

To

Date 27.09.2024

The secretary,

CERC, 7th and 8th Floor, Block B, India Trading centre

Nauroji Nagar, New Delhi- 110029

Email: secy@cercind.gov.in

asstsecy@cercind.gov.in

Subject: Draft Central electricity Regulatory Commission (Appointment of Consultants) (Fifth Amendment) Regulations, 2024.

Reference: No. L-7/1/0S44(59)-CERC dated 27.08.2024

Sir,

Reference above following comments are sending as suggestions/objections in the draft regulations for consideration of the Hon'ble Commission-

1. The proposed draft fifth amendment of the CERC Appointment of consultant regulation is not in consonance of the Electricity Act 2003 (henceforth the Act). This is because the Act has no mandate in its functions prescribes under section 79 for carryout activities for research and development in the Commission. Research and development in the power sector is provided i.e. in generation. Transmission. Distribution and trading is under the domain of the Central Electricity authority (CEA) under section 73 and sub-section (k) of the Act.
2. The act under Section 73 sub-section (n) also provides the mandate to provide advices to the appropriate governments and the appropriate commission in all technical matters of electricity. It is also fact that the Act clearly defines role of the appropriate governments and the appropriate Commission and the CEA. Under the provisions of the Act the functions of the Central commission are broadly administrative and advisory. In the administrative main function of the CERC is to determination of tariff of the central generating companies and the transmission licensees. The advisory functions of the CERC is to provide statutory advice to the central government and to provide advice to the central government in formulating National Electricity Plan and Electricity Policy. There is no mandate in the Act for doing research and development works and the proposed act of establishing a separate wing contrary to the provisions of law is not only wastage of national resources but also against the public

interest. Therefore, the idea of establishing such separate research and development wings by the Commission is to be aborted.

3. Further if we read the various sections 73,76 and 79 of the Act it is clear that the central commission consists of the Chairperson and members appointed and the Chairperson of the CEA as ex-officio member Section (76). Functions of the CEA is defined under Section 73 and section 79 defines the function of the Central commission. Therefore, establishing a separate academic and research institution/ organizations within CERC would not only wastage of national resources but also against the spirit of law. Therefore, the proposal in the draft is to be aborted.
4. It is also a matter of concern that during the process of amendment of 4th amendment the eligibility criteria for age was made that the applicants should be retired persons. The undersigned objected the draft proposal stating that this will create serious problems and the sanctity of the Central commission would be lost. Detailed explanation was made in the comment but unfortunately nothing was considered in the final regulations were made. The Central commission while finalizing the Regulations neither statement of reasons was published nor the comments of public received were also not uploaded in the CERC website. This is contrary to the advice CERC provided in the statutory advice to the MoP,GoI dated 15.10.2020 where it was stated that the MoP, GoI is to upload all the comments received from the public for maintaining transparency. It is a matter of serious concern.
5. The various acts committed by the central commission against the law, norms and conventions made it perceived that there is conflict of interest associated in appointment of the consultants despite having a huge regular working staff already existed against sanction posts. Further it is also observed that many of the consultants has been re-employed as staff consultants who were retired from the Central commission. This proposed draft regulations also will create serious opportunity to the Central commission for providing appointments without having any useful utilization of the human resources spending taxpayers' money. In this regard it is worth mentioning that in a reply on queries the Central Commission mentioned that several retired employees were re-employed as consultant in the high posts as consultants which is really very

disturbing. This made the central Commission have become the refuge for the superannuated officials without contributing anything to the development in the electricity industry. The central commission must desist from such action and therefore the draft regulations must be called back not only on public interest but also on national interest.

6. Para wise comments: (a) Amendment to regulation 5 of the regulations: As explained above the Act does not permit to it.

(b) Insertion of new regulation 6(B) of the Principal Regulations: The proposed draft is against the principle of engaging consultants as mandates in the act and the procedure to be followed as prescribed. The principal regulations clearly mention the procedure of selection of the individual consultants. Here in the draft proposals the Central commission wants to engage consultants on '**nomination**' basis is not acceptable. The draft proposal is contrary to the transparency to be maintained by the Central commission while discharging its function as mandates U/S 79 (3) of the Act. The proposed amendments are to be aborted by the CERC.

