

Bangladesh Energy Regulatory Commission

In exercise of the power conferred by section 59 of the Bangladesh Energy Regulatory Commission Act, 2003 (Act No 13 of 2003) as amended, The Bangladesh Energy Regulatory Commission hereby adopts the following regulations pursuant to Articles 22,23, 35, 36, 37, 39,42, 43, 46,55, and 63 of the Act.

1. SHORT TITLE AND COMMENCEMENT:

- a. This regulation shall be called Bangladesh Energy Regulatory Commission Electric Generation Tariff Regulation, 2005.
- b. It shall come into force upon publication in the official Gazette.

2. SCOPE AND APPLICATION:

- a. This Regulation shall define: (1) the process of submitting application by a Licensee for an initial tariff rate, terms, and conditions of service, or a change thereof; (2) the methodology to be used by the Commission in reviewing the application; (3) and the procedures for the issuance of an approved initial tariff rate, terms and conditions of service of the applicant licensee; or an approved change thereof.
- b. This Regulation shall apply to licensed applicants for electric generation, including the sale of electric energy therefrom at wholesale for resale to the grid.
- c. In developing this regulation, the Commission has taken into consideration: Electricity Act, Related Presidential Order, Rural Electrification Act and DESA Act; and other applicable acts, orders, etc.

3. DEFINITIONS:

- a. Words, terms and phrases that are defined in the Bangladesh Energy Regulatory Commission Act, 2003 (Act No 13 of 2003), including subsequent amendments to the Act, and Commission's Regulations, shall have the same meaning for the purposes of these Licensing Regulations.
- b. Words, terms and phrases that are not defined in this Regulation or in the Bangladesh Energy Regulatory Commission Act, 2003 (Act No 13 of 2003), including subsequent amendments to the Act and Commission's Regulations, shall have the meaning assigned to them in the Electricity Act, 1910 (Act No 9 of 1910); or other applicable legislation. Words, terms and phrases that are not defined in either the Bangladesh Energy Regulatory Commission Act, 2003 (Act No 13 of 2003), including subsequent amendments to the Act, and the

Regulations, or in the Electricity Act, 1910 (Act No 9 of 1910) shall be defined by the Commission as needed.

c. Unless the context requires otherwise, the words, terms and phrases in the Electric Generation Tariff Regulation and any attachments hereto shall have the following meanings:

(1) "Acceptance Date" means the date on which a rate schedule or tariff has been officially received by the Commission, and the process for hearing commences.

(2) "Accounts" means the accounts prescribed in the uniform system of accounts.

(3) "Act" means the Bangladesh Energy Regulatory Commission Act, 2003 (Act No 13 of 2003) including any subsequent amendments.

(4) "Applicant" means a licensed entity who applied to the Commission in accordance with these Regulations to establish rates and tariffs for operations by the licensee.

(5) "Commission" means the Bangladesh Energy Regulatory Commission.

(6) "Effective Date" means the date on which a proposed rate schedule is permitted by the Commission to become effective.

(7) "Initial Rate" means a filed rate schedule applicable to the generation of electric energy other than that which proposes to supercede, supplement, cancel or otherwise change the provisions of a rate schedule currently on file with this Commission.

(9) "Kilowatt (KW)" means a measure of electricity defined as a unit of demand or capacity, measured as 1 kilowatt (1,000 watts) of power generated.

(8) "Kilowatt-hour (kWh)" means a measure of electricity defined as a unit of work or energy, measured as 1 kilowatt (1,000 watts) of power expended for 1 hour.

(9) "Rate" means the authorized charges, per unit or level of consumption, for a specified time period for any of the classes of generation licensee services provided to a customer.

(10) "Rate Schedule" means a written statement of electric generation service provided to a customer, the rates and charges for or in connection with that

service, and all classification, practices, rules, regulations or contracts which in any manner affect or relate to the aforementioned service, rates, and charges. Any oral agreement or understanding forming a part of such statement shall be reduced to writing and made a part thereof.

(11) "Regulations" means any regulations developed and promulgated by the Commission according to the Bangladesh Energy Regulatory Commission Act, 2003 (Act No 13 of 2003), including subsequent amendments to the Act.

(12) "Schedule" means a statement of the pricing format of electricity and the terms and conditions governing its applications.

(13). "Tariff" means a document, approved by the Commission, listing the terms and conditions of service and a schedule of prices, under which licensee services will be provided.

(14) "Terms and Conditions of Service" means a published document included as part of a licensee's tariff that establishes the terms and conditions of a licensee providing service to a customer, discussing such issues as the conditions under which connection will be provided to a customer, metering, disconnection policies, payment instructions, consumer complaints procedures, etc.

