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PART I—Orders and Notifications by the Governor of West Bengal, the High Court, Government Treasury, etc.

WEST BENGAL ELECTRICITY REGULATORY COMMISSION**NOTIFICATION**

No. 33/WBERC Dated : 05.03.2007 In exercise of the powers conferred by sub-section (1) and clauses (zj), (zl), (zn), (zo) & (zp) of sub-section (2) of section 181 read with sub-sections (1) and (4) of section 91, sub-section (1) of section 92, sub-section (1) of section 127 and section 130 of the Electricity Act, 2003 (36 of 2003) and all powers enabling it in that behalf, and in supersession of the notification no. 12/WBERC dated 12.11.2003 published in the Kolkata Gazette, Extraordinary on 1.3.2004, as modified, West Bengal Electricity Regulatory Commission hereby makes the following regulations:-

CHAPTER – I**(General)****Short title, commencement and interpretation:**

1. (1) These regulations may be called the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2007.
- (2) They shall come into force on the date of their publication in the Official Gazette.

- (3) They extend to the State of West Bengal.

Definitions:

2. (1) In these regulations, unless the context otherwise requires:-
 - (a) 'Act' means the Electricity Act, 2003 (36 of 2003);
 - (b) 'Association' means an association or a group or a body or a forum of consumers that is registered in India under any law, for the time being in force, that mainly works for promotion of the cause of the consumers, that has been so functioning for at least five years and that has been fully and consistently obeying all the provisions of law under which it has been registered, particularly in respect of holding its annual general meetings and auditing its accounts;
 - (c) 'Chairperson' means the Chairperson of the Commission;
 - (d) 'Commission' means the West Bengal Electricity Regulatory Commission.

(e) 'Fees Regulations' means the regulations made under sub-section (1) and clauses (zo) and (zp) of sub-section (2) of section 181 read with clause (g) of sub-section (1) of section 86 and sub-section (1) of section 127 of the Act;

(f) 'Member' means a member of the Commission and includes the Chairperson;

(g) 'Officer' means an officer of the Commission and includes the Secretary;

(h) 'Petition' includes complaints, appeals, replies, rejoinders, supplemental pleadings, other papers and documents filed before the Commission in proceedings in the manner provided in these regulations;

(i) 'Proceedings' or 'proceedings' means all the proceedings of the Commission in discharge of its judicial 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;

(j) 'Regulations' means the Regulations made under the Act;

(k) 'Rules' means the Rules made under the Act;

(l) 'Secretary' means the Secretary of the Commission;

(2) Words or expressions used and not defined in these regulations but defined in the Act shall have the meanings respectively assigned to them in the Act.

Commission's office, office hours and sittings:

3. Unless otherwise directed, the headquarters and other offices of the Commission shall open daily except on Saturdays, Sundays and holidays notified by the Government of West Bengal. The headquarters and other offices of the Commission shall open at such hours as the Commission may direct from time to time.

4. Where the last day for doing of any act falls on a day on which the office of the Commission is closed and by reason thereof the act can not be done on that day, it may be done on the next day on which the office is open.

5. The Commission may hold sittings for meetings or proceedings at the headquarters or at any other place in West Bengal on day and time to be decided by the Commission.

Quorum for meeting:

6. (1) The Quorum for a meeting of the Commission shall be two.

(2) The Chairperson, or if he is unable to attend a meeting of the Commission, any other Member nominated by the Chairperson in this behalf and, in the absence of such nomination or where there is no Chairperson, any Member chosen by the Members present from amongst themselves, shall preside at the meeting.

(3) All the questions which come up before any meeting of the Commission shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote.

(4) Save as otherwise provided in sub-regulation (3), every Member shall have one vote.

(5) The Chairperson shall call the meeting of the Commission. The notice of the meeting along with place, time and agenda items to be considered will be issued by the Secretary in writing to all the members preferably seven days before the meeting with the approval of the Chairperson. The Members may also request for inclusion of any item in the agenda for the meeting and the same shall also be included in the agenda for

the meeting. The Chairperson may also call a meeting at any short notice if he considers the same to be necessary.

(6) All decisions, directions and orders of the Commission taken in a meeting of the Commission shall be in writing, and expressed in terms of the views of the majority of the votes of the Members present. The views of the dissenting Member, if any, will also be appropriately recorded.

(7) The Secretary shall maintain the Minute Book and paste duly signed Minutes in the Minute Book, the pages of which will be numbered serially in a continuous manner.

Language of the Commission:

7. Meetings and also proceedings of the Commission shall be conducted in English or Bengali.

8. The petitions, replies, objections, evidence, documents or other matters contained in any language other than English or Bengali, may be accepted by the Commission only if 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. The Commission in appropriate cases may direct translation of any document relevant to the proceedings in English by an Officer or person designated by the Commission for the purpose.

9. A 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 into English, may be accepted by the Commission as a true translation subject to satisfaction of the Commission.

Seal of the Commission:

10. There shall be a separate seal indicating that it is the seal of the Commission.

11. 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 the Secretary or an Officer designated for the purpose by the Commission.

