

**SIKKIM**



**GOVERNMENT**

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**GANGTOK**

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**SIKKIM STATE ELECTRICITY REGULATORY COMMISSION**

No. 01 / SSERC / CB / 2012

Gangtok, the 1<sup>st</sup> March, 2012

**NOTIFICATION**

In exercise of the powers conferred on it by Section 181 of The Electricity Act, 2003 (36 of 2003) and all other powers enabling it in that behalf, the Sikkim State Electricity Regulatory Commission hereby makes the following Regulations, namely:

**Chapter I**

**General**

**1. Short title, commencement, and extent**

- (i) These Regulations may be called the Sikkim State Electricity Regulatory Commission (Conduct of Business) Regulations, 2012.
- (ii) These Regulations shall come into force on the date of their publication in the Official Gazette.
- (iii) These Regulations extend to the whole of the State of Sikkim

**2. Definitions**

- (i) In these Regulations, unless the context otherwise requires:
  - (a) 'Act' means the Electricity Act, 2003 (36 of 2003);

- (b) 'Chairperson' means the Chairperson of the Commission;
  - (c) 'Commission' means the Sikkim State Electricity Regulatory Commission;
  - (d) 'Meeting' means hearings, meetings, discussions, deliberations, inquiries, investigations, consultations as held by the Commission from time to time in the discharge of its functions under the Act.
  - (e) 'Officer' means an officer of the Commission;
  - (f) 'Petition' means and includes all petitions, applications, complaints, appeals rejoinders, supplemental pleadings, other papers and documents filed before the Commission in proceedings in the manner provided in these regulations.
  - (g) 'Receiving Officer' means the officer designated by the Commission for receiving the petition;
  - (h) 'Proceedings' means and includes proceedings of all nature that the Commission may hold in the discharge of its functions under the Act. It shall also include all the proceedings before any person if the said person is delegated to act by the Commission under section 97 of the Act.
  - (i) 'Regulations' means these Regulations made under the Act.
  - (j) 'Secretary' means the Secretary of the Commission;
  - (k) 'Rules' means the Rules made under the Act and
- (ii) Words and expressions occurring in these Regulations and not defined herein but defined in the Act shall bear the same meaning as respectively assigned to them in the Act.

### **3. Commission's office, office hours and sittings**

- (i) The headquarter of the Commission shall be located at Gangtok the state capital.
- (ii) Unless otherwise directed, the headquarter and other offices of the Commission shall be open daily except on second Saturdays, Sundays and State Govt. Gazetted holidays as may be notified by the Commission.
- (iii) The headquarters and other offices of the Commission shall be open at such hours as the Commission may direct from time to time. At present the working hours of the Commission shall be from 10.00 a.m., to 4.00 p.m.
- (iv) Where the last day for doing of any act falls on a day on which the office of the Commission is closed and by reasons thereof the act cannot be done on that day, it may be done on the next day on which the office is open.
- (iv) The Commission may hold sittings for hearing matters at it's headquarter or at any other place on days and time as directed by the Commission.

#### **4. Language of the Commission**

- (i) The proceedings of the Commission shall be conducted in English. The Commission may allow any person to plead or represent the case in any local language recognized by the Commission.
- (ii) No Petition, document or other material contained in any language other than English may be accepted by the Commission, unless the same is accompanied by a translation thereof in English. However, the Commission may relax and accept the same without translation in English in deserving cases at its own discretion.
- (iii) 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 the same in a language recognized by the Commission, may be accepted by the Commission as a true translation.
- (iv) The Commission may in appropriate cases direct translation of the petitions, pleadings, documents and other material into English by an officer or person designated by the Commission for the purpose by the Commission.

#### **5. Seal of the Commission**

- (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 Secretary or any other officer designated for the purpose.

#### **6. Officers of the Commission**

##### **(i) Appointments**

- (a) The Commission shall have the power to appoint Secretary, officers and other employees for discharging various duties. It may also prescribe the qualifications, experience and other terms and conditions for the appointment of such officers and other employees in conformity with the procedure laid down in the Act.
- (b) The Commission may appoint Consultants to assist the Commission in the discharge of its functions.

##### **(ii) The Secretary**

- (a) The Secretary shall exercise his powers and perform his duties under the control of the Chairperson.
- (b) The Commission in discharge of its functions under the Act, may take such assistance from the Secretary as it may deem fit.
- (iii) In particular and without prejudice to the generality of the above provisions, the

Secretary shall have the following powers and perform the following duties, viz.:

- (a) He shall have custody of assets, records and the seal of the Commission;
- (b) He shall receive or cause to receive all petitions, applications or references pertaining to the Commission;
- (c) He shall prepare or cause to prepare briefs and summaries of all pleadings presented by various parties in each case before the Commission in the discharge of its functions in this regard;
- (d) He shall assist the Commission in the proceedings relating to the powers exercisable by the Commission;
- (e) He shall authenticate the orders passed by the Commission;
- (f) He shall ensure compliance of the orders and decisions passed by the Commission; and
- (g) He shall have the right to collect from the Central Government or State Government of Sikkim or other offices, companies and firms or any other party as may be directed by the Commission, such information as may be considered useful for the purpose of efficient discharge of the functions of the Commission under the Act and place the information before the Commission.

## **7. Delegation of Powers**

- (i) The Commission may delegate to its officers such functions and duties that may be required by these regulations to be exercised by the Secretary on terms and conditions which the Commission may specify for the purpose subject to provisions of the Act.
- (iii) In the absence of the Secretary, such other Officer of the Commission, as may be designated by the Commission, may exercise all or any functions of the Secretary.
- (iv) The Secretary, with the approval of the Commission, may delegate to any Officer any function, required by these regulations or otherwise, to be exercised by the Secretary.
- (iii) 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 made or action taken by the Secretary or the Officers of the Commission, if the Commission considers the same to be appropriate.

## **8. Participation of Consumer Associations and others**

- (i) It shall be open to the Commission to permit any association / forum or other bodies corporate or any group of consumers to participate in any proceedings before the Commission on such terms and conditions, in regard to the nature and extent of participation that the Commission may consider appropriate. Commission may ask

for credential of such Association at any stage. Commission may also disallow any Association if Commission is not satisfied with the credentials of any such Association. The Commission may also disallow any person or Association on the ground of unruly behavior, use of intemperate language or for any other reason which Commission finds necessary for maintenance of discipline and decorum in public hearing.

- (ii) It shall be open to the Commission for the sake of timely completion of proceedings, to direct grouping of associations / groups / forums referred to above for submission of respective Petitions / Affidavits collectively.
- (iii) The Commission may as and when considered appropriate notify a procedure for recognition of associations, groups, forums or bodies corporate as registered consumer association for purposes of representation before the Commission.
- (iv) The Commission may appoint any officer or any other person to represent consumers' interests, if considered necessary.
- (v) The Commission may direct payment to the officer or person appointed to represent the consumers' interest such fees, costs and expense by such of the parties in the proceedings as the Commission may consider appropriate.

## Chapter II

### General Rules Concerning the Proceedings before the Commission

#### 9. Proceedings etc. before the Commission

- (i) The Commission may from time to time hold meetings, as it may consider appropriate in the discharge of its functions under the Act.
- (ii) The Commission may, from time to time, hold such public consultation or circulate commutative papers on broad macro issues to solicit the views, comments, suggestions, critical assessment etc. from the public and other stakeholders etc. as it may consider appropriate in discharge of its function. The decision of the Commission to hold or not to hold such consultation on any issue shall be final and binding.
- (iii) The proceedings before the Commission may relate to any of the following matters :-
  - (a) determination of tariff.
  - (b) Issue of license or amendments in the licence or cancellation of license of any matter relating thereto.
  - (c) adjudication or resolution of dispute.
  - (d) open access, use of surplus transmission facilities, supply of electricity other than by distribution licensee or any matter relating thereto.
  - (e) regulation of purchase and procurement process of electricity or any matter relating thereto.
  - (f) investigation of generating company or licensee etc. or any matter relating thereto including market domination.
  - (g) complaint against contravention of Act or Rules or Regulations or directions or the order of the Commission including matters which falls under Section 129 of the Act.
  - (h) any other matter provided under the Act.

