time.”

15. Arbitration of Disputes

15.1. Section 86 (1) (f) of the Act provides powers to the Commission either to adjudicate upon the dispute and to refer any dispute for arbitration. Accordingly, the Commission has proposed to include the following clauses related to Arbitration as per Section 158 of the Act and Section 8 of the Arbitration and Conciliation Act 1996.

“31.

(a) Where any matter is, by or under the Act, directed to be determined by arbitration, the matter shall, unless it is otherwise expressly provided in the licence of a licensee, be determined by such person or persons as the Commission may nominate in that behalf on the application of either party; but in all other respects the arbitration shall be subject to the provisions of the Arbitration and Conciliation Act 1996 (26 of 1996).

(b) Notwithstanding the generality of the foregoing provisions, the Commission, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.

(c) The application referred to in sub-regulation (b) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:

Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-regulation (b), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Commission to call upon the other party to produce the original arbitration agreement or its duly certified copy before the Commission.

(d) Notwithstanding that an application has been made under sub-regulation (b) and that the issue is pending before the Commission, an arbitration may be commenced or continued and an arbitral award made.”

16. Enforcement of Orders and Directions, Rules, Regulations and Provisions of the Act

16.1. The Commission has been granted power of punishment for non-compliance of directions/orders of the Commission as per Section 142 and Section 146 of the Act. However, explicit procedure for enforcing the same is proposed to be specified in the draft Transaction of Business Regulations, 2022. The relevant clauses proposed to be included are as under:

“32

(a) For taking any action under Section 142 of the Act, including penalty, additional penalty or any other penalty under the provisions of the Act, the Commission shall:

- i. Issue a show-cause notice containing specific allegation against the defaulter requiring the defaulter to respond to the allegation indicated in the show cause notice by affording an adequate opportunity of being heard on the principle of natural justice:*

Provided that the Commission will proceed only if it arrives at a prima facie satisfaction that it is a fit case for initiation of proceedings under section 142 and record its satisfaction in the Show Cause Notice in respect of the specified allegation and send the Show Cause Notice to the person for the purpose of giving to such person to defend or rebut such specific allegation:

Provided further that the allegation contained in the show cause notice shall be sufficient and unambiguous and shall apprise the defaulter determinatively the allegations which are needed to be responded;

Provided also that the defaulter or any other person concerned shall be granted adequate time to meet the allegations contained in the show cause notice:

Provided also that the defaulter or any other person concerned shall be granted adequate time to meet the principles of natural justice shall be complied with before taking any action under section 142 of the Act.

- ii. *The Commission shall hear the defaulter and other persons concerned while making an order under Section 142 of the Act:*

Provided that the defaulter or any other person concerned shall be granted adequate time to meet the Commission will scrutinize the explanation offered by the defaulter or any other person concerned and find out as to whether the explanation is satisfactory or not. In the event, the Commission is satisfied with the explanation, it may drop the proceedings under section 142 of the Act. If the Commission feels that the explanation is not satisfactory, the Commission may summon the defaulter to appear before the Commission and frame the specific charges in the presence of the defaulter or other person concerned and intimate him that the Commission proposes to conduct enquiry with regard to those charges and give an opportunity to the person concerned by way of a hearing to offer his further explanation and to produce further materials to disprove/oppose those charges.

- iii. *After considering the evidence available on record, and after hearing the parties, the Commission will find out as to whether the charges framed against the defaulter or other person concerned has been proved or not in light of the submissions and evidence/explanation produced by the concerned person. If the Commission is of the opinion that the charges framed are not proved, the proceedings at that stage, may be dropped. If the Commission is satisfied that the charges have been proved, the Commission may fine the defaulter or other concerned person and impose penalty as it deems fit.*

- iv. *Unless otherwise varied by special order, the fines, charges or compensation ordered by the Commission under Regulation 33 shall be paid within 30 days of the order of the Commission imposing the fine, charge, or compensation or within such extended date as may be allowed by the Commission.*

(b) For taking action under Section 146 of the Act, the Commission shall file a complaint in writing before the Civil Court or Criminal Court, as the case may be, for the purpose of cognizance of an offence punishable in accordance with Section 151 of the Act.”