Secretary of the Commission:

12. The Secretary shall exercise his powers and perform his duties under the control of the Chairperson in particular and the Commission in general. He shall exercise such functions as are assigned to him by these regulations or otherwise by the Commission or the Chairperson. In particular, or without prejudice to the generality of the above provisions, the Secretary shall have the following duties, viz.: -

(a) He shall have the custody of the seal, records and assets of the Commission;

(b) He shall receive or cause to receive all petitions;

(c) He shall prepare or cause to be prepared briefs and summaries of the pleadings presented by various parties in course of hearings held by the Commission in discharge of its functions as may be directed by the Commission;

(d) He shall assist the Commission in the proceedings relating to the powers exercisable by the Commission;

(e) He shall ensure compliance of the decisions and orders passed by the Commission;

(f) He shall have the right to collect from the State Government or other offices, companies or firms or any other party or the licencees, 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 said information before the Commission;

- (g) He shall authenticate the orders and decisions passed by the Commission; and
- (h) He shall perform and provide administrative, logistical and other support functions in the Commission and will work within approved organizational chart of the Commission.
13. The Commission may delegate to any of its Officers such functions and duties including functions and duties that may be required by these regulations to be exercised by the Secretary on terms and conditions which the Commission may order for the purpose subject to the provisions of the Act.
14. 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.
15. In the absence of the Secretary, such other Officer, as may be nominated by the Chairperson, may exercise all or any functions of the Secretary.
16. The Commission shall 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 any Officer.

Advisory Committee:

17. (1) The Commission may pay to the members of the Advisory Committee except ex-officio members of the Committee such allowances/fees etc. apart from reimbursement of expenses as may be decided by the Commission from time to time.
- (2) Members of the Advisory Committee envisaged under sub-section (2) of section 87 of the Act shall be nominated by the Commission except the ex-officio members of the Committee.

(3) The criteria of the nomination shall be decided by the Commission from time to time keeping in view the objects of the Advisory Committee.

(4) A meeting of the Advisory Committee will be called by the Secretary of the Commission with the approval of the Chairperson. Notice of the meeting along with place, time and the matters / issues to be considered in the meeting will be sent to the members of the Advisory Committee at least seven days in advance.

Consultant:

18. (1) The Commission may appoint consultants to assist the Commission in discharge of its functions in the manner as may be decided by the Commission.

(2) The fee of the consultants and other terms and conditions for engagement of the consultants shall be such as may be decided by the Commission.

(3) The consultants shall be bound to maintain absolute secrecy on all matters / issues related to the work of the Commission. The consultant shall not reveal or cause to reveal directly or indirectly any information related to the Commission or gathered by him during the work of the Commission to any person other than those authorized by the Commission.

(4) The Commission shall have full and unrestricted right to appoint a consultant or terminate, curtail or extend the term of any consultant at its sole discretion and without giving any prior notice.

(5) The consultant shall not be an officer of the Commission in terms of the Act or Rules or Regulations.

(6) In case of non-compliance of the Regulations and orders of the Commission, the consultant may be liable for suitable action as may be decided by the Commission.

Assistance of Experts:

19. (1) The Commission may, at any time, take the assistance of any experts, Engineers, Cost Accountants, Chartered Accountants, Advocates, Surveyors and such other technical and professional persons as may be considered necessary and ask them to study, inquire into any matter or issue and submit report or furnish any information. The Commission may determine from time to time the terms and conditions for engagement of such professionals including their remunerations for their services.
- (2) The Commission may engage any Advocate of its choice to defend the Commission before the different Courts and Tribunals. The Commission may also seek legal opinion from any Advocate of its choice. The terms and conditions of engagement of such Advocates shall be decided by the Commission. An Advocate engaged by the Commission shall maintain absolute secrecy on all matters/issues related to the work of the Commission. The Advocate shall not, directly or indirectly reveal or cause to reveal any information related to the work of the Commission, gathered by him during the work of the Commission to any person other than those authorised by the Commission.

Investigation:

20. (1) The Commission may appoint any person including an Institution, a Firm, a Cost Accountant, a Chartered Accountant, an Advocate and an Engineer as investigating authority.
- (2) Persons so appointed as investigating authority shall be of repute with specialization in the field, which needs to be investigated, and which pertains to the affairs of the allegedly offending generating company or licensee or others.

(3) The investigating authority shall submit its report to the Commission within such time as may be fixed by the Commission.

(4) The investigating authority may with the approval of the Commission employ an auditor or any other person to assist him in the investigation on such terms and conditions as the Commission may direct including those relating to the assisting person, their remuneration and expenses. The scope of assistance to be rendered to the investigating authority will be such as may be directed by the Commission in writing.

(5) The investigating authority and employees and officers or other persons appointed for assisting the investigating authority shall maintain absolute secrecy of the work assigned to them by the Commission and shall not reveal or cause to reveal directly or indirectly any information related to such investigation or the information gathered by them during such work to any person other than those who has been specifically authorized by the Commission to receive the information and to such extent for which such authorization has been made.

(6) The Commission shall have full and unrestricted right to fix the terms and conditions of appointment of the investigating authority including its expenses and other incidental expenses in connection with such investigation and how such expenses shall be met. The investigating authority or its officers or employees or other persons of such investigating authority shall not take or accept any amount or other facility or benefit from such licensee or generating company or any other person in connection with such investigation unless the same has been specifically authorized by the Commission and to

that extent only to which authorization extends. In case the work involves visiting any area outside the area of the licensee or outside the State of West Bengal then approval of the Commission should be obtained by the investigating authority or other persons connected with such investigation.

(7) The report of the investigating authority as well as investigation report, if any, shall be in writing and given to the Commission in four copies within the time period stipulated by the Commission.

(8) The Commission shall have full power, after giving reasonable notice to the licensee or the generating company, as the case may be, to publish the report in full or in part or any extract of the report of the investigating authority as the Commission may consider necessary.