#### 10. Authority to represent

A person may authorize 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 to act and plead on his behalf before the Commission. The person may also appear himself or may authorize any of his employees to appear before the Commission and to act and plead on his behalf. The Commission may from time to time specify the terms and conditions subject to which a person may authorize any other person to represent him and act and plead on his behalf.

## **11. Initiation of Proceedings**

- (i) The Commission may initiate any Proceedings suo motu or on a Petition filed by any affected or interested person who can file such petition in terms of the provision of these regulations and the Act.
- (ii) 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 parties, the filing of replies and rejoinders in opposition or in support of the Petition in such form as it may direct. The Commission may, if it considers appropriate, issue orders for publication of the petition inviting comments on the issues involved in the proceedings in such form as the Commission may direct.
- (iii) 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.

## **Regulation 12 - Petitions and Pleadings before the Commission and Fees payable**

- (i) 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. The Commission will accept petitions filed with a Computer Disk or through electronic media on such terms and conditions as the Commission may specify. 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. All such documents, supporting data and statements accompanying the Petition shall be attested by the person who files the affidavit.
- (ii) Every petition / application filed before the Commission shall be accompanied by fee in accordance with the provisions of Chapter VIII.
- (iii) The fees shall be payable by way of demand draft / pay order to the designated bank issued in favour of Secretary, Sikkim State Electricity Regulatory Commission.
- (iv) The fee received shall be entered in the register prescribed for the purpose in Form Sikkim State Electricity Regulatory Commission -1 (Annexure I).

## **13. General Headings**

The general headings in all Petitions before the Commission and in all publications and notices shall be in Form Sikkim State Electricity Regulatory Commission -2 (Annexure II).

## **14. Affidavit in support**

- (i) Each petition shall be signed, verified and supported by affidavit and every such affidavit shall be in Form Sikkim State Electricity Regulatory Commission -3 (Annexure III).

- (ii) Every affidavit shall be drawn up in the first person and shall state the full name, age, occupation and address of the deponent and the capacity in which he is signing and shall be signed and sworn before a person lawfully authorized to take and receive affidavits.
- (iii) 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.
- (iv) 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 and he has no information / document etc. which makes the information false or misleading or incomplete.

## **15. Presentation and Scrutiny of the Petitions**

- (i) All Petitions shall be filed with six copies and each set of the Petition shall be complete in all respects. The fees as may be prescribed by the Commission shall be payable along with the petition.
- (ii) All Petitions shall be presented in person or by any duly authorized agent or representative at the headquarters of the Commission 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 acknowledgment due, to the Commission at the places mentioned above. The vakalatnama in favour of the advocate and, in the event the Petition is presented by an authorized representative, the document authorizing the representative shall be filed along with the Petition, if not already filed on the record of the case. Any person other than a legal practitioner representing a party before the Commission shall file a Memorandum of Appearance, in Form Sikkim State Electricity Regulatory Commission -4 (Annexure IV), duly signed by him.
- (iii) Upon the receipt of the Petition, the Receiving Officer designated by the Commission for the purpose of receiving the petition, shall acknowledge the receipt by stamping and endorsing the date on which the Petition has been presented and shall issue a duly stamped and dated acknowledgment to the person filing the Petition. In case the Petition is received by registered post, the date on which the Petition is actually received at the office of the Commission shall be taken as the date of the presentation of the Petition.
- (iv) The presentation and receipt of the Petition shall be duly entered in the register maintained for the purpose by the office of the Commission. The said register shall be as per the format given in Form Sikkim State Electricity Regulatory Commission -5 (Annexure V).
- (v) The Receiving Officer may decline to accept any Petition which does not conform to the provisions of the Act or the Regulations or directions given by the Commission or is otherwise defective or which is presented otherwise than in accordance with the Regulations or directions of the Commission:  
Provided, however, that no petition shall be refused for defects in the pleadings or in the presentation, without giving an opportunity to the person filing the petition to rectify the defects within the time which may be given for



the purpose. The Receiving Officer shall advise in writing the person filing the petition, of the defects in the petition filed, in format as per Form Sikkim State Electricity Regulatory Commission -6 (Annexure VI).

- (vi) A person aggrieved by any order of the Receiving Officer in regard to the presentation of the Petition may request the matter to be placed before the Secretary of the Commission for appropriate orders.
- (vii) The Chairperson shall be entitled to call for the Petition presented by any party and give such directions regarding the presentation and acceptance of the Petition as he considers appropriate.
- (viii) If on scrutiny, the Petition is not refused or any order of refusal is rectified by the Secretary or by the Chairperson of the Commission, the Petition shall be duly registered and assigned a number in the manner to be specified by the Commission.
- (ix) 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.
- (x) The Commission may admit the Petition for hearing without requiring the attendance of the party. 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 deem fit, to hear the petition for admission.
- (xi) If the Commission admits the Petition, it may give such orders and directions, as may be deemed necessary, for service of notices to the respondent(s) and other affected or interested parties for the filing of replies and rejoinders in opposition or in support of the Petition in such form as the Commission may direct and for the petition to be placed for hearing before the Commission.

#### **16. Service of notices and processes issued by the Commission**

- (i) Any notice, process or summons 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 parties to the proceedings as may be directed by the Commission;
  - (b) By hand delivery through a messenger;
  - (c) By 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, processes, etc. on any person in the manner mentioned above.
  - (e) In any other manner as considered appropriate by the Commission.
- (ii) The Commission shall be entitled to decide in each case the persons who

shall bear the cost of such service / publication.

- (iii) 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. The notice shall be accompanied by a copy of the petition along with the copies of the documents filed with the petition.
- (iv) In the event any matter is pending before the Commission and the person to be served has authorized an agent or representative to appear for or represent him or her in the matter, such agent or representative shall be deemed to be duly empowered to take service of the 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.
- (v) Where a notice is served by the party to the proceedings either in person or through registered post, an affidavit of services shall be filed by such party with the Commission giving details of the date and manner of service of notices and processes.
- (vi) Where any petition is required to be published, it shall be published in the newspapers in such form to be specified, for such duration and within such times as the Commission may direct.
- (vii) 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 publication thereof, the Commission may either dismiss the Petition or give such other or further directions as it thinks fit.
- (viii) 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, and no proceeding 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.

#### **17. Filing of Reply, Opposition, Objections, etc.**

- (i) Each person to whom the notice of inquiry or the Petition is issued (hereinafter called the 'respondent') who intends to oppose or support the Petition shall file the reply and the documents relied upon (with six (6) additional copies) within such period as may be fixed by the Commission. In the reply filed, the respondent shall specifically admit, deny or explain the facts stated in the notice of inquiry or 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.
- (ii) The respondent shall serve a copy of the reply along with the documents duly attested to be true copies on the petitioner or his authorized representative and file proof of such service with the office of the Commission at the time of filing the reply.

