

Explanatory Memorandum to draft Central Electricity Regulatory Commission (Payment of Fees) (First Amendment) Regulations, 2017

Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012 were notified on 30.3.2012 and came into force with effect from 1.4.2012 (hereinafter Payment of Fees Regulation).

2. Payment of Fees Regulations provides for filing fees for petitions filed for determination of generation and provisional tariff. In addition, Regulation 6 of the Payment of Fees Regulations, 2012 specifies the fees for different types of applications and they are as under:-

“(a) Miscellaneous Application	:	₹3 lakh per application
Review Application	:	₹3 lakh per application
Interlocutory Application	:	₹1 lakh per application
Regulatory Compliance Application	:	₹50,000 per application”

Application other than the tariff petitions and the petitions mentioned above are treated as Miscellaneous Petition and the fee of ₹3 lakh is required to be paid for the said type of application.

3. The Works of Licensees Rules, 2006 was notified under Section 176(2)(e) read with Section 67(2) of the Electricity Act, 2003 (“Act”). Rule 3 of the 2006 Rules provides as under:-

“3. Licensee to carry out works. - (1) A licensee may –

(a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;

(b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of an overhead line on any building or land or having been so fixed, may alter such support:

Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorized by the State Government in this behalf, for carrying out the works:

Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorised may by order in writing direct for any such works, support, stay or strut to be removed or altered.

(2) When making an order under sub-rule (1), the District Magistrate or the Commissioner of Police or the officer so authorised, as the case may be, shall fix, after considering the representations of the concerned persons, if any, the amount of

compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(3) Every order made by a District Magistrate or a Commissioner of Police or an authorised officer under sub-rule (1) shall be subject to revision by the Appropriate Commission.

(4) Nothing contained in this rule shall affect the powers conferred upon any licensee under section 164 of the Act.”

As per the above rules, where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District magistrate or the Commissioner of Police or any other officer authorised by the State Government in this behalf, for carrying out the works. The Rules further provides that the District Magistrate or the Commissioner of Police, or the officer authorised by the State Government shall fix the amount of compensation or of annual rent or of both, which should in his opinion be paid by the licensee to the owner or occupier. The Rules further provides that every order made by a District Magistrate or a Commissioner of Police or an authorised officer under sub-rule (1) shall be subject to revision by the Appropriate Commission.

Therefore, the decision of the District Magistrate under Rule 3(2) of the Works of Licensees Rules may relate to either permission to enter premises of the land owner or occupier as well as the compensation for using the land for installation of the transmission lines. Against the order of the District Magistrate, revision petition lies before the Appropriate Commission.

4. Appropriate Commission in respect of the transmission lines executed by the PGCIL and inter-State Transmission Licensees is the Central Commission. Therefore, the order passed by the District magistrate or a Commissioner of Police or an authorised officer shall be subject to the revision by the Central Commission.

5. It has been brought to the notice of the Commission that the land owners and small farmers are required to file the “Revision Petition” under the head “Miscellaneous Petitions” by paying fee of ₹3 lakh. The land owners and small farmers are finding it difficult to pay fee of ₹3 lakh to file a “Revision Petition”. It has been suggested that the filing fee may be reduced in case of “Revision Petition” in order to make it affordable to the affected parties.

6. The Commission is of the view that a separate fee needs to be prescribed in respect of “Revision Petition” in order to make it affordable for the land owners/small farmers to bring their grievances before the Commission in terms of Rule 3 (3) of the 2006 Rules. This requires amendment of the Payment of Fees Regulation.

Accordingly, it is proposed to define “Revision Petition” under Regulation 2 of the Payment of Fees Regulations, 2012 and to specify a fee of ₹25,000/- for “Revision Petition” in Regulation 6 of the Payment of Fees Regulations, 2012. Accordingly, the following amendments have been proposed to Regulation 2 and 6 of the Payment of Fees Regulations, 2012:-

a. Amendment of Regulation 2 of Payment of Fees Regulations, 2012:

Following sub-clause is proposed to be added after sub-clause (l) of clause (1) of Regulation 2:-

“(m) “Revision Petition” means the petition filed by any person against an order made by a District Magistrate or a Commissioner of Police or an authorised officer as provided under sub-rule (3) of Rule 3 of the Works of Licensees Rules, 2006.”