Consumer Association:

21. (1) It shall be open to the Commission to permit any Association to participate in any proceedings before the Commission, which remain open for the public hearing on such terms and conditions including in regard to the nature and extent of participation as 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.

(2) The Commission may direct Secretary or any other Officer to suitably draft,

publish and issue literature, through different means including display on Website, relating to protection of the consumers' interest, consumers' rights and obligations, the procedure relating to filing of the consumers' complaints and grievances and other related issues in order to safeguard the interest of the consumers. All or any of such publication normally will be issued to the consumers at nominal cost or free of cost as may be decided by the Commission from time to time.

(3) The Commission may also direct any licensee to suitably advise its consumers and / or issue, at its own cost or on recovery of nominal cost, the booklets / other literatures in suitable form regarding consumers' rights and obligations, protection of consumers' interests and such other directions as the Commission may consider necessary to safeguard the interest of the consumers.

CHAPTER – II

(General Rules Concerning the Proceedings before the Commission)

Proceedings before the Commission:

22. (1) The Commission may, from time to time, hold such proceedings which may or may not involve hearings or inviting objections from the affected person through press notification etc. as it may consider appropriate in the discharge of its functions.

(2) 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.

(3) The proceedings before the Commission may relate to any of the following matters: -

- (a) determination of tariff;
- (b) issue of licence or amendments in the licence or cancellation of licence or 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 fall under Section 129 of the Act;
- (h) Any other matter provided under the Act.

Quorum:

23. (1) Quorum for the proceedings before the Commission shall be two unless delegation has been made under Section 97 of the Act.
- (2) The provisions of sub-regulations (2) to (6) of regulation 6 shall apply mutatis mutandis for the proceedings before the Commission.
- (3) All decisions/directions and orders of the Commission shall be in writing in terms of the views of the majority of the Members present. The view of the

dissenting Member shall also be appropriately recorded.

(4) In case the proceedings are done by a single Member or other authorized person in terms of the delegation made under Section 97 of the Act then the order will be signed by such Member or person only.

Initiation of Proceedings:

- 24 (1) The Commission may initiate any proceedings suo motu or on a petition filed by any affected person who can file such petition in terms of the provisions of these regulations and the Act.
- (2) The petition so filed shall become a part of the proceedings only after the petition is admitted by the Commission in terms of these regulations.
- (3) When the Commission initiates the proceedings it shall be by a notice issued by the authorized Officer and the Commission may give such orders and direction as may be deemed necessary, for service of notices to the 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. The Commission may, if it considers appropriate, issue orders for advertisement of the petition inviting comments from the public or any class of persons on the issue involved in the proceedings in such form as the Commission may direct.

Petition and pleadings before the Commission:

25. (1) All petitions to be filed before the Commission shall be type written, cyclostyled or printed neatly and legibly on white paper in six copies and every page shall be consecutively numbered. The contents of the petition shall be divided appropriately into separate

paragraphs, which shall be numbered serially. The petition shall be accompanied by such documents as the Commission has specified in these regulations or may direct from time to time. No typed or printed true copy shall be allowed unless those are accompanied with the xerox copy of the original document.

- (2) Petition filed by any Association, if registered under any State Act or Central Act, shall contain the registration number of such Association. Person signing such petition must also be authorized by the Association concerned in writing to file such petition.
- (3) The Commission at its sole discretion may accept a petition even if the same does not fulfill the requirements laid down in sub-regulations (1) and (2).

General headings:

26. The general headings in all petitions before the Commission shall be in Form-1.

Affidavit in support:

27. (1) Unless specifically exempted by the Commission, petitions filed shall be verified by an affidavit, and every such affidavit shall be in Form-2.

(2) 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 authorised to take and receive affidavits.

(3) Every affidavit shall clearly and separately indicate the statements, documents, supporting data etc. which are true to the:

- (a) knowledge of the deponent;
- (b) information received by the deponent, and
- (c) belief of the deponent.

(4) 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 reflects true position and he has no information / documents etc. which makes the information false or misleading or incomplete.

Presentation and scrutiny of the pleadings etc.:

28. (1) All petitions shall be presented in person or by any duly authorized agent to an Officer designated for the purpose by the Commission (hereinafter called the Receiving Officer) at the headquarters or such other filing centre or centres as may be directed by the Commission from time to time. The petitions may also be sent by registered post with acknowledgement due to the Receiving Officer of the Commission at the places mentioned above within the time, if any, as may be directed by the Commission. The Vakalatnama in favour of the Advocate and in the event the petitions are presented by the authorised agent or representative, the document authorizing the agent or representative shall be filed along with the petition, if not already filed on the record of the case.

(2) The Receiving Officer shall acknowledge the receipt by stamping and endorsing the date on which the petition has been presented and shall issue an acknowledgement with stamp and date 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.

(3) The Receiving Officer, after receiving the petition shall scrutinize the same. If the Receiving Officer finds that the

petition has been made following the procedural formalities under the Act, Regulations, Rules or any direction of the Commission, he shall forward the petition for consideration of the same by the Commission. In case of a new petition, the Receiving Officer shall give a number to such petition. No number shall be given to reply, rejoinder, supplementary pleadings & other papers, filed in connection with an already numbered petition.

(4) If Receiving Officer, upon scrutiny, finds that the petition is defective and the petition has not been made complying with the procedural formalities under the Act, Regulations, Rules or any direction of the Commission, he shall mark such petition as defective. The reasons of such defects shall be recorded in a register specifically meant for such purpose by the Receiving Officer within a period of seven days from the date of receipt of the petition. Such register shall be open for inspection by the concerned party filing the petition.