- (iii) Where the respondent states that additional facts 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 respondents. The procedure mentioned above for filing of the reply shall apply mutatis mutandis to the filing of the rejoinder.
- (iv) Filing of objections or comments
  - (a) Every person (other than the persons to whom notices, processes, etc. have been issued calling for reply) who intends to file objections or comments in regard to a matter pending before the Commission, pursuant to the publication made for the purpose shall deliver to an Officer designated by the Commission for the purpose, the statement of the objections or comments with six (6) copies of the documents and evidences in support thereof within the time fixed for the purpose.
  - (b) The Commission may permit such person or persons including associations, forums and bodies corporate as it may consider appropriate to participate in the proceedings before the Commission if, on the report received from the Officer, the Commission considers that the participation of such person or persons will facilitate the proceedings and the decision in the matter. The Commission may also disallow any person or any objector or any association on the ground of unruly behaviour, use of intemperate language or for any other reason which the Commission finds necessary for maintenance of discipline and decorum in hearing.
  - (c) Unless permitted by the Commission, the person filing objections or comments shall not necessarily 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.

## **18. Hearing of the matter**

- (i) The Commission may determine the stages, manner, the place, the date and the time of the hearing of a matter, as it may consider appropriate and proceed further in any one or more of the following manners:
  - (a) The Commission may decide the matter on the pleadings of the parties or may call for the parties to produce evidence by way of affidavit or lead oral evidence in the matter.
  - (b) If the Commission directs evidence of a party to be led by way of oral submissions, the Commission may, if considered necessary or expedient, grant an opportunity to the other party to cross-examine the persons giving 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 to file written note(s) of arguments or submissions in the matter.

**19. Procedure to be followed where any party does not appear**

- (i) Where, on the date fixed for hearing or any other date to which such hearing may be adjourned, any of the parties or its 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 in default or process ex-parte.
- (ii) 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 when the Petition was called for hearing.

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

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

**21. Reference of issues to others**

- (i) 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.
- (ii) 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.
- (iii) The Commission, if it thinks fit, may direct the parties concerned and / or any other person considered by it as qualified to provide expert or informed advice or opinion to appear before the persons designated in sub-section (i) or (ii) above to present their respective views on the issues or matters referred to.
- (iv) 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(s) 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.

- (v) 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, may examine the person giving the report or the opinion. Provided however, that the Commission shall not be bound by the report or the opinion given.
- (vi) When, on the date fixed for hearing or filing information, documents, petition etc. or any other extended date, if any party or his authorized agent or representative does not appear when the matter is called for hearing or the required information or documents, petition etc. is not filed, the Commission may, at its discretion, either dismiss the petition for default or proceed ex parte to decide the petition or any matter as may be deemed appropriate by the Commission.
- (vii) Where a petition is dismissed in default, the person aggrieved may file an application within 30 days from the date of such dismissal, 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 default under sub-regulation (1).

## **22. Orders of the Commission**

- I. The Commission shall pass orders on the Petition.  
The reasons given by the Commission in support of the orders shall form a part of the order and shall be available for inspection and supply of copies in accordance with the Regulations.
- II. All orders and decisions issued or communicated by the Commission shall be certified by the signature of the Secretary or any other officer of the Commission duly authorized by the Chairperson in this behalf and bear the official seal of the Commission.
- III. All final orders of the Commission shall be communicated to the parties to the Proceedings under the signature of the Secretary or an Officer empowered in this behalf by the Chairperson
- IV. Without prejudice to any other remedies an aggrieved person may have, an appeal against an order of the Commission shall lie with the Appellate Tribunal for Electricity established under Section 110 of the Act.

## **23. Interim Orders**

The Commission may pass such interim orders, as it may consider appropriate at any stage of the proceedings.

## **24. Inspection of records of Proceedings**

- (i) Records of every Proceeding, except those parts which for reasons recorded by the Commission are confidential or privileged or otherwise not to be disclosed to any person, shall be open to inspection either during the

proceeding or after the orders have been passed, subject to such person complying with such terms as the Commission may direct from time to time including in regard to time, place, and manner of inspection and payment of fees.

- (ii) An application for inspection of documents shall be in the Form Sikkim State Electricity Regulatory Commission -7(Annexure- VII) and shall be accompanied by a fee of Rs. 100 /- for each inspection for one day in the form of Demand Draft / Pay Order in favour of the Secretary, Sikkim State Electricity Regulatory Commission.
- (iii) The inspection of record shall be allowed on any working day ordinarily during 1400 hours to 1600 hours in the presence of an officer authorized for that purpose.
- (iv) The person inspecting the records shall not in any manner cause dislocation, mutilation, tampering or damage to records in the course of inspection.
- (v) The officer supervising the inspection may at any time prohibit further inspection if in his opinion any of the records are likely to be damaged in the process of inspection and shall immediately make a report about the matter to the Secretary and seek orders on the matter.
- (vi) A register for inspection of records in the format as per Form Sikkim State Electricity Regulatory Commission –8(Annexure VIII) shall be maintained.

## **25. Supply of Certified Copies of Documents**

- (i) Any person shall be entitled to obtain certified copies of the orders, decisions, direction and reasons in support thereof given by the Commission as well as the pleadings, papers and other parts of the records of the Commission to which he is entitled, on payment of fees and complying with such other terms which the Commission may direct.
- (ii) Every order granting, refusing or modifying interim relief and final order shall be communicated to the parties to the petition free of cost: Provided that unless ordered otherwise by the commission, a copy of the final order may not be sent to any party who has not entered appearance.
- (iii) Any person desirous of obtaining a certified copy of any order of the Commission or any document forming part of the record of proceeding before the Commission may submit an application in the prescribed Form Sikkim State Electricity Regulatory Commission -9 ( Annexure-IX).
- (iv) The application for certified copy shall be accompanied by the fee prescribed in the Schedule to these Regulations in the form of Demand Draft / Pay Order in favour of the Sikkim State Electricity Regulatory Commission.
- (v) A Register of Copy Applications shall be maintained in the form as prescribed in Form Sikkim State Electricity Regulatory Commission -10 (Annexure –X).
- (vi) As far as practicable, the certified copies shall be prepared in the order in which the applications are entered in the Register of Copy Applications.

- (vii) The certified copies shall be prepared by photocopying process or by typing and when a copy is so made, it shall be compared by the person preparing the copy to satisfy himself that the copy prepared faithfully and legibly reproduces the document desired.
- (vii) An endorsement as under shall be affixed on the reverse of the last page of the document.
  - (a) Sl. No. of the application.
  - (b) Name of the applicant.
  - (c) Date of presentation of the application.
  - (d) No. of pages.
  - (e) Copying fee charged,
  - (f) Date on which copy is ready
  - (g) Date of delivery.
- (ix) The endorsement shall be made with the help of rubber stamp got prepared for the purpose. The entries shall be made in ink.
- (xi) The copying fee payable for obtaining a certified copy shall be Rs. 3 /- per page irrespective of the number of words / lines in each page.

## **26. Proceedings before the Commission to be deemed as Judicial Proceedings**

- (i) According to Section 95 of the Electricity Act, 2003, all proceedings before the Commission shall be deemed to be judicial proceedings within the meaning of sections 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).
- (ii) The relevant provisions of the Indian Penal Code and Criminal Procedure Code are as under:
  - (a) **Section 193 of Indian Penal Code, 1860.**

Punishment for false evidence:-

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

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

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

(b) **Section 228 of Indian Penal Code, 1860.**

Intentional insult or interruption to public servant sitting in judicial proceeding :-

Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to Rs. 1,000 (one thousand) rupees or with both.

(c) **Section 345 of Code of Criminal Procedure, 1973.**

Procedure in certain cases of contempt:-

- (1) When any such offence as is described in Section 175, Section 178, Section 179, Section 180 or Section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and may, at any time before the rising of the Court on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to fine not exceeding two hundred rupees, and, in default of payment of fine, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.
- (2) In every such case the Commission shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.
- (3) If the offence is under Section 228 of the Indian Penal Code (45 of 1860), the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.
- (d) Section 346 of Code of Criminal Procedure, 1973.