17. Framing of Regulations

17.1. The Commission has been granted power to frame Regulations as per Section 181 of the Act. Accordingly, it is proposed to include the clauses related to procedure to be followed for framing the Regulations as mentioned below:

“36 ..

(a) The Commission in exercise of the powers conferred on it by Section 181 and all other enabling provisions of the Act may make Regulations on the subject matters specified in the Act as per The Electricity (Procedure for Previous Publication) Rules, 2005 as amended from time to time.

(b) Notwithstanding the generality of the foregoing provisions, the Commission may from time to time decide the need for making of regulations based on the assessment of the requirements of the sector in the state of Maharashtra.

(c) Any proposal to make regulations shall precede with an Explanatory Memorandum as well as statement of objects and reasons.

(d) The Commission will note the suggestions and objections of the stakeholders and shall appropriately deal with them in the statement of objects and reasons while finalising the regulations.

(e) The regulations when finalised shall be sent for notification in the Official Gazette as soon as may be after it is made.

(f) Every regulation made by the Commission shall be laid, as soon as may be after it is made, before the State Legislature.”

18. Fees for Applications and Petitions

18.1. The Fees and Charges Regulation were notified by the Commission on 5 April, 2017. Since 5 years have passed since the previous Regulations were notified, the Commission has decided to review the Fees and Charges considering the evolution of working of the Commission post Covid-19 pandemic, various digital initiatives taken by the Commission and considering the increasing workload with increasing number of licensees within the State.

18.2. As part of effective regulation, the Commission has to appoint independent third party agencies for studies on many financial and technical issues on the licensees. Further the Commission has observed that cases being filed before the Commission as well as in higher courts where the Commission is made party have also increased over last few years. The matters before the Commission are as given below for the period FY 2016-17 to FY 2019-20 (FY 2020-21 and FY 2021-22 being impacted by Covid-19 pandemic are not considered):

No of Cases	2016-17	2017-18	2018-19	2019-20
Cases Filed	168	271	352	341
Cases Disposed	152	204	459	309

Similarly, the number of matter where the Commission is a party before the higher courts is as given below:

Forum	2016-17	2017-18	2018-19	2019-20
APTEL	47	38	99	99
High Court	7	7	13	16
Supreme Court	9	3	0	6
Total	63	48	112	121

The increased litigation has resulted in higher expenses. The details of increase in expenditure are evident from the table below:

Financial Year	2016-17	2017-18	2018-19	2019-20
Legal Expenses (A)	0.48	0.77	2.11	2.59
Consultancy Charges (B)	4.58	3.26	4.5	7.42
Other Expenses (C)	8.8	8.87	9.8	9.54
Total Administrative Expenses (D=A+B+C)	13.86	12.9	16.41	19.55

Financial Year	2016-17	2017-18	2018-19	2019-20
Establishment Expenditure (E)	5.49	6.2	7.6	9.95
Total Expenditure (D+E)	19.35	19.1	24.01	29.5

18.3. As per Regulation 29 of Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020, the Commission has decided to fund the Electricity Ombudsman's office for capacity building of Consumer Representatives and Consumer Grievance Redressal Forum by conducting workshops, training, seminars and issue of quarterly magazines for enhancing consumer awareness. Also, as per the Regulation 17 of the said Regulations, the remuneration and other allowances payable to the Electricity Ombudsman shall be paid out of the fund constituted under Section 103 of the Act. Accordingly, this will also add to the expenses of the Commission. The relevant extract of the said Regulations is as given below:

“17 Remuneration

The remuneration and other allowances payable to the Electricity Ombudsman will be determined by the Commission from time to time and shall be paid out of the Fund constituted under Section 103 of the Act

.....

29.1 A Consumer Advocacy Cell may be instituted and funded by the Commission at each Electricity Ombudsman's office for capacity building of Consumer Representatives and CGRF by conducting workshops, training, seminars and issue of quarterly magazines for enhancing consumer awareness.”

Further, Salaries of Chairperson and independent Member of the Consumer Grievance Redressal Forum is now being reimbursed by the Commission as per Regulation 4.9 of the of Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020.

18.4. In view of the aforesaid, the Commission has proposed to revise the Fees and Charges payable to the Commission as specified in the Schedule to the draft Transaction of Business Regulations, 2022.