(5) The Receiving Officer shall prepare a list of defective petitions and such list shall be hung up on the notice Board of the Commission. Cause title and the date of receiving of such defective petition shall be shown in the "defective list". Every defective matter shall be listed on the Notice Board of the Commission for a consecutive period of six weeks.

(6) It shall be the responsibility of the party concerned to cure all the defects mentioned in the register by the Receiving Officer within a period of 90 days from the date of listing the Cause title of the defective petition in the defective list failing which such defective petition shall not be entertained. In that case, it shall also not be forwarded to the Commission for

consideration. However, the concerned party may file a fresh petition after lapse of 90 days from the date of listing the Cause title of the defective petition in the defective list on Notice Board of the Commission.

- (7) Any party, aggrieved by any action or order of the Receiving Officer may approach the Secretary of the Commission by writing a precise letter stating the reasons of being aggrieved;
- (8) The Secretary of the Commission shall pass appropriate order if any such letter is made to him under regulation 28(7).
- (9) A party aggrieved by the order under regulation 28(8) by the Secretary may request in writing by giving adequate reasons for placement of the matter before the Commission for appropriate orders.
- (10) When a matter under regulation 28(9) is placed before the Commission, it may pass appropriate order affirming or modifying or rejecting the order passed by the Secretary or the Receiving Officer after hearing the petitioner if the Commission is of the opinion that in any particular case such hearing would be appropriate / necessary. Such a hearing, however, will be subject to regulation 28(12).
- (11) The Commission after due consideration may admit the petition without requiring the attendance of any party. The Commission may also, if it considers appropriate, issue notice to such person or persons, as it may desire to hear for deciding upon whether the petition is to be admitted.
- (12) If the Commission admits the petition, it may give such orders/ directions as may be deemed necessary for filing of replies and rejoinders in opposition or in support of the petition in such form as the Commission may direct subject

to the provisions of the Act or the Regulations.

(13) The Commission shall afford opportunity of being heard to the applicant while rejecting an application under section 64(3)(b) of the Act if the application under section 64(1) is not made in accordance with the provisions of the Act and Rules and Regulations made thereunder or the provisions of any other law for the time being in force.

Service of notices including notice of proceedings / inviting objections etc.:

29. (1) Any notice or process or summons 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 as may be directed by the Commission;
- (b) by hand delivery through a messenger;
- (c) by registered post with acknowledgement due ;
- (d) by publication preferably in three newspapers – one in Bengali, one in English and one in Hindi – in cases where the Commission is satisfied that it is not reasonably practicable to serve the notices, processes etc. in the manner mentioned above;
- (e) by publication of gist preferably in three newspapers – one in Bengali, one in English and one in Hindi;
- (f) in any other manner as considered appropriate by the Commission.

(2) Every notice or process required to be served or delivered to any person may be sent to the person or his agent empowered to accept service at the address furnished by him or at the place where the person or his agent ordinarily

resides or carries on business or personally works for gain.

(3) In the event any matter is pending before the Commission and the person to be served a notice has authorised an agent or representative to appear for and 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 process on behalf of the party concerned in all matters and the service on such agent or representative shall be taken as the service on the person to be served.

(4) Where a notice is served by a party to the proceedings either in person or through registered post, an affidavit of service shall be filed by the party with the Commission giving details of the date and manner of service of notices and processes.

(5) Where any petition is required to be published it shall be published in such form in the newspaper(s) to be stipulated, for such duration and such time as the Commission may direct.

(6) The Commission may also effect service or give directions for effecting service in any other manner it considers appropriate. The Commission shall be entitled to decide in each case the person(s) who shall bear the cost of such service and publication, except in such cases where the Commission itself effects the service or publication.

(7) In default of compliance with the requirements of the Regulations or directions of the Commission as regards the service of notices, summons or process or the advertisement and publication thereof, the Commission may either dismiss the petition or give such other or further directions, as the Commission considers appropriate.

- (8) 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 proceedings shall be invalidated by reason of any defect or irregularity in the service or publication unless the Commission, on an objection taken, is of the opinion that substantial injustice has been caused by any such defect or irregularity or there are otherwise sufficient reasons for doing so.

Filing of reply, opposition, objection etc.:

30.(1) (a) Each person, to whom the notice of inquiry or process or summons is issued by name, (hereinafter called the respondent), shall file reply and the documents relied upon within such period, as may be directed, in six copies. In the reply the respondent shall specifically admit, deny or explain the facts stated in the notice of inquiry or process or summons and may also state such additional facts, as he considers necessary for a 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.

(b) The respondent shall serve a copy of the reply along with the documents duly attested to be true copies on the petitioner or his authorised representative and file proof of such service with the office of the Commission at the time of filing the reply.

(c) Where the respondent states additional facts as may be necessary for a just decision of the case, the Commission may allow the petitioner to file a rejoinder to the reply filed by the respondent. The procedure mentioned above for filing of the reply shall apply mutatis mutandis to the filing of the rejoinder.

(2) (a) Every person, who is affected and who intends to file objections or comments in regard to a matter pending before the Commission, pursuant to the advertisement, publication etc. issued for the purpose (hereinafter called the objector), shall deliver in six copies to the officer designated by the Commission for the purpose the statement of the objection or comments with copies of the documents and evidence in support thereof within the time fixed for the purpose.

(b) The Commission, after deciding the requirement of hearing, may permit such objector, being a person or persons including an Association, to participate in the hearing before the Commission. Commission may also disallow any person including any objector or any 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 hearing.