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

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



## **Chapter III**

### **Investigation, Inquiry, Collection of Information, etc.**

#### **27. Orders / Directions by the Commission**

- (i) The Commission may make such order or orders as it deems fit in terms of the applicable provisions of the Act 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 specially authorize any officer, on behalf of the Commission, to enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry or adjudication under the Act, may be found and may seize any such document or take extracts or copies therefrom;
  - (b) In the exercise of powers conferred on it by Section 128 of the Act, the Commission may, on being satisfied that a licensee or a generating company has failed to comply with any of the conditions of the licence or the provisions of the Act or the rules or regulations made thereunder, at any time, by order in writing, direct any person specified in the order to investigate the affairs of the licensee or generating company and report to the Commission. For this, the Commission may direct the minimum information to be maintained by the licensees and generating companies in their books and also direct the manner in which such information shall be maintained and the checks and verifications to be adopted.
  - (c) The Commission may, at any time, direct the Secretary or any one or more Officers or consultants or any other person as the Commission considers appropriate to study, investigate or furnish information with respect to any matter within the purview of the Commission.
  - (d) The Commission may for the above purpose give such other directions as it may deem fit and specify the time within which the report is to be submitted or information furnished.
  - (e) The Commission may issue or authorize the Secretary or an Officer to issue directions to any person to produce before it and allow to be examined and kept by an Officer of the Commission, designated in this behalf the books, accounts, etc. or to furnish to an Officer information, etc. as provided in the Act.
  - (f) The Commission may, for the purpose of collecting any information, particulars or documents which the Commission consider necessary in connection with the discharge of its functions, issue such directions and follow any one or more of the methods provided for in the Act.
  - (g) If any such report or information obtained appears to the Commission to be insufficient or inadequate, the Commission or the Secretary or an Officer authorized for the purpose may give directions for further inquiry report and furnishing of information.

- (h) The Commission may direct such incidental, consequential and supplemental matters to be attended to as may be considered relevant in connection with the above.
- (ii) In connection with the discharge of its functions under the Act and the Regulations, the Commission may, if it thinks fit, direct a notice of inquiry to be issued and proceed with the matter in a manner provided under Chapter II of these Regulations.
- (iii) The Commission may, at any time, take the assistance of any institution, consultants, experts, engineers, chartered accountants, advocates, surveyors and such other technical and professional persons, as it may consider necessary, and 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.

## Chapter IV

### Tariff Regulations

#### 28. Filing by the Licensees & Generating Companies

- (i) The Commission shall specify the terms and conditions for the determination of the revenues and tariffs of the licensees / generating companies in accordance with the applicable provisions of the Act.
- (ii) The methodologies and procedures for computing the expected revenue from charges, and for determining the tariffs may be provided by the Commission from time to time. The Commission may at any time add, amend, alter, revise, substitute or otherwise change the methodologies and procedures, as the Commission considers appropriate.
- (iii) Unless otherwise directed by the Commission, the terms and conditions for the determination of revenues and tariff of the licensees / generating companies shall include that the tariff allowed and the revenue permitted to a licensee / generating company in any financial year in terms of Section 62 of the Act shall be subject to adjustments in any tariff(s) to be fixed for the subsequent period if the Commission is satisfied for reasons to be recorded in writing that such adjustments for the excess amount or shortfall in the amount, actually realized is necessary, and the Commission is further satisfied that the same is not on account of any reason attributable to the licensee/generating company.
- (iv) Subject to the provisions of the applicable provisions of the Act, each year, a licensee or the generating company shall file with the Commission on or before 30<sup>th</sup> November, or otherwise as and if so directed by the Commission, in the format and in accordance with the guidelines and procedures issued by the Commission for this purpose, an application for determination of tariff, along with statements containing calculations for the ensuing financial year of the expected aggregate revenue from charges under its currently approved tariff, the expected cost of providing services, and the tariff proposals.
- (v) The statement referred to in sub-regulation (iv) above shall be furnished separately for each separate business of the licensee generating company and in such manner in respect of each such business as the Commission may direct.
- (vi) Notwithstanding the above, the licensee/generating company shall forthwith furnish to the Commission such additional information, particulars and documents as the Commission may require from time to time prior to, with or after, such filing of revenue calculations and tariff proposals, in the format that may be directed by the Commission.
- (vii) The Commission may, issue guidelines for filing statement of revenue calculations and tariff proposals and unless waived by the Commission, the licensee / generating company shall follow such guidelines issued by the Commission.

## **29. Publication of Tariff Proposals & Hearing on Objections**

- (i) The licensee or the generating company shall publish within 3 (three) days of submission of its tariff proposals, a notice in at least two (2) newspapers, widely circulated in the area of generation or supply, outlining the proposed tariff and calling for objections from the interested persons and the State Government.  
Provided that the notice published in the newspaper shall be in the same language as of the newspaper.
- (ii) Unless otherwise directed by the Commission, the Commission shall hold a proceeding on the revenue calculations and tariff proposals given by the licensee / generating company and may hear such persons as the Commission may consider appropriate for making a decision on such revenue calculations and tariff proposals.
- (iii) The hearing on the revenue calculations and tariff proposals of the licensee/generating company shall, as far as possible, be done in the same manner as provided in Chapter II of these regulations.

## **30. Order of the Commission**

- (i) Subsequent to the licensee or the generating company furnishing the complete information required by the Commission, and upon hearing the applicant and other interested parties and upon making such inquiry as the Commission may consider it to be appropriate, the Commission shall make an order and notify the applicant of its decision on the revenue calculations and tariff proposals.
- (ii) While making an order under sub-regulation (i) above or at any time thereafter the Commission may notify the tariff which the licensee or generating company shall charge.
- (iii) The Commission shall, within seven days of the order forward a copy of the order to the Concerned Government, the Central Electricity Authority and the concerned licensees / generating companies and to the persons concerned.

## **31. Publication of Tariff**

The licensee or the generating company shall publish the tariff or tariffs approved by the Commission in the newspapers having circulation in the State of Sikkim concerned as the case and if necessary the Commission may also publicize the same for information of all the stakeholders. The publication shall, besides other things as the Commission may require, include a general description of the tariff approved and its impact.

## **32. Revision of Tariff**

- (i) The tariff determined shall not generally be amended or modified more than once in a financial year except in respect of any change expressly permissible under the terms of any fuel surcharge formula as may be provided by the Commission.
- (ii) All applications for amendment of tariff in terms of Section 62(4) of the Act shall be made in such form as the Commission may direct from time to time,

and the provisions of Chapter II in so far as they are applicable shall apply to the proceeding for determination / amendment / modification of tariffs.

### **33. Differential Tariffs and Cross-subsidization**

While determining the retail tariff under these Regulations, the Commission may set different tariffs to different persons according to the consumer's load factor, power factor, voltage, consumer's total consumption of energy during any period, or time during which the supply is required or geographical position of any area, the nature of supply and the purpose for which supply is required.

### **34. Subsidy from Government**

- (i) The concerned Government may, at any time as it considers to be appropriate, propose grant of any subsidy to any consumer or class of consumers in the tariff determined by the Commission and upon receiving such proposal, the Commission shall determine the amount to be paid as subsidy and the terms and conditions of such payment including the manner of payment of subsidy amounts by the concerned Government to the distribution licensee affected by the decision of the subsidy.
- (ii) While determining the tariff, the Commission shall take into account any subsidies, which the concerned Government had agreed to give to any class or classes of consumers.
- (iii) Notwithstanding anything mentioned above, no direction of the concerned Government shall be operative if the advance payment of the subsidy amount is not made by the concerned Government in accordance with the provisions of Section 65 of the Act and the tariff fixed by the Commission shall be applicable from the date of issue of orders by the Commission in this regard.
- (iv) The Distribution Licensee shall be required to furnish documents to the satisfaction of the Commission that the subsidy amount received by the Distribution Licensee from the concerned Government is duly accounted for and utilized for the purpose for which the subsidy is given.

