

**No. L-1/(5)/2009-CERC
CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

- 1. Dr. Pramod Deo, Chairperson**
- 2. Shri R. Krishnamoorthy, Member**
- 3. Shri S. Jayaraman, Member**
- 4. Shri V. S. Verma, Member**

In the matter of

Amendment of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

STATEMENT OF REASONS

The Commission through the public notice dated 22.4.2009 had invited suggestions and comments on the draft amendments to regulations 87 and 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (hereinafter “the Conduct of Business Regulations”). The revised regulations proposed were as under, namely –

“87.

- (1) All petitions for approval of generating or transmission tariff or for revision of tariff shall be made strictly in accordance with the regulations specified by the Commission and shall also be in conformity with the requirements relating to filing of petitions specified in Chapter II of these Regulations.
- (2) The Secretariat of the Commission shall, on receipt of the petition, carry out preliminary scrutiny of the petitions and convey the defects, if any, for rectification and call for additional information, if any required for determination of tariff, as far as possible, within 15 days of receipt of the petition.

- (3) The petitioner shall rectify the defects and submit the additional information called for, in accordance with the procedure specified in these regulations within 20 days from the date of communication by the Secretariat.
- (4) If the petitioner fails to rectify the defects or submit the additional information within the time specified above, the Commission may, at its discretion, dismiss the petition without any further notice to the petitioner or/and on an application made by the petitioner, on being satisfied that the petitioner was prevented from rectifying the defects or providing additional information for sufficient reason, extend time for rectification of defects or for providing additional information, as the case may be:
Provided that the dismissal of the petition under this clause shall not preclude the petitioner from making a fresh petition for determination of tariff:
Provided further that for the purpose of filing fee, the petition dismissed under this clause shall be considered as an interlocutory application, and fee shall be payable accordingly.
- (5) On rectification of the defects or providing additional information by the petitioner, the petition shall be processed by the Secretariat for hearing by the Commission, as far as possible, within 10 days thereof.”

“103.

- (1) The Commission may at any time, on its own motion, or on an application of any of the persons or parties concerned, within 45 days of making such decision, directions or order, review such decision, directions or orders and pass such appropriate orders as the Commission deems fit:
Provided that power of review by the Commission on its own motion under this clause may be exercised only for correction of clerical or arithmetical mistakes arising from any accidental slip or omission.”

2. The suggestions and comments have been received from Madhya Pradesh Power Trading Co Ltd and Chemfab Alkalis Limited, Puducherry. .

3. Madhya Pradesh Power Trading Co Ltd has suggested that period of 20 days proposed to be specified by virtue of clause (3) of regulation 87 for rectification of defects pointed out, and additional information called for, by the Secretariat of the

Commission should be extended to 30 days. However, no specific reason for the suggestion made has been given. We feel that time line proposed in the draft is reasonable and adequate.

4. Madhya Pradesh Power Trading Co Ltd has further pointed out that the proviso sought to be introduced by amending regulation 103 was not justified on the ground that Commission should not only possess the power to rectify the clerical or typographical errors but should be able to review its own order *suo motu* after taking cognizance of an order passed by a superior court or the Appellate Tribunal wherein such court or the Appellate Tribunal has expounded a new principle. We have considered the suggestion. Under clause (f) of sub-section (1) of section 94 of the Electricity Act, 2003 (the Act) , the Commission is vested with same power of review as is vested in a civil court under the Code of Civil Procedure (the Code). Thus, the Commission's power of review of its orders or decisions is exercisable under the Code. The Code does not authorize a civil court to exercise power of review its judgment or decree *suo motu*. Under the Code, review is permissible when "any person considering himself aggrievedmay apply for a review...." Further, explanation below rule 1, order XLVII of the Code clarifies that when the decision on a question of law on which judgment is based has been reversed or modified by the subsequent decision of the superior Court in any other case, it shall not be a ground for review of such judgment. Acceptance of the suggestion will be contrary to the express provisions of the Code. For these reasons, the suggestion made by Madhya Pradesh Power Trading Co Ltd cannot be accepted. The proviso was proposed to

be added to regulation 103 of the Conduct of Business Regulations on the analogy of section 152 of the Code.

5. Chemfab Alkalis Limited has suggested a revised version of the clause (1) of regulation 87, as extracted hereunder-

“(87)(1) All petitions for approval of generating or transmission *or distribution or supply tariff including that of the licensee/supplier* or revision of tariff, shall be made strictly in accordance with the regulations specified by the commission and shall also be in conformity with the requirements relating to the filing of petitions specified in Chapter II of these Regulations.”

6. The reason given in support of the suggestion is that the Administration of Union Territory of Pudducherry continues with its practice of fixing the tariff through its Electricity Department.

7. The suggestion made by Chemfab Alkalis Limited is outside the scope of the proposal. Firstly, this Commission is not dealing with fixation or revision of tariff for distribution or supply of electricity at intra-State level as it does not fall within the functions assigned under section 79 of the Act. The fixation of tariff for distribution or supply of electricity falls within the jurisdiction of the Joint Commission constituted for the Union Territories by the Central Government. Also, the tariff by the Commission is to be determined or revised under the terms and conditions specified under section 61 of the Act. Normally, there cannot be any deviation from these terms and conditions while fixing or revising tariff. However, where in any particular case, considering the special circumstances, any departures from the specified terms and conditions becomes necessary, the Commission is to give reasons for

such departure, as provided in the relevant regulations. Therefore, we do not consider it necessary to modify the proposal so as to provide that determination of tariff or revision thereof “shall be made strictly in accordance with the regulations specified by the commission”.

8. We direct that the amendments proposed and published in draft form be published in the Official Gazette.

Sd/-
(V.S. Verma)
Member

Sd/-
(S. Jayaraman)
Member

Sd/-
(R. Krishnamoorthy)
Member

Sd/-
(Dr. Pramod Deo)
Chairperson

New Delhi, dated the 26th May 2009