(3) The Commission shall duly take into account the objections and comments filed within time and may give such opportunity to the petitioner, as the Commission considers appropriate to deal with the objections and comments.

Hearing of the matter:

31. (1) The Commission may determine the requirement, the extent, the stage, the manner, the place, the date and the time of the hearing of the matter including the persons who may be permitted in the hearing at its sole discretion and dispose of the matter as expeditiously as possible.

(2) (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. The Commission may provide or direct the party to provide translator for oral evidence, pleadings as may be considered necessary by the Commission.

(b) If the Commission directs evidence of a party to be led by way of affidavit, the Commission may, as and when the Commission considers it to be necessary, grant an opportunity to the other party to give its points / objection provided the other party has filed his objections/ points.

(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 notes of arguments or submissions in the matter.

(e) When the Commission determines the requirement of hearing under regulation 31(1) and grants an opportunity of being heard to a person, who is a party to any proceedings before the Commission, he may appear in person or may authorise any of his employees to appear before the Commission and to act and plead on his behalf. The person may also authorise a member of any Association or any statutory professional body holding a certificate of practice as the Commission may from time to time decide to represent him and act and plead on his behalf before the Commission. For the purpose of this regulation, the Commission specifies the following professional bodies in addition to legal practitioners / Advocates.

- (i) Institute of Chartered Accountants of India;
- (ii) Institute of Cost and Works Accountants of India;

(iii) Institute of Company Secretaries of India;

(iv) The Institution of Engineers (India).

(f) The Vakalatnama or the authority letter shall be in the form as specified in Form-3. The Memorandum of Appearance for representing the party shall be in the form as given in Form-4.

Power of the Commission to call for information, evidence, etc.:

32. (1) The Commission may, at any time before passing order, ask any person including any party to the proceedings to furnish required information related to the subject matter of the proceedings and to produce documentary or other evidence connected with the subject matter of the proceedings before the Commission within the time limit as may be directed by the Commission for the purpose of enabling it to pass order.

(2) The Commission may direct the summoning of the witness, discovery and production of any document or other material objects producible in evidence, requisitioning any public record from any office, examination by an Officer or consultant or experts or investigating authority appointed by the Commission, the books, accounts or other documents or information in the custody or control of a person which the Commission considers relevant for the matter.

Reference of issues to others:

33. (1) At any stage of the proceedings the Commission may refer such issue or issues in the matter as it considers appropriate to persons including, but not limited to the Officers, experts, investigating authority and consultants of the Commission whom the Commission considers as qualified to verify the documents, statements, data

etc. and to give expert or specialised advice or opinion on such issue or issues.

- (2) The Commission may nominate from time to time any such person to visit any place or places for inspection and report on the matters to be directed by the Commission.
- (3) The Commission, if it thinks fit, may direct the petitioner / respondent / objector to appear before the persons designated in sub-regulations (1) or (2) to present their respective views on the issues or matters referred to.
- (4) The report or the opinion received from such person(s) shall form a part of the records of the case and the petitioner / respondent / objector can request and obtain a copy of the above report or opinion received, in accordance with the provisions of these regulations.
- (5) The Commission may take into account the report or the opinion given by the person while deciding the matter and if considered necessary, 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.

Procedure to be followed where any party does not appear:

34. (1) When, on the date fixed for hearing or filing information, documents, petition etc. or any other extended date, if any party or his authorised 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
- (2) 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).

Orders of the Commission:

35. (1) The Commission shall pass order and the same shall be signed by the Members, who considered and/or heard the matter as the case may be. In case the Member who considered and/or heard the matter retires or resigns or is removed, the new Member shall sign the order subject to requirement of the same for constituting the quorum of the Commission. In case, a matter is considered and/or heard for several days, the Member, who considered and/or heard the matter remains absent in some of the days but remains present in most of the days when the matter was considered and/or heard, shall sign the order.
- (2) The reasons given by the Commission in support of the orders including those by the dissenting member, if any, shall form a part of the order and shall be available for inspection and supply of copies in accordance with these regulations.
- (3) All orders and decisions issued or communicated by the Commission shall be certified by the signature of the Secretary or any other Officer empowered in this behalf by the Chairperson and shall bear the official seal of the Commission.
- (4) (a) All orders of the Commission shall be available for inspection and supply of certified copy as per regulation 36.
- (b) The Commission at its sole

discretion may direct that the order or gist of the order may be published in the manner as may be directed.

Inspection of Records and supply of certified copies:

36. (1) Any person shall be entitled to obtaining certified copy or inspection of records of any proceedings of the Commission subject to an application as per Schedule-I [for obtaining certified copy] or Schedule-II [for inspection of the records of the proceedings], as the case may be, and payment of requisite fees and compliance with the following regulations.
- (2) All application for obtaining certified copy or for inspection of records of any proceedings shall be presented as per Schedule I and Schedule-II respectively, in person or by any duly authorized agent to an Officer designated for the purpose by the Commission (hereinafter called the Receiving Officer) at the headquarters or such other places as may be directed by the Commission from time to time.
- (3) The Receiving Officer shall acknowledge the receipt of the application for certified copy or for inspection by stamping and endorsing the date on which the application has been presented and shall issue an acknowledgement with stamp and date to the person filing such application. The Receiving Officer shall give a number to such application.
- (4) The Receiving Officer, after receiving the application for certified copy or for inspection shall scrutinize the same. If the Receiving Officer finds that the application has been made following Schedule-I or Schedule-II, as the case may be, or any direction of the Commission, he shall forward the

petition for necessary steps.