## Chapter V

### Licence

#### 35. Application for Licence

- (i) The regulations contained herein shall apply to all persons desirous of engaging in the business of transmission, distribution or trading of electricity within the State of Sikkim.
- (ii) An application for any licence shall be made in accordance with the provision of the Act and these regulations.
- (iii) The Commission may, if considered appropriate, advertise in newspapers or otherwise notify in such other appropriate manner as the Commission may decide inviting applications for grant of licence for Transmission, Distribution or Trading of Electricity.
- (iv) Every application for a licence shall be signed by the applicant and addressed to the Secretary or such officer as the Commission may designate in this behalf and it shall be accompanied by:
  - (a) Six copies in print, and one soft copy of the draft licence as proposed by the applicant with the name and address of the applicant and of his agent (if any) printed on the outside of the draft;
  - (b) Three copies, each signed by the applicant, of maps of the proposed service area and, in the case of supply of the streets or roads in which the supply of electricity is to be made, which shall be so marked or coloured as to define any portions of such area and streets or roads which are under the administrative control of any local authority and shall be on a scale:
    - (i) of not less than that of the largest scale ordinance maps available,  
or
    - (ii) such other scales as may be approved by the Commission.
  - (c) A list of any local authorities interested with the administration of any portion of the area of transmission or supply;
  - (d) An approximate statement describing any lands which the applicant proposes to acquire for the purpose of the licence and the means of such acquisition;
  - (e) An approximate statement of the capital proposed to be expended in connection with the utility and such other particulars as the Commission may require;
  - (f) A copy of the Memorandum and Articles of Association, Annual Accounts for the last three years or other similar documents as may be required;
  - (g) Accompanying notes and certifications, if any, on the above statements, from a chartered accountant;

- (h) A receipt for such processing fee, as the Commission may require;
  - (i) Applicant's details including technical, capital adequacy and credit-worthiness;
  - (j) Detailed map(s) of the proposed area for transmission / supply, showing the area to be supplied and the configuration of the Transmission / Distribution system. The map(s) shall clearly distinguish between the existing system and any new facilities that are or will be required for the purpose of providing transmission / supply of electricity. The map(s) shall indicate the sub-station, distribution mains, transmission / distribution network, streets and roads on which energy is supplied to various consumers and distinguish between public and private consumers;
  - (k) Copy of letter seeking consent from local authority or consent letter;
  - (l) Copy of letter seeking consent from the Central Government as per Section 15(2) (ii) of the Act or the consent letter.
- (v) Any person intending to act as the Transmission Licensee shall, immediately on making the application, forward a copy of such application to the State Transmission Utility. The State Transmission Utility shall acknowledge the receipt of the application and within thirty days of the receipt of the said application send its recommendations, if any, to the Commission.

### **36. Copies of maps and draft licence for public inspection**

The applicant shall keep at his own office and of his agents (if any) and shall deposit at the office of every local authority invested with the administration of any portion of the proposed area of supply:

- i. Copies of the maps referred to in Regulation 35(iv)(b) above for public inspection; and
- ii. A sufficient number of copies of the draft licence shall be furnished to all persons applying for them at a price not exceeding the normal photocopying charges.

### **37. Contents of draft licence**

The draft licence shall contain the following particulars:

- i. A short title descriptive of the proposed utility together with the address and description of the applicant and if the applicant is a company, the names of all the directors of the company;
- ii. Type of licence applied for;
- iii. Locations of the proposed service area;
- iv. A description of the proposed area; and
- v. Such other particulars as the Commission may direct.

**38. Conditions of Licence**

- a. The General Conditions subject to which each of the categories of licence shall be laid down by the Commission.
- b. The Commission may decide on the special conditions subject to which licence shall be issued to the applicant.
- c. Any person intending to apply for licence shall duly comply with the conditions and requirements laid down by the Commission.

**39. Form of Draft Licence**

The Commission may, from time to time, prescribe the form of licences to be issued and this form of licences may, with such variation as the circumstances of each case require, be used for the purposes of these Regulations.

**40. Acknowledgement of Application**

On receipt of the application, the Receiving Officer shall note thereon the date of its receipt and shall send to the applicant an acknowledgement stating the date of receipt.

**41. Calling for additional information**

The Commission or the Secretary or any other officer so authorized by the Commission for this purpose, may upon scrutiny of the application, require the applicant to furnish within a period to be directed by it such additional information or particulars or documents as considered necessary for the purpose of dealing with the application.

**42. Notifying the due filing of the application**

If the Commission finds the application to be complete, accompanied by the requisite information, particulars and documents, and finds that the applicant has complied with all the requirements for making the application and furnishing of information, particulars and documents, the Commission or the Secretary shall certify that the application is ready for being considered for grant of licence in accordance with the applicable laws.

**43. Advertisement of application and contents thereof**

- a. Unless exempted by the applicable laws / Commission, the applicant shall, within seven (7) days from the date of admission of the application, publish notice of his application by public advertisement, and such advertisement shall contain such particulars as have been directed by the Commission in these Regulations.
- b. The advertisement shall be headed by a short title corresponding to that given at the head of the draft licence and shall give the addresses of the offices at which copies of maps therein referred to may be inspected and the copies of draft licence perused or purchased and shall state that every local authority, utility or person, desirous of making any representation / objection with reference to the application to the Commission, may do so by a letter addressed to Secretary or such Officer as the Commission may designate in this behalf, within thirty (30) days from the date of publication of the first advertisement.



- c. The Commission may direct that notice of the application be served on the Central Government, the concerned Government, the local authority or any other authority or person or body as the Commission may direct in such other manner, as the Commission may consider appropriate. Further, in the case of an application for a licence for an area including the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for defense purposes, the Commission shall issue a licence only after ascertaining that the Central Government has no objection to the grant of the licence.

#### **44. Amendment of draft licence**

Any person who desires to have any amendment made in the draft licence shall deliver a statement of the amendment to the applicant and to Secretary or such Officer as the Commission may designate in this behalf within a period thirty (30) days from the date of publication of notice of the application by way of advertisement in newspapers.

#### **45. Objections**

- a. Any person intending to object to the grant of the licence shall file objection within a period of thirty days from the date of publication of notice of application in newspapers. The objection shall be filed in the form of a reply and the provisions of Chapter II dealing with a reply shall apply to the filing of such objections.
- b. When applicable, the applicant shall apply for and obtain the no objection required from the Central Government before the application can be placed for hearing by the Commission for grant of the licence.

#### **46. Local Inquiries and Hearings**

- a. If the applicant has duly arranged for the publication of the notice of the intended application and the time for filing of the objections is over and after the applicant has furnished to the Commission the no objection, if required from the Central Government, the Commission may proceed to place the application for regular hearing.
- b. The Commission shall give the notice of inquiry or hearing to the applicant, the persons who had filed objections, the Central Government, the concerned Government and such other authority, person or body as the Commission considers appropriate.
- c. The Commission shall consider the recommendations, if any, from the State Transmission Utility in regard to the grant of licence.
- d. If any person objects to the grant of licence applied for, the Commission shall, if either the applicant or the objector so desires, cause a local inquiry to be held of which the notice in writing shall be given to both the applicant and the objector:  
Provided that the Commission may refuse such an inquiry if in its opinion the objection is of a trifling or vexatious nature.

