

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

**Shri Gireesh B. Pradhan, Chairperson
Shri V.S. Verma, Member
Shri M. Deena Dayalan, Member
Shri A.K.Singhal, Member**

Date: 12.11.2013

In the matter of:

Central Electricity Regulatory Commission (Conduct of Business) (Amendment) Regulations, 2013

Statement of Reasons

Introduction

In exercise of the powers conferred by Section 55 of the Electricity Regulatory Commissions Act, 1998, the Central Commission on 26.4.1999 had notified the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (hereinafter referred as "the Conduct of Business Regulations"). In terms of Section 185(2)(a) of the Electricity Act, 2003 (the 2003 Act), the Conduct of Business Regulations is deemed to have been done or taken under the 2003 Act. The Conduct of Business Regulations have been governing the proceedings before the Commission and processing of the petitions in various stages.

2. The Conduct of Business Regulations provided for the following time limit for disposal of petitions:

(a) Regulation 101 provides that the Commission may normally dispose of the petitions finally within a period of six months from the date of admission;

(b) Regulation 103 provides that an application for review of the order of the Commission may be filed within 60 days from the date of passing the order. This period was reduced to 45 days

through an amendment consequent to the direction of the Appellate Tribunal for Electricity (the Tribunal) that the period for filing review cannot be more than the period for filing the appeal. It was also provided that the Commission can *suo motu* review its order which will be confined to rectification of clerical or arithmetical mistakes arising from any accidental slip or omission. However, no time limit for disposal of the review petitions was provided in the Conduct of Business Regulations.

3. The Tribunal by its order dated 6.8.2013 in I.A. No.180/2013 in DFR No.1099/2013 (NTPC V CERC & ors) directed the Central Commission to frame the regulations to fix the time frame within which the Review Petitions could be disposed of to enable the parties to file appeal before the Tribunal without any delay. In order to give effect to the directions of the Tribunal, the Central Commission initiated the process of amendment of the Conduct of Business Regulations by publishing the draft Central Electricity Regulatory Commission (Conduct of Business) (Amendment) Regulations, 2013 (hereinafter referred as "draft Amendment Regulations"). The draft Amendment Regulations were posted on the website of the Commission on 9.9.2013 inviting comments/objections/suggestions from the stakeholders and any other interested persons by 30.9.2013. In response to the published notice, NTPC, NLC and Adani Power Ltd have made their suggestions/comments on the draft amendments.

4. Rule 3(4) of the Electricity (Procedure for previous publication) Rules, 2005 provides that "the Authority or the Appropriate Commission having powers to make regulations shall consider any objection or suggestion which may be received by the Authority or the Appropriate Commission from any person with respect to the draft before the date so specified." Accordingly, the comments received in response to the published notice regarding draft amendment regulations has been examined and dealt with in succeeding paragraphs.

5. Regulation 101 of the draft Amendment Regulations provides as under:

Time limit for disposal of petitions other than review petitions

"101. Save as otherwise provided in the Electricity Act, 2003 with regard to tariff petitions and applications for grant of license or in the Procedure for holding Inquiry by Adjudicating officer Rules, 2004 in respect of the proceedings under Section 143 of the Electricity Act, 2003 or in Regulation 103 of these regulations in respect of review petitions, the Commission shall dispose of the petitions finally within a period of six months from the date of admission.

Provided that where the petitions are not disposed of within six months, the Commission shall record the reasons for the time taken for disposal of the petitions."

6. NTPC and NLC have submitted their objections/suggestions as under:
 - (a) NTPC has submitted that in order to achieve the target of disposing petitions within six months from the date of admission, the Commissions may consider making amendments to Regulations 49 to 52 (filing of reply, opposition, objections etc) and Regulation 87 (chapter V –Tariff Regulations regarding filing of replies, rejoinders and/or submissions against technical validations) by putting a time frame. NTPC has also submitted that in exercise of powers under Regulation 68 (interim order) of the Principal Regulations, the Commission may contemplate issuance of provisional tariff orders within a stipulate a time frame in respect of tariff applications for new units declared /to be declared by generating stations/companies and petitions filed under Regulation 6(1) of the 2009 Tariff Regulations. NTPC has further submitted that Appendix-I for the tariff period 2014-19 may be revised to include all such information so that tariff petition can be disposed of expeditiously. NTPC has suggested that the proposed amendments may be implemented with effect from the tariff period 2014-19 since the balance time period in the current control period is very little.
 - (b) NLC has not opposed the time limit of six months for disposal of the petitions from the date of admission. It has however submitted that since the proposed regulation takes into consideration the disposal of the applications for determination of tariff in terms of Section 64(3) of the Electricity Act, 2003, the title should be changed to 'time limit for disposal of petitions other than tariff petitions and review petitions'. NLC has also submitted that the

proviso to the proposed regulation may be made applicable to tariff petitions and review petitions since such petitions are not covered under the proposed amendment.