- (5) If the Receiving Officer, upon scrutiny, finds that the application is defective and the application has not been made giving all the particulars of the Schedule-I or Schedule-II, as the case may be, he shall mark such application as defective. The reasons of such defects shall be recorded in a register specifically meant for such purpose by the Receiving Officer within a period of three days from the date of receipt of the application.
- (6) The Receiving Officer shall prepare a defective list and such list shall be hung up on the notice Board of the Commission within a period of three days, excluding the day on which the application has been received, from the date of receipt of the application. Name of the applicant and the date of receiving of defective application shall be shown in the defective list. Every defective application shall be listed on the Notice Board of the Commission for a consecutive period of six weeks.
- (7) It shall be the responsibility of the party concerned to cure all the defects mentioned in the register by the Receiving Officer within a period of 90 days from the date of listing of the name of the applicant in the defective list failing which such defective application shall not be entertained. However, the concerned person may file a fresh application for obtaining certified copy or for inspection of records in compliance with regulation 36 and its sub regulations.
- (8) It shall be the responsibility of the concerned person to pay necessary fees as per the estimation made by an Officer and/or any other person authorized by the Commission. The estimation of fees shall be recorded by an Officer in a register, which shall be open for inspection by the concerned person seeking certified copies or inspection.

No certified copy and/or inspection shall be given / allowed unless all the fees for certified copy and/or inspection are paid.

(9) A person, aggrieved by any action or order of the Receiving Officer may approach the Secretary by writing a precise letter stating the reasons of being aggrieved;

(10) The Secretary shall pass appropriate order if any such letter is made to him under regulation 36(9).

(11) An aggrieved person by the order under regulation 36(10) by the Secretary may request in writing to the Secretary by giving adequate reasons for placement of the matter before the Commission for appropriate order.

(12) When a matter under regulation 36(11) is placed before the Commission, it may pass appropriate order affirming or modifying or rejecting the order passed by the Secretary or the Receiving Officer after hearing the petitioner if the Commission is of the opinion that in any particular case such hearing would be appropriate / necessary. Such matter shall be considered by the Commission usually without hearing the person concerned. However, in case Commission feels the requirement of granting hearing, same may be granted

(13) No person shall be entitled obtaining certified copies or inspection of records of any document if such documents are considered as confidential or privileged. The privileged documents shall include any brief/file seeking legal opinion and the legal opinion given by any Advocate appointed by the Commission. No inspection and/or certified copy shall be given for those documents.

(14) Notwithstanding anything contained in regulations 36(1) to 36(12) no inspection and/or certified copy be given

when the Commission is in the midst of preparing an order in discharge of its functions under section 86 of the Act and Commission feels that the concerned file from which the documents have been sought for inspection or for certified copies are required for the purpose of completing its order.

(15) In every certified copy granted by the office of the Commission following information shall be provided on the certified copy itself.

(i) Date of application for the certified copy.

(ii) Date of curing defects, if any.

(iii) Date of payment of fees.

(iv) Date on which certified copy is ready for delivery.

(v) Date on which certified copy is received by the applicant.

CHAPTER-III

(Miscellaneous)

Appeal under Section 127 of the Act:

37. (1) The form and the contents in respect of an appeal to be filed before the appellate authority by a person aggrieved by a final order made under section 126 of the Act is as contained in Form-5.

(2) The appeal shall be verified in the manner provided in Chapter-II of these regulations and the fees to be paid for preferring the appeal shall be such as specified in the Fees Regulations.

Interim Orders:

38. The Commission may pass in any proceedings before it, such interim orders including an interim exparte order, as it may consider appropriate.

Review of the decisions, directions and orders:

39. (1) The Commission may, on its own motion or on the application of any of the persons or parties concerned, within 90 (ninety) days of the making of any decision, directions or order, review such decision, direction or order and pass such appropriate orders as the Commission thinks fit.
- (2) An application for such review shall be filed in the same manner as a petition under Chapter-II of these regulations.

Continuance of proceedings after death, etc.:

40. (1) Where in any proceedings any of the parties to the proceedings dies or is adjudicated as an insolvent or in the case of a company under liquidation or winding up, the proceedings shall continue with the successors-in-interest, the executor, administrator, receiver, liquidator or other legal representative of the concerned person.
- (2) The Commission may, for reasons to be recorded in writing, treat the proceedings as abated in case the Commission so directs and dispenses with the need to bring the successors-in-interest to come on record.

Publication of petition:

41. (1) Where any application, petition, or other matter is required to be published under the Act or these regulations or as per the directions of the Commission, it shall, unless the Commission otherwise orders or the Act or Regulations otherwise provides, be advertised not less than 7 (seven) days before the date fixed for objections, comments, consultation, hearing etc.
- (2) Except as otherwise provided, such advertisement shall give heading describing the subject matter in brief.
- (3) Such advertisement to be published shall be approved by the Officer designated for the purpose.

Confidentiality:

42. The Commission may, by order, direct that any information, documents and other papers and materials produced before the Commission or any of its Officers, consultants, representatives or otherwise which come into their possession or custody, shall be confidential or privileged and shall not be available for inspection or supply of copies, and the Commission may also direct that such documents, papers or materials shall not be used in any manner except as specially authorised by the Commission.

Specified fees:

43. Requisite Fees shall be paid in terms of the Fees Regulations.

Issue of Orders and Practice directions:

44. Commission may from time to time, issue orders and give directions in regard to the implementation of the Regulations, procedure to be followed on various matters and any other matter for which the Commission is empowered under the Act.