- e. In case of such local inquiry, a memorandum of results of the local inquiry made shall be prepared and shall be signed by the applicant, the Officer or person designated for the purpose and such other person as the Commission may direct.
- f. The hearing on the application for grant of licence shall thereafter proceed as far as possible in the same manner as provided in Chapter II.

**47. Approval of draft licence**

- a. After inquiry, if any, and the hearing, the Commission may decide to grant or refuse the licence and if it decides to grant the licence, it may do so by approving the draft licence with such modifications changes or additions and subject to such other terms and conditions as the Commission may direct.
- b. When the Commission has approved a draft licence either in its original form or in a modified form, the Secretary or such other officer as the Commission may designate in this behalf, shall inform the applicant of such approval and of the form in which it is proposed to grant the licence and the conditions to be satisfied by the applicant including the fees to be paid by the applicant for the grant of the licence.
- c. Before granting any licence, the Commission shall publish a notice in two such daily newspapers, as the Commission may consider necessary, stating name and address of the person to whom it proposes to issue the licence.
- d. The Commission shall immediately after issue of a licence forward a copy of the licence to the concerned Government, Central Electricity Authority, local authority, and to such other persons as the Commission considers necessary.

**48. Notification of grant of licence**

On receiving intimation in writing from the applicant that he is willing to accept the licence in the form approved by the Commission and after the applicant satisfies the conditions imposed for the grant of the licence, the Commission shall publish the licence or such part or gist thereof as the Commission considers appropriate.

**49. Date of commencement and duration of licence**

The licence shall commence from the date the Commission may direct as the date of commencement of licence and shall be valid for a period of twenty-five years, unless revoked earlier.

**50. Deposit of maps**

When a licence has been granted, three sets of maps showing, as regards such licence, the particulars specified in Regulation 35(iv)(b) above shall be signed and dated to correspond with the date of the notification of the grant of the licence by Secretary or any other officer designated by the Commission. One set of such maps shall be retained as the deposited maps by the said Officer and the other two sets

given to the licensee.

**51. Deposit of printed copies**

- a. Every person who is granted a licence shall within thirty days of the grant thereof:
  - i. Have adequate number of copies of the licence printed :-
  - ii. Have adequate number of maps prepared showing the area of supply stated in the licence; iii. Arrange to exhibit a copy of such licence and maps for public inspection at all reasonable times at his head office, at his local offices (if any) and at the office of every local authority within the area of supply.
- b. Every such licensee shall, within the aforesaid period of thirty days, supply free of charge one copy of the licence and the relevant maps to every local authority within the area of supply and shall also make necessary arrangements for the sale of printed copies of the licence to all persons applying for the same, at a price not exceeding the normal photocopying charges.

**52. Preparation and submission of accounts**

- a. Every licensee shall cause the accounts of his utility to be made up the thirty-first day of March each year.
- b. Such licensee shall prepare and render to the Commission an annual statement of his audited accounts in accordance with the provisions of the Act, within a period of six months from the aforesaid date, or such extended period as the Commission may authorize after it is satisfied that the time allowed is insufficient owing to any cause beyond the control of the licensee and the statement shall be rendered in such number of copies as the Commission directs.
- c. The accounts shall be made up in such forms as the Commission may direct from time to time. All the forms shall be signed by the licensee or his accredited and duly authorized agent or manager.
- d. The Commission may by special or general order direct that, in addition to the submission of the annual statements of accounts in the forms directed in sub-regulation (c) above, a licensee shall submit to the Commission or such other authority as it may designate in this behalf such additional information as it may require for the purpose.

**53. Model Conditions of Supply**

- a. The Commission shall specify the model conditions of supply to be adopted and complied by the licensee, with such variations as the Commission may direct from time to time.
- b. The licensee shall always keep in his office an adequate number of printed copies of the Codes formulated under the provisions of Chapter IX of these Regulations, as amended from time to time and shall, on demand, sell such copies to any applicant at a price not exceeding normal photocopying charges and shall take steps to give suitable publicity to the documents.

**54. Contravention of Licence**

- a. The Commission may pass such orders, as it thinks fit, in accordance with the relevant provisions of the Act, for the contravention or the likely contravention, by a licensee, of the terms or conditions of the licence, any provisions of the applicable law or the rules or regulations made there under.
- b. Subject to the provisions of the Act, the Commission may follow as far as possible the general procedure directed in Chapter II of these Regulations in dealing with a proceeding arising out of a contravention or likely contravention by a licensee.

**55. Deemed grant of the Distribution Licence**

- a. Until otherwise directed by the Commission, the Energy and Power Department engaged in the supply of electricity in the State of Sikkim shall be deemed to have applied for and been granted the Distribution Licence for the purposes contained herein and subject to the fulfillment of the conditions contained in sub-regulation (b) below.
  - i. Persons who supply electricity generated by themselves and / or supplied to them by an authorized person, for the purposes of an event or function not exceeding two months, and when the electricity is distributed through a system owned by them;
  - ii. Persons who supply electricity to the residential colonies as a part of their activity of maintaining such colonies for use and occupation of their employees and / or for use and occupation of persons providing facilities and services to the employees, where such person procures electricity from any Licensee or from any other source approved by the Commission and distributes the electricity within the residential colonies on no-profit motive basis;
  - iii. Such other persons as the Commission may from time to time by order notify, subject to such terms and conditions as the Commission may direct.
- b. The Energy and Power Department of Sikkim shall :-
  - i. Not directly or indirectly undertake trading in electricity or distribution or supply of electricity outside its area of operation and the distribution or supply of electricity shall be strictly restricted to the purpose mentioned in sub-regulation (a) above;
  - ii. Establish the electric line or works only within the area of operation;
  - iii. If so required, furnish to the Commission such information required for the purposes of the discharge of the functions of the Commission as the Commission may from time to time direct;
  - iv. Comply with the provisions of the Act, the Regulations of the Commission, technical codes such as Grid Code, Distribution Code, Supply Code, Standards of Performance and Overall Standards of Performance or any other guidelines issued / to be issued by the Commission;
  - v. Comply with all applicable rules and regulations concerning the safety and security of the operation; and

- vi Comply with any directions which the Commission may issue from time to time in regard to the charges which such persons may levy on the consumers taking into account the charges prevailing in the nearby area of supply of electricity supplied by a licensee.
- c. The Commission shall be entitled to issue appropriate directions from time to time as it may consider necessary and take appropriate actions against such persons in accordance with the provisions of the Act and these Regulations for any breach or non-compliance thereof.
- d. The Commission, at any stage, if it considers to be necessary, direct any such, persons to apply for a licence in accordance with Regulation 35 above and consider accordingly the grant or refusal of licence and may by an interim or final order directs such a person to cease to distribute or supply electricity in the area of operation or any part thereof.
- e. If any difference or dispute arises as to whether the person is entitled to undertake supply of electricity as a Licensee under the provisions of this regulation 55, the decision of the Commission, thereon shall be final.

**56. Grant of exemption from licence**

An exemption from licence shall be granted in a manner that is consistent with the provisions of the applicable law and provision of the Act.

**57. Revocation of the licence**

- a. The proceedings for revocation of the licence or for passing of any other orders stated in Section 19 of the Act, shall be initiated by an order passed by the Commission, which the Commission may initiate suo motu or on application of the licensee or on receiving any complaint or information from any person.
- b. The procedure and the manner of revocation shall be consistent with the provisions inter- alia of Section 19 of the Act.
- c. Subject to the provisions of the Act and the procedure contained therein, the inquiry by the Commission on the revocation of the licence, in so far it is applicable, shall be in the same manner as provided in Chapter II of these Regulations.
- d. A licensee himself wishing to apply for or give consent to the revocation or part revocation of his licence may make an application to the Commission. The Commission shall pass orders on such applications, after hearing the licensee and such other persons as it thinks fit. The procedure to be followed by the Commission on such application shall be as far as possible as provided in Chapter II of these Regulations.