b. Amendment of Regulation 6 of Payment of Fees Regulations, 2012:

Following sub-clause is proposed to be added after sub-clause (d) of clause (1) of Regulation 6:-

“(e) Revision Petition : ₹ 25,000/- per petition”

7. Power Grid Corporation of India Limited (PGCIL) vide letter dated 20.11.2015 has sought waiver from payment of fees for various petitions/applications filed by it in discharge of the regulatory and statutory functions as a Central Transmission Utility (CTU). PGCIL has stated as CTU it is required to perform various regulatory functions as under:-

a. As per the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009, CTU is the nodal agency for grant of connectivity, long term access and medium term open access and is required to determine the Total Transfer Capacity, Total Reliability Margin and Available Transfer Capability in respect of long term and medium term open access.

b. Under the Central Electricity Regulatory Commission (Grant of Regulatory Approval for execution of Inter-State Transmission Scheme to Transmission Utility) Regulations, 2010, CTU has to consult stakeholders for system strengthening/upgradation of ISTS Scheme to enable reliable, efficient and economical flow of electricity within and across the region and seen regulating approval.

c. As per the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010, the CTU has to carry out the planning process from time to time for identification of inter-State Transmission System including the transmission system associated with Generation Projects, regional, and inter-regional system strengthening schemes in accordance with the perspective plan developed by CEA. CTU has to plan system strengthening schemes to overcome the constraints in power transfers and to improve the overall performance of the grid. CTU has to carry out planning studies for Reactive Power Compensation of ISTS including reactive power compensation requirement at the generator's/bulk consumer's switchyard and for connectivity of new generator/bulk consumer to the ISTS. Further, CTU is also responsible for system security, outage planning, recovery procedures and event information.

d. As per the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010, CTU is responsible for raising the transmission bills, collection, and disbursement of transmission charges to ISTS transmission licensees. CTU is required to enter into TSAs with the Designated ISTS Customers. CTU is also required to enter into a separate revenue sharing agreement with ISTS transmission licensees to disburse monthly transmission charges among various transmission licensees.

e. As per the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009, the CTU is required to send its non-binding recommendations, if any, in case of applications for transmission licence to the Commission.

8. PGCIL has stated that for discharging these functions, there is a dedicated CTU-Planning department headed by Executive Director besides a large number of officials on sharing basis from departments like Corporate Monitoring Group, Finance, Law, Engineering, Smart Grid, Operation Service, Load Despatch and Communication, HR, IT, etc. About 150 executives on dedicated and sharing basis are engaged in discharge of statutory and regulatory functions of CTU. The source of income for CTU is the application money of LTA/MTOA applications and the applications under Connectivity Regulations and the fee realised is very nominal. The cost of performing the CTU functions far exceeds the income and PGCIL has to bear the cost of performing the functions of CTU. PGCIL has requested that payment of application fee may be waived for application/petition made in discharge of the regulatory function as CTU as has been done in the case of NLDC/RLDCs.

9. The expenses incurred by PGCIL in performance of the statutory role as CTU is higher than the income received by the CTU through application money. With privatisation in the power sector and participation of IPPs and increasing complexity of issues, the role of CTU assumes significance. In discharging the statutory obligations, the CTU is required to file petitions/applications regarding non-compliance and difficulties faced in implementing the provisions of the Act and the regulations. The number of petitions/applications has been increasing. As a result, the expenditure incurred by the CTU in discharge of the statutory and regulatory functions is increasing and the income received by it is not commensurate with the expenditure incurred by it. Accordingly, the Commission is of the view that the application money in case of the CTU for applications/petitions filed before the Commission in discharge of its statutory functions requires to be waived. Accordingly, Regulation 6 of the Principal Regulations is proposed to be amended by introducing provision exempting CTU from payment of filing fees. Accordingly, following amendment is proposed:

a. Amendment of Regulation 6 of Payment of Fees Regulations, 2012:

Following clause is proposed to be added after clause (2):-

“(3) No application fee shall be payable by the Central Transmission Utility (CTU) for any application made in discharge of its regulatory functions.”