General Order:

45. The Commission may pass any general order and may direct the same for publication in any newspaper for protecting the interest of the consumers, the licensees and the generating companies under the Commission in the State of West Bengal.

Saving of inherent power of the Commission:

46. (1) 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 for meeting the ends of justice or to prevent the abuse of the process of the Commission.
- (2) Nothing in these regulations shall bar the Commission from adopting a procedure, which is at variance with any of the

provisions of these regulations, if the Commission, in view of the special circumstances, on matter or class of matters and for reasons to be recorded in writing deems it necessary or expedient.

(3) 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 made, and the Commission may deal with such matters, power and functions in a manner it thinks fit and proper.

47. The Commission may, at any stage, amend any defect or error in any proceedings before it.

Power to remove difficulties:

48. 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 which appears to it to be necessary or expedient for the purpose of removing the difficulty.

Power to dispense with the requirement of the Regulations:

49. The Commission shall have the power, for reasons to be recorded in writing to dispense with the requirements of any of the Regulations in specific cases subject to such terms and conditions as may be directed.

Extension or abridgement of time prescribed:

50. Subject to the provisions of the Act, the time specified by these 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 reasons by order of the Commission.

Effect of non-compliance:

51. Failure to comply with any requirement of these regulations shall not invalidate any proceedings merely by reasons of the

failure unless the Commission is of the view that such failure has resulted or will result in miscarriage of justice.

Costs:

52. (1) Subject to such conditions 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 costs are to be paid and give all necessary directions for the aforesaid purpose.

(2) The costs shall be paid within 30 (thirty) days from the date of the order or within such time as the Commission may, by order, direct.

Enforcement of orders passed by the Commission:

53. 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.

Repeal:

54. (1) The following regulations issued by the Commission are hereby repealed:

The West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2003 issued under Notification No. 12/WBERC dated 12th November, 2003 published in Kolkata Gazette, Extraordinary, on 1st March, 2004, as it stands modified and the West Bengal Electricity Regulatory Commission (Conduct of Business) First Amendment Regulations, 2004, issued under Notification No. 19/WBERC dated 12th October, 2004 and published in Kolkata Gazette,

Extraordinary, on 27th January, 2005 are hereby repealed.

- (2) Notwithstanding such repeal, anything done or any action already taken under the repealed Regulations, shall in so far as it is not inconsistent with the West Bengal Electricity Regulatory

Commission (Conduct of Business) Regulations, 2007, be deemed to have been done or taken under the corresponding provisions of the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2007.

47. The Commission may, at any stage, amend any defect or error in any proceedings before it.

48. 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 which appears to it to be necessary or expedient for the purpose of removing the difficulty.

Power to remove difficulties:

49. The Commission shall have the power for reasons to be recorded in writing to dispense with the requirements of any of the Regulations in specific cases subject to such terms and conditions as may be laid down in the order.

Extension or abridgement of time prescribed:

50. Subject to the provisions of the Act, the time specified by these 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 reasons by order of the Commission.

Effect of non-compliance:

Failure to comply with any requirement of these regulations shall not invalidate any proceedings merely by reasons of the

49. The Commission shall have the power for reasons to be recorded in writing to dispense with the requirements of any of the Regulations in specific cases subject to such terms and conditions as may be laid down in the order.

Extension or abridgement of time prescribed:

50. Subject to the provisions of the Act, the time specified by these 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 reasons by order of the Commission.

Repeal:

24. (1) The following regulations issued by the Commission are hereby repealed:

The West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2003 issued under Notification No. 12/WBERC dated 12th November 2003 published in Kolkata Gazette Extraordinary on 1st March, 2004 as it stands modified and the West Bengal Electricity Regulatory Commission (Conduct of Business) First Amendment Regulations, 2004, issued under Notification No. 19/WBERC dated 12th October, 2004 and published in Kolkata Gazette.

SCHEDULE—I

[See regulation 36(1). Applicable for obtaining Certified Copy]

To,
The Secretary,
West Bengal Electricity Regulatory Commission,

Sir,

I hereby apply for certified copies. The particulars are given below: -

- a) Name of the Applicant:
- b) Registration Number: -[to be filled up, if applicable]:
[if the applicant is an Association and registered under any Act, registration Number of such Association to be given]
- c) Full Address of the Applicant:
- d) Case/proceedings number from which certified copy is sought:
- e) Name of the petitioner and the first Respondent: -
(if any) in the case / proceedings of which certified copy is sought:
- f) Date of the Order/Decision: -
- g) Whether the case is pending or disposed of:
- h) Specific reference of the documents/records of the proceedings
[i.e. whether the document sought is a reply or a rejoinder etc.]
- i) Whether the applicant is a party to the case/proceedings:
- j) Purpose of application for certified copy:

Place:

Date:

Signature

SCHEDULE—II

[See regulation 36(1). Applicable for inspection of the records of the proceedings]

To
The Secretary,
West Bengal Electricity Regulatory Commission,

Sir,
I hereby apply for Inspection of Records of the proceedings.

The particulars are given below: -

- a) Name of the Applicant:
- b) Registration Number: -[to be filled up, if applicable]:
[if the applicant is an Association and registered under any Act, registration Number of such association be given]
- c) Full Address of the Applicant:
- d) Case/proceedings Number of which inspection is sought:
- e) Name of the petitioner and the first Respondent: -
(if any) in the case / proceedings of which inspection is sought:
- f) Whether the case is pending or disposed of:
- g) Specific reference of the documents/records of the proceedings of which inspection is sought
[i.e. whether the document sought is a reply or a rejoinder etc.]
- h) Whether the applicant is a party to the case/proceedings:
- i) Purpose of inspection: -
- j) Date & Duration of the inspection sought: -

Place:
Date:

Signature.