**58. Amendment of the licence granted**

- a. Amendment of the licence shall take place in the manner laid down in Section 18 of the Act. Unless otherwise directed by the Commission in writing, the procedure specified in these Regulations for grant of licence, in so far it can be applied, shall be followed while dealing with an application for

amendment or alternation of the licence.

- b. The application for amendment of the licence shall be accompanied by a statement of the proposed amendment and shall be supported by affidavit as provided in Chapter II of these Regulations.
- c. Unless otherwise directed by the Commission in writing, each application for an amendment or alteration in the licence shall be accompanied by a receipt for such fee as the Commission may require and paid in the manner directed by the Commission.
- d. The applicant shall, within seven days from the date of admission and numbering of the application for amendment, publish a notice of the amendment application filed giving a brief statement of the amendment proposed, the reason for the proposed amendment, the effect of the amendment proposed on the discharge of the functions of the Licensee under the licence granted, the alternate arrangement proposed for such discharge of the functions and such other particulars as the Commission may direct. The publication shall give the addresses of the offices at which the application for amendment may be inspected and the copies of documents be purchased and shall state that every local authority, utility or person, desirous of making any representation with reference to application to the Commission, may do so by letter addressed to such Officer as the Commission may designate in this behalf, within thirty days from the date of publication.

**59. Suspension of Distribution Licence**

If at any time, it is of the opinion that it is necessary in public interest, the Commission may, for reasons to be recorded in writing, suspend the licence of the distribution licensee in the circumstances, manner and form given in Section 24 of the Act.

**60. Regulation of licensee's purchase of power**

- a. The licensee shall file with the Commission in complete form, copies of all Power Purchase Agreements already entered into by the licensee.
- b. The Commission shall be entitled to direct that the licensee shall establish to the satisfaction of the Commission that the purchase of power by the licensee is under a transparent power purchase procurement process and is economical and the power is necessary for the licensee to meet its service obligation.
- c. The licensee shall apply to the Commission to approve the draft Power Purchase Agreement that the Licensee proposes to enter into. The Commission may pass orders:
  - i. Approving the agreement; or
  - ii. Approving the agreement with modifications proposed to the terms of the agreement;or
  - iii. Rejecting the agreement.

- d. Nothing contained herein shall affect the obligations of distribution licensee under the existing contracts and arrangements for purchase, import or acquisition of electricity from generating companies, electricity traders and from other persons with whom the licensee has agreements or arrangements of power purchase or procurement of energy in accordance with the terms and conditions of such agreements and arrangements consented to or approved by the Commission.
- e. The provisions of sub-regulation (a) and (b) above or any action taken therein shall not, in any manner, prejudice the exercise of functions and powers of the Commission under any of the other provisions of the applicable law, the Regulations and orders to be issued from time to time.

**61. Standards of Performance**

The Commission may, after consultation with the licensees and persons likely to be affected, specify standards of performance of a licensee or a class of licensees which in its opinion, are attainable and ought to be achieved by such licensees, and different standards may be determined for different licensees. The Commission may publish the standards so determined in such form and in such manner as the Commission may consider appropriate.

## Chapter VI

### Investment Approvals

#### 62. Requirement for Investment Approval by the Commission

- (i) Unless otherwise directed by the Commission, every licensee shall obtain prior approval of the Commission for making investment in the licensed business if such investment is above the limits laid down by the Commission in the licence conditions.
- (ii) The limits in the licence conditions may be modified by the Commission from time to time by a general or special order.
- (iii) In the application for investment approval, the licensee shall furnish the following information or particulars:
  - (a) A detailed project report containing examination of an economic technical system and environmental aspects of the investment together with the outline of the works to be undertaken, the salient features and particulars demonstrating the need for investment;
  - (b) The project cost together with the cost -benefit analysis;
  - (c) Whether the investment is in a new project or for expansion or upgradation of an existing system;
  - (d) Sanctions and statutory clearances required for execution of the project and status of such sanctions and statutory clearances;
  - (e) Phasing of investment over the financial years and commissioning schedule;
  - (f) The manner in which investments will be capitalized for the purposes of inclusion in the revenue requirements of the Licensee;
  - (g) Constraints which the Licensee may face in making the investments or in implementing the project including constraints on information available;
  - (h) Resource mobilization and financial plans for meeting the investment;
  - (i) Process for inviting and finalizing tenders for procurement of equipment, material and / or services relating to investment, in accordance with a transparent tendering procedure as may be approved by the Commission; and
  - (j) Such other particulars as the Commission may from time to time direct.

#### 63. Proceedings by the Commission

- (i) The Commission may at its discretion hold such inquiries and consultations as the Commission may consider appropriate while dealing with the application for approval for the investment to be made by the licensee.
- (ii) The Commission may at its discretion initiate a proceedings or consider the



application for investment approval as a part of the proceedings for determination of tariff or along with any other proceedings as the Commission may consider appropriate.

- (iii) The Commission shall be entitled to appoint consultants, experts and others as the Commission may consider appropriate and authorise the Commission's staff, consultants and experts to hold discussions and deliberations with the licensees before the Commission considers the application for investment approval which shall be accompanied by such fee as may be directed.

**64. Additional Information**

- (i) The licensee and other applicants seeking investment approval shall furnish information, particulars, documents as may be required by the Commission staff, consultants and experts appointed by the Commission for the purpose and allow them access to the records and documents in the power, possession or custody of the licensee.
- (ii) The licensee shall cooperate with the Commission's staff, consultants and experts to enable them to discharge their functions and to submit a report to the Commission on the outcome of their findings.

## Chapter VII

### Settlement of Disputes

#### 65. Arbitration

- (i) On disputes, between the licensees and the generating companies being brought before the Commission or coming to Commission's notice otherwise, the Commission may take up the same for adjudication or arbitration.
- (ii) If the Commission decides to adjudicate on a dispute itself, it may take such help from experts, specialists as it considers necessary.
- (iii) If the Commission decides to refer the matter for arbitration, the same will be done in accordance with the Arbitration and Conciliation Act, 1996.

#### 66. Nomination of Arbitrators

- a. If the Commission decides to refer the matter for arbitration by a person or persons other than the Commission itself, the reference shall be:
  - i. To a sole arbitrator if the parties to the dispute agree on the name of the arbitrator; or
  - ii. If the parties are unable to agree on the name of a sole arbitrator Commission would refer to three persons taking into account the nature of the dispute and the value involved. If the decision is to refer to three persons, one shall 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 of the arbitrators nominated by the parties or by the Commission fails or neglects to act or continue as arbitrator, the Commission shall be entitled to nominate any other person in his place.
- b. The Commission shall not nominate a person as arbitrator to whom any party to the arbitration has a reasonable objection on grounds of possible bias or similar such reasons, if the Commission considers the objection to be valid and justified.
- c. The fees and expenses of the arbitration and proceedings before the Commission shall be borne by such parties and in such sums as the Commission may direct.

#### 67. Procedure for adjudication, settlement and passing of award

In case the Commission decides to adjudicate upon a dispute itself, the procedure for adjudication and settlement to be followed shall be as far as possible the same as in the case of hearing before the Commission provided in Chapter II.

## **Chapter VIII**

### **Fees & Fines**

#### **68. Fees on applications or petitions**

- a. The fees payable for filing of any petition, application or complaint with the Commission shall be as specified in the Schedule to these regulations.
- b. The fees payable under these regulations shall be paid by means of bank draft or pay order, drawn in favour of the Secretary, Sikkim State Electricity Regulatory Commission, Gangtok, Sikkim.
- c. The fees received by the Secretary of the Commission under these regulations shall be deposited in a bank account to be maintained by the Commission at such bank and in such Branches as the Commission may direct from time to time or in Government Account under relevant head of account.