(c) As already explained above the Act has no mandate to purchase any consultancy service for academic and research Institution/ organisations. The research works in generation, transmission, distribution and trading in the field of electricity to be carried out by the CEA under section 73(k) of the Act. Therefore, the Central commission has neither any authority nor jurisdiction to carry out such works under the law. This is wastage of national economic resources too. The central commission has already mis-utilised the power to legislate conferred by the parliament in various occasions for personnel benefits by making several amendments in the principal amendments against public interest. E.g. The principal Regulations of appointment of consultants in the regulation 7(4) states ***"The CEC shall call for applications through publication of notice in at least one newspaper and on the commission's web-site giving as far as possible, a period at least three weeks for submission of applications."*** Here the Central commission deliberately tries to dilute the principal regulations by putting ***"The CEC shall, with approval of the Chairperson , call for Expression of Interest through advertising on the web-site, newspaper or as may be decided."*** The word **and** is replaced with **or** and also as decided by CEC is not acceptable. This would result manipulations

and corrupt practice in appointments which are already very much visible galore.

(d) Performance-related variable pay: Pay and salaries are paid to the employees as staff, Chairperson and Members of the staff working in CERC. There are separate Regulations for appointment of consultant Regulations under section 91(4) of the Act. The proposed Procurement of consultancy services on nomination basis by itself is not proper as it would be in discretion of CEC resulting conflict of interest in the procurement and therefore not liable to be accepted. In the CERC (appointment of consultant) regulations 1999 a detailed procedure of purchasing consultancy services were prescribed in detail and the Commission was to select the consultants and it was necessary to sign an agreement in a prescribed format and the tenure of the consultancy services was not more than two years. The above Regulation was repealed by a new Regulation on 6th of October, 2008 where all the previous procedure of selection was deleted and the selection procedure was entrusted on a new Committee known as "Consultancy Evaluation Committee" (CEC headed by the secretary. The provisions of signing an agreement is also deleted in the new regulations. Subsequently, by first amendment of the new Regulations were incorporated on 06.09.2010 where a new class of consultant named as "staff-consultant" was incorporated without defining the term in the Regulations. The staff consultants were to provide monthly remuneration with an additional hike of 25% in their monthly salary. It was stated in the amended Regulations that due to increase in work load in the commission staff consultants were to engage and new bread of consultants was created. In contrast after enactment of the tariff policy 2006, the work load was considerably reduced as the policy envisaged that generation and transmission tariff were to be determined under tariff bidding process under section 63 of the Act. In the said policy a five-year window was provided for the central government entities after which the tariff should have been decided u/s 63 of the Act for Central utilities also. As such after the national tariff policy was notified the work load of the Central Commission has been considerably reduced. But the Commission in their 4th amendment of the CERC (Recruitment, control and service conditions of staff) regulations the

strength of the staff was increased to 111 nos. Over and above many fore staff-consultants were also appointed without specifying their works/ functions. In a RTI reply dated 15.01.2024 CERC stated that in addition to their regular staff total 33 nos. of staff/ individual consultants has been working in CERC as on 15th January/ 2024. More importantly it is learnt that many of the consultants were re-employed after retirement from CERC which is against the public interest. The individual/ staff consultants re-appointed from retired personnel from CERC has clear conflict of interest and has every likelihood of conflict of interest as during the tenure of their pre-retirement services they might have dealt with those clients now they are to deal as consultant without covering them with service rule of Govt. of India. In the repealed CERC Regulations dated 29.10.1999, Regulation 16 specifically mention that consultants shall not be hired where conflict of interest existed. But now a special breed of consultants was created by the CERC and the persons with conflict of interest has been recruited. The individual consultants are paid monthly remuneration but is not uploaded in its web-site as CERC does it for every month for other staffs employed in the central Commission. This is against the mandate of the Act U/S 79(3) which states that *“The Central Commission shall ensure transparency while exercising its powers and discharging its functions.”* Therefore, there is reason to believe that a racket of appointment has been running in the central Commission which is not only against the public interest but also against the national interest. This also create enormous confusion in the minds of public. A regulatory body is not to create confusion. The 2003 Act requires that Commission should act in a particular manner. That is the intention of the legislature and the intention is of an imperative character. The Commission cannot give an indecent burial to the imperative mandate of the statute, corrode the integral scheme engrafted under it and defeat the legislative intendment. There may be a perceptual error by any adjudicating or regulating authority but there cannot be a functioning which would lead to a volcanic eruption by violation of the statute.

7. As stated above the proposed draft amendment Regulations are not required as work load of CERC has been reduced considerably after enactment of Tariff policy and also increased its strength of the Regular

staff in earlier amendments up to 111 Nos. A detail performance audit of the work of the existing staff and the consultants must be evaluated before increasing its consultants which are not necessary also against the public as well as national interest. Therefore, this draft amendment should be aborted. Public hearing must be conducted in the matter.

Thank you.

Yours faithfully

Hemanta Madhab Sharma

146(FF), Vinobapuri, Lajpat Nagar-2, new delhi-110024

Mob. No. 9810566869;

Email: hemantahemanta@rediffmail.com