4. APPLICATION FORM AND FEES:

- a. An application for the filing of initial, or the changing of current generation tariff rate, or the change or initiation of terms and conditions of service for customers, shall be filed with the Bangladesh Energy Regulatory Commission in accordance with this regulation.
- b. An application shall be made upon payment of an application fee, which will be fixed by the Commission from time to time. The application fee shall be paid by means of demand draft/pay order from a schedule bank in Bangladesh, in the name of the Bangladesh Energy Regulatory Commission.

5. DOCUMENTS TO ACCOMPANY A TARIFF APPLICATION:

- a. The filing of an application for an initial rate or tariff shall include the following:
 - (1) A list of documents submitted with the filing;
 - (2) The date on which service under the proposed rate schedule is expected to commence;

(3) The names and addresses of those whom the rate schedule or tariff will be mailed;

(4) A copy of the draft notice announcing the initial rate;

(5) A brief description of the kinds of services to be furnished and the rates specified therein;

(6) A summary of the circumstances which show that all requisite agreement to the rate schedule or to the filing thereof, including any contract embedded therein, has in fact, been obtained;

(7) Estimates of the transactions and revenues under an initial rate schedule;

(i) This shall include estimates by months and for the year, of the quantities of services to be rendered and of the revenues to be derived therefrom during the twelve months immediately following the month in which those services will commence.

(ii) Such estimates should be divided by classes of service, customers, and delivery points and shall show all billing determinants, e.g. KW, KWh, fuel adjustment, power factor adjustment.

(8) The basis of the rate or charge proposed in an initial rate schedule and an explanation of how the proposed rate or charge was derived;

(9) A summary statement of all costs (whether fully distributed, incremental or other) computations involved in arriving at the deviation of the level of the rate in sufficient detail to justify the rate, shall be submitted with the filing;

(10) A comparison of the proposed initial rate with other rates of the filing utility or regulated entity for similar generation service or wholesale for resale electric power services.

(11) A copy of relevant power purchase agreements, including detailed terms of service.

b. The documentation required in support of a change to an existing tariff or rate schedule are as follows:

(1) Summary of tariff proposal with historical trend of tariff rate;

(2) Justification of tariff changes proposal;

- (3) Detailed methodology of arriving at the proposed tariff;
 - (4) List of person(s) likely to be affected by the changes in the tariff;
 - (i) The current relationship with the person(s);
 - (ii) The relationship that will emerge after the proposed change.
 - (5) A copy of the draft notice announcing the change in tariff or rate.
 - (6) Audited annual accounts for the last consecutive three years;
 - (7) Provisional accounts for the current year at the time of submission;
 - (8) Comparative statement of present and future financial position resulting from changes in tariff;
 - (9) Details of financial impact if the proposal is not approved;
 - (10) Financial forecast for the next year at the time of filing of the tariff proposal;
 - (11) A planned outage report and three year history of unplanned outages;
 - (12) Any other information which the applicant considers could be useful for evaluating the proposal, including detailed terms of service.
- c. All accounting codes utilized in the application for an initial rate or change in existing rate schedule or tariff shall be consistent with the Commission's uniform system of accounts, as and when published.
- d. All application filings should provide five copies in printed form and two floppy disks or CD ROMs containing each a copy of the format in an electronic format, preferably Microsoft Word, Excel, and Access.
- e. Commission may seek clarification or new information relevant to the proposal after submission of the proposal.

6. ACCEPTANCE AND PROCESSING OF APPLICATION:

- a. Acceptance of Application.
 - (1) The Staff of the Commission has thirty days from the receipt of the application by the Commission Secretary to review and identify any flaws

in the application, and any additional information that the Commission may require, in evaluating the application.

(2) The Staff shall establish a data request deadline, not to exceed two weeks, within which the applicant will provide the supplemental information.

(3) Upon receipt of the required information, the Staff will prepare an entry for acceptance by the Commission, at a regularly scheduled Commission meeting, accepting the application for consideration. That acceptance date becomes the official receipt date for the application.

(4) The fact that the Commission accepts a rate schedule or any part thereof shall not constitute approval by the Commission of such rate schedule or part thereof.

(5) The Commission shall not be required to entertain or accept any application until such supporting supplemental data is furnished.

(6) The Commission shall not pass an order rejecting the application without giving the applicant an opportunity of being heard or making a written representation.

(7) If the Commission accepts the application, it may give such orders and directions for the service of notices as it deems appropriate to –

(a) all persons affected by, or interested in, the application who in the opinion of the Commission are likely to be affected or interested; and

(b) persons, who, by reason of their calling or expertise, may be of assistance to the Commission in arriving at a just and informed determination on the application.