#### **69. Licence Fees**

- a. The Commission may while granting a licence or an Exemption to undertake the business of transmission or supply of electricity including bulk supply of electricity or any other order granting any privilege to any person may levy and collect the fee payable in accordance with provisions of the Act and these or any other regulations issued by the Commission, at the time of the grant of licence or privilege and thereafter on an annual or such periodic basis as the Commission may specify in the order granting licence or privilege or in a separate order that may be passed by the Commission.
- b. The existing licensees or exemption holders shall pay the annual fee for the financial year 2012-13 onwards as specified in the Schedule and for the period prior to 2012-13 the same shall be levied on case to case basis through separate orders as may be passed by the Commission.
- c. Until otherwise specified, the fees payable for grant of licence or exemption, shall be as specified in the Schedule to these Regulations.
- d. The fees shall be payable and the amount shall be deposited in the same manner as specified in Regulation 68 above.

#### **70. Imposition of Fines and Charges**

- a. The Commission may initiate a proceeding for imposition of fines and charges and award of compensation upon receiving from the person affected a complaint or on its own if the Commission is of the view that the facts made known prima-facie constitute non-compliance or violation by a generating company, a licensee or other person of any provision or requirement of the Act or of any of the rules or regulations framed there under or of directions or orders of the Commission.
- b. If the Commission decides on the basis of the information received that there is a prima-facie cause to proceed in the matter, a case shall be registered and notice shall be issued to the person who is responsible for non-compliance or violation under sub-regulation (a) above to show cause within a reasonable time, as

indicated in the notice, to appear before the Commission in person or through his authorized representative to explain as to why the Commission should not impose the fines or charges on him. The notice shall state the substance of the allegation against such person with specific reference to the alleged non-compliance or violation.

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

## **71. Process for Levy and Recovery of Fines and Charges**

- a. If on the conclusion of any proceeding, the Commission is satisfied that any person is liable to fines or charges, it may by order in writing impose such fines or charges in accordance with the provisions of the Act and the Regulations specified for the purpose and may also award compensation.
- b. While determining the quantum of fines or charges, the Commission shall, inter-alia, consider the following factors:
  - i. The nature and extent of non-compliance or violation;

- ii. Wrongful gain or unfair advantage derived as a result of the non-compliance or violation;
  - iii. Loss or degree of harassment caused to any person(s) as a result of the non-compliance or violation; and
  - iv. The repetitive nature of the non-compliance or violation.
- c. While passing an order under this regulation, the Commission may award compensation to the complainant or affected party to be paid by the person found to have committed the non-compliance or violation.
  - d. The Commission may direct the time within which the fines, charges or compensation should be paid by the concerned person.
  - e. The Commission may designate an Officer to collect the fines and charges pursuant to the provisions of the Act.

**72. Withdrawal and Disposal of Complaint**

- a. If a complainant, at any time before a final order is passed in any proceeding satisfies the Commission that there are sufficient grounds for permitting him to withdraw his complaint against the respondent named in the complaint, or if there be more than one respondent, against all or any of them, the Commission may permit the complainant to withdraw the same.
- b. If the Commission is of the opinion that it will not be appropriate to allow the withdrawal of the complaint, the Commission may make orders for the complaint being continued by such other person in the place of the complainant and in such manner as the Commission may consider appropriate.
- c. 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 proceeding for reasons to be recorded in writing.

## Chapter IX

### Performance Standards, Codes, Supply Regulations, etc.

#### 73. Formulation of Codes

- a. The Commission may from time to time direct the licensees and generating companies operating in the State, as the case may be, to formulate or adopt such codes as the Commission considers appropriate for the proper and efficient conduct of the electricity sector and operation of the power systems in the State.
- b. The Commission may hold such consultations and proceedings as it considers appropriate to deliberate on the codes so formulated.
- c. The Commission may appoint consultants or experts to advise the Commission on the codes so formulated.
- d. The Commission may direct such modifications as it considers appropriate to the codes so formulated.
- e. The licensees and generating companies shall implement the codes approved by the Commission consistent with the directions and orders made by the Commission from time to time.
- f. Without prejudice to the generality of the powers of the Commission in regard to the enforcement of standards of performance in operation of the power system, the codes to be formulated and implemented may include:
  - i. Grid Code;
  - ii. Distribution Code;
  - iii. Electricity Supply Code and Conditions of Supply;
  - iv. Consumer related codes including code of practice on payment of bills; code on disconnection for non-payment, standards and quality of service and fines and penalties for failure, consumer rights, settlement and consumer complaint handling procedures;
  - v. Safety and security codes;
  - vi. Transmission system planning and Security Standards; vii. Distribution system planning and Security Standards; viii. Operating standards; and
  - ix. Codes on utilization of electricity and demand side management.
- g. The Licensees and generating companies shall follow the existing standards, codes and conditions of supply till the codes, standards and conditions of supply are formulated and implemented in accordance with this regulation.

## Chapter X

### Miscellaneous

#### 74. Review of the decisions, directions and orders

- (a) The Commission may at any time on its own motion or on the application of any of the persons or parties concerned, within 45 days of the making of any decision, direction or order, review such decisions, directions or orders and pass such appropriate orders as the Commission thinks fit:

Provided that power of review by the Commission on its own motion shall be exercised limited to correction of clerical or typographical errors.

- (b) An application for such review shall be filed in the same manner as a Petition under Chapter II of these regulations.

#### 75. Continuance of Proceeding after death, etc.

- a). Where in any proceeding any of the parties to the proceeding dies or is adjudicated as insolvent or is in the case of a Company under liquidation / winding up, the proceedings shall continue with the successor-in-interest, the executor, administrator, receiver, liquidator or other legal representative of the party concerned.
- b). The Commission may, for reasons to be recorded, treat the proceeding as abated, and in case the Commission so directs, dispense with the need to bring the successors-in-interest, etc. on the record of the case.
- c). 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.

#### 76. Proceedings to be open to public

The proceedings before the Commission shall be open to the public:

Provided that the Commission may, if it thinks fit, and for reason to be recorded in writing, order at any stage of the proceedings of in any particular case that the public generally or any particular person or group of persons shall have restricted access to proceedings.

#### 77. Publication of Petition

- a. Where any application, petition, or other matter is required to be published under the Act or the 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.
- b. Except as otherwise provided, such publication shall give a heading describing the subject matter in brief.
- c. Such publication to be published shall be approved by the Officer of the Commission designated for the purpose.

**78. Issue of orders and directions on procedures**

Subject to the provisions of the Act and the Regulations, the Commission may, from time to time, issue orders and practice directions in regard to the implementation of the Regulations and procedure to be followed and various matters, which the Commission has been empowered by the Regulations to specify or direct.

**79. Saving of inherent power of the Commission**

- a. 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 to meet the ends of justice or to prevent the abuse of the process of the Commission.
- b. 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 the 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.
- c. 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.

**80. Power to amend any defect, error, etc. in proceedings / pleadings**

The Commission may, at any time and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceedings before it, and all necessary amendments shall be made for the purpose of determining the real question or issue arising in the proceedings.

**81. 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.

**82. . Extension or abridgement of time prescribed**

Subject to the provisions of the Act, the time prescribed by the 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 means of an order of the Commission

**83. 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.

**84. Costs**

- a. 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.
- b. 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.

**85. 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.

**86. General power to amend**

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

**By Order of the Commission**

Sd/-  
(K. L. Gyaltshen)  
Secretary  
Sikkim State Electricity Regulatory Commission