Analysis and decision

7. We have considered the suggestions and objections of NTPC and NLC. It is clarified that the proposed Regulation 101 provides for the time limit for disposal of the petitions other than the following types of petition which are governed by the provisions of the 2003 Act:

(a) Tariff petitions: Time limit has been provided under Section 64(3) of the 2003 Act.

(b) Licenses: Time limit has been provided under Section 15 of the 2003 Act.

(c) Adjudication: Time limit has been provided under Rule 3(8) of the Procedure for Holding Inquiry by Adjudicating Officer Rules, 2004.

(d) Review applications: Time limit has been provided under the proposed Regulation 103.

As regards the suggestions of NTPC to consider making amendments to Regulations 49 to 52 and Regulation 68 and 87 of the Conduct of Business Regulations for fixing time limit it is clarified that the same would be considered at the time of comprehensive review of the Conduct of Business Regulations and during finalization of the Tariff Regulations for the next tariff period.

As regards the suggestion of NLC to extend the proviso to the tariff and review petitions, it is clarified that the proviso has been provided under Regulation 103 to take care of the eventuality in case of any delay in the disposal of review petitions. As regards tariff petitions, it is clarified that the time limit has already been provided under the 2003 Act.

8. Accordingly, there is no change in the proposed amendment and the same has been retained.

Regulation 103

9. Regulation 103 of the draft Amendment Regulations provides as under:

Review of Decisions, Directions and orders

"103.(1) The Commission may, at any time on its own motion, or on an application of any of the persons or parties concerned made within 30 days of making such decision, directions or order, review such decision, directions or orders and pass such appropriate orders as the Commission deems fit.

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

(3) An application for review shall be listed before the Commission within a period of 15 days from the date of filing such application.

(4) The Review applications shall be disposed of within 15 days from the date of hearing if the review is not admitted and within a period of two months from the date of admission if the application is admitted.

Provided that where the review applications cannot be disposed of within the period as stipulated, the Commission shall record the reasons for the additional time taken for disposal of the review applications."

10. Adani Power Ltd and NLC have submitted its objections/comments as under:

(a) Adani Power Ltd has submitted that the proposed time limit of 30 days for filing review petitions is too short a period to analyze the order, judge the implication, take an expert opinion, take approval from the competent authority and decide for filing review, if required. While pointing out that most of the State Regulatory Commissions have provided for a time period of 60 days to 90 days for filing of review, Adani Power Ltd has requested the Commission to either increase the time of filing review to 60 days or to retain the existing time period of 45 days.

(b) NLC while pointing out that the directions of the Tribunal relate to the fixing of time frame for the Commission to dispose of the review petitions filed before it and not the time limit for filing review petitions before the Commission, has submitted that the existing time limit of 45 days for filing review petitions need not be reviewed and the same may be retained. Notwithstanding this, NLC has stated that review of orders necessitate collection of data and records from various departments and authentication and approval from

management for filing the review, which involve a further period. NLC has also sought clarification as to whether the Commission has the power to review its own decisions/orders *suo motu* in the light of the observations of the Commission in its Explanatory Memorandum dated 28.5.2009 wherein review under the Code of Civil Procedure is permissible only when a person aggrieved by the order/decision applies for review.

Analysis and decision

11. We have considered the suggestions and objections of Adani and NLC. Keeping in view the practical difficulty experienced by the stakeholders to collect and collate the necessary inputs for filing the review petition, we are inclined to retain the time limit of 45 days. Any party who has taken time to file its review petition beyond the period of 45 days would be required to justify the delay for condonation by the Commission under Regulation 116 of the Conduct of Business Regulations. There is however no objection to the time limit for disposal of the review petitions and hence the proposed amendment on this count is retained. The submission of NLC that the Commission should not review the order *suo motu* has been accepted. Accordingly, the words "at any time on its own motion" has been deleted. However, a separate regulation (Regulation 103 A) for *suo motu* revision of orders for correction of clerical or arithmetical mistakes arising from accidental slip or omission has been made. Based on this, the proposed amendment is modified as under:

Review of Decisions, Directions and orders

"103.(1) The Commission may, on an application of any of the persons or parties concerned made 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.

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

(3) An application for review shall be listed before the Commission within a period of 15 days from the date of filing such application.

(4) The Review applications shall be disposed of within 15 days from the date of hearing if the review is not admitted and within a period of two months from the date of admission if the application is admitted.

Provided that where the review applications cannot be disposed of within the period as stipulated, the Commission shall record the reasons for the additional time taken for disposal of the review applications.”

Regulation 103A

12. Regulation 103 A of the draft Amendment Regulations provides as under

Amendment of orders

“103A. Clerical or arithmetical mistakes in the orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Commission either of its own motion or on the application of any of the parties.”

13. Since no comments/suggestions have been submitted by any of the parties, the proposed amendment has been retained.

Sd/-
(A.K.Singhal)
Member

Sd/-
(M. Deena Dayalan)
Member

Sd/-
(V.S. Verma)
Member

Sd/-
(Gireesh B. Pradhan)
Chairperson