Form-1

(See regulation -26)

**General Headings for proceedings.
Before the West Bengal Electricity Regulatory Commission, Kolkata**

File No.
Case No.
(To be filled by the office)

File No.
Case No.
(To be filled by the office)

In the matter of :

[Gist of the purpose of the petition or application including relevant type of proceedings under regulation 22(3)]

And

In the matter of:

[Name(s) and full address(es) of the petitioner(s)/applicant(s) and name(s) and full address(es) of the respondent(s)*]

* if applicable

Signature

Place:

Name & Address

Date:

* if applicable

Form - 2
(See regulation-27)

Before the West Bengal Electricity Regulatory Commission, Kolkata

File No.

Case No.

(To be filled by the office)

In the matter of:

[Gist of the purpose of the petition or application including its type as per regulation 22(3)]

And

In the matter of:

[Name(s) and full address(es) of the petitioner(s)/applicant(s) and name(s) and full address(es) of the respondent(s)*]

Affidavit verifying the petition/reply/application.

I,....., son / daughter / wife of
.....aged.....residing at.....do solemnly affirm and say as follows:

I am the petitioner/applicant/respondent etc. or I am a Director/Secretary/partner.....ofLtd., the petitioner/applicant/respondent in the above matter and am duly authorised by the said petitioner/applicant/respondent to make this affidavit for and on his/her behalf.

The statements made in paragraphs of the petition/application/reply herein now shown to me and marked with the letter 'A' are true to my knowledge and the statements made in paragraphs.....and marked with the letter 'B' are based on information received and the statements made in paragraphs and marked with the letter 'C' are true to my belief and nothing material has been concealed from the statements so made or documents or supporting data etc. attached.

Solemnly affirmed at.....on this..... day ofthat the contents of this affidavit are true to my knowledge, no part of it is false or nothing material has been concealed therefrom and misleading material included therein.

i) Purpose of inspection:-

Place:

ii) Date & Duration of the inspection sought:-

Date:

Deponent

* if applicable

Place:

Date:

Signature

Form - 3

[See clause (f) of sub-regulation (2) of regulation 31.]

Before the West Bengal Electricity Regulatory Commission, Kolkata

File No.

Case No.

(To be filled by the office)

In the matter of :

[Gist of the purpose of the petition or application including its type as per regulation 22(3)]

And

In the matter of:

[Name(s) and full address(es) of the petitioner(s)/applicant(s) and name(s) and full address(es) of the respondent(s)*]

I,.....practicing / working as, have been authorized by, to act as his/its representative/agent in the above matter and to do all or any act on behalf of the above named petitioner/respondent in all matters in the aforesaid case.

Place:

Signature

Date:

Name & Address

Certified that I have given the above authority and I have powers to give such an authority. Change, if any, will be duly registered with the Commission and I will continue to be bound by the act, action and/or other submissions/undertakings etc. made/given by him/it before registration of such change.

Signature

Name & Address

* if applicable

Form - 4

[See clause (f) of sub-regulation (2) of regulation 31.]

Before the West Bengal Electricity Regulatory Commission, Kolkata
Before the West Bengal Electricity Regulatory Commission, Kolkata

File No.

File No.

Case No.

Case No.

(To be filled by the office)

In the matter of:

[Gist of the purpose of the petition or application including its type as per Regulation 22(3)]

And

In the matter of:

[Name(s) and full address(es) of the petitioner(s)/applicant(s) and name(s) and full address(es) of the respondent(s)*]

Memo of Appearance

I, practicing / working as, have been authorized by, to act as his/its representative/agent in the above matter and to do all or any act on behalf of the above named petitioner/respondent in all matters in the aforesaid case do hereby enter appearance on behalf of

Place :

Signature

Date :

Name & Address

* if applicable

Place:

Name & Address

Date:

Deponent

* if applicable

* if applicable

Form - 5

[See sub-regulation (1) of regulation 37]

**Form of Memorandum of Appeal under Section 127(1) of the
Electricity Act, 2003**BEFORE THE APPELLATE AUTHORITY
UNDER SECTION 127 OF THE ELECTRICITY ACT, 2003

APPEAL NO..... OF 20__

.....
-APPELLANT

- VS -

.....
-RESPONDENT

- (1) The name, designation and address of the Assessing Officer passing the order appealed against.
- (2) The date of the order appealed against.
- (3) Date of communication of the order appealed against
- (4) Amount assessed by the final order under section 126 of the Act.
- (5) Address to which the notices may be sent to the appellant
- (6) Address(es) to which the notices may be sent to the respondents
- (7) Whether copy of the order appealed against is attached herewith
- (8) Whether amount as required to be deposited under section 127(2) of the Act has been deposited with the licensee; if so, the particulars thereof (documentary evidence to be enclosed)
- (9) Whether the appellant wishes to be heard in person?
- (10) Reliefs claimed in the appeal.

STATEMENT OF FACTS

GROUND OF APPEAL

Signature of the appellant/

authorized representative, if any.

VERIFICATION

I,, the of the appellant do hereby declare that what is stated above is true to the best of my knowledge and belief.

Verified today the day of

Signature of the appellant /
authorized representative, if any.

Place: Kolkata

Date: 05.03.2007

By order of the Commission

(K. L. Biswas)

Secretary of the Commission