

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION, MUMBAI
Maharashtra Electricity Regulatory Commission (Standing Legal
Counsels: Terms and Conditions of Appointment) Regulations, 2004

ELECTRICITY ACT, 2003

No. MERC/Legal/131/2004/2224 – In exercise of the powers conferred on it under Section 181(zp) of the Electricity Act, 2003, the Maharashtra Electricity Regulatory Commission hereby specifies the following Regulations relating to the terms and conditions of appointment of Standing Legal Counsel. Save as otherwise provided in these Regulations, these Regulations supersede the “Maharashtra Electricity Regulatory Commission (Standing Legal Counsels: Terms and Conditions of Appointment) Regulations, 2000”

1 Short title and Commencement

- (i) These Regulations may be called the Maharashtra Electricity Regulatory Commission (Standing Legal Counsel: Terms and Conditions of Appointment) Regulations, 2004.
- (ii) These Regulations shall come into force on the date of their publication in the Official Gazette.
- (iii) These Regulations shall apply to Standing Legal Counsel appointed under Regulation 3 of these Regulations.

2. Definitions

- (1) In these Regulations, unless the context otherwise requires:-
 - (i) “Act” means the Electricity Act, 2003 (No. 36 of 2003);
 - (ii) “Advocate” means an advocate entered in any roll under the provisions of the Advocates Act, 1961;
 - (iii) “Commission” means the Maharashtra Electricity Regulatory Commission;
 - (iv) “Standing Legal Counsel” means any Advocate appointed by the Commission under Regulation 3 and who is not in the employment of the Commission.
- (2) Words or expressions occurring in these Regulations and not defined herein but defined in the Act shall have the meanings assigned in the Act.

3. Appointment and Termination

- (1) The Commission shall appoint:-
 - (i) An Advocate with not less than 20 years standing at the bar as its Standing Legal Counsel for matters in the High Court and the Supreme Court.
 - (ii) An advocate with not less than 15 years standing as its Standing Legal Counsel for matters in any criminal court.

- (iii) An Advocate with not less than 5 years standing at the bar as its Standing Legal Counsel for matters at any Tribunal, Forum or Court other than the Supreme Court or High Court.

Provided that the Commission may engage any other Advocate, in any specific case either before the Supreme Court, High Court or any other Court, Tribunal or Forum depending on the nature and requirements of the case and the specialization possessed by such Advocate in the subject relating to such case.

Provided further that the Commission may also engage an Advocate for a specific task of consultation only.

- (2) The Commission may appoint more than one Standing Legal Counsel in any Court, Tribunal or Forum.
- (3) The number of Standing Legal Counsels to be appointed shall be determined by the Commission depending upon the volume of work.
- (4) The services of a Standing Legal Counsel shall be terminable on three months notice in writing on either side.

4. Appointment of a Senior Counsel

The Commission, may, if it so desires or on the advice of any Standing Legal Counsel, engage a Senior Counsel for any case before the Supreme Court, High Court, Tribunal or Forum at a fee to be determined in advance by the Commission.

5. Duties

The duties of a Standing Legal Counsel shall be as follows:-

- (1) To tender advice and opinion to the Commission and its functional heads on matters involving legal implications as may be referred to him by the Commission.
- (2) To prepare, settle and scrutinize agreements, contracts, deeds and other documents of a legal and / or regulatory nature as may be referred to him by the Commission or its functional heads.
- (3) To prepare affidavits, counter affidavits, petitions, appeals, statement of cases and all other connected documentation for legal proceedings on behalf of the Commission.
- (4) To appear before the Supreme Court, High Court or any other Court or Tribunal or Forum on behalf of the Commission in all cases or classes of cases assigned to him by the Commission, where the Commission is a party or its interests are involved.
- (5) To appear personally before the Supreme Court, High Court or any other Court or Tribunal or Forum in cases entrusted to him by the Commission.

Provided that a Standing Legal Counsel may, in the event of unavoidable and unforeseen contingencies entrust a case or cases, with the prior consent of the Commission, to any other Advocate.

- (6) To perform such other work of a legal and / or regulatory nature as may be entrusted to him by the Commission from time to time.

6. Standing Legal Counsel not to represent interests adverse to the Commission

Standing Legal Counsel shall not appear against the Commission in any case or represent or give opinion or advice to others in any matter which is in conflict with or is adverse to the interests of the Commission.

7. Honorarium.

In the event of the Commission finding it fit to appoint more than one Standing Legal Counsel in any Court, Tribunal or Forum, it shall designate the most senior of such Standing Legal Counsel as the Principal Standing Legal Counsel, and such Principal Standing Legal Counsel shall further be entitled to be paid an honorarium every month towards his duties, as set out in the Schedule to these regulations.

Provided, however, that the Commission may, for reasons to be recorded in writing, approve a higher amount as honorarium than provided in this Schedule, taking into consideration the nature of the case and the labour and time required to be spent by the principal standing legal counsel if a particular case so warrants.

8. Fees.

Standing Legal Counsel shall be paid fees as prescribed by the Government of Maharashtra for A-Panel Counsel in the High Court under the Maharashtra Law Officers (Appointment, Conditions of Service, Remuneration) Rules, 1984 as amended by the Government from time to time, and Senior Standing Legal Counsel shall be entitled to the same in addition to the honorarium payable under Regulation 7 of these regulations.

9. Payment of higher or lower fees in certain cases.

The Commission may order payment of fees higher or lower than those prescribed if the nature of the case and the labour and time spent by the Standing Legal Counsel if a particular case so warrants.

10. Payment of Reasonable fees in cases pending when termination is effected.

In case the engagement of a Standing Legal Counsel is terminated due to any of the following reasons :-

- (1) either by reason of resignation;
- (2) by reason of the Commission deciding not to pursue a case;
- (3) by expiry of the term of the Standing Legal Counsel;
- (4) as a result of the termination of the services of the Standing Legal Counsel for any reason by the Commission,

the Commission shall, in cases being handled by the Standing Legal Counsel which are pending disposal at the time of the termination of service of the counsel, have the discretion to fix such fees as it considers reasonable having regard to the work done in the case or cases till the date of such termination of service.

11. Saving of inherent power of the Commission

Nothing in these Regulations shall bar the Commission from adopting a procedure which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of the matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient to depart from the procedure prescribed in the Regulations.

12. General power to amend

The Commission may at any time and on such terms as it may think fit amend any provisions of these Regulations for the purpose of meeting the objectives with which these Regulations have been framed.

13. 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.

Schedule

(Under Regulation 7)

Serial No.	Payable to the Principal Standing Legal Counsel	Rate
1	Honorarium as retainer	[Rs. 3,000 per month]
2	Payments towards postage, fax, etc for correspondence	[Rs. 1,000 per month]

**Mumbai,
Dated 3rd December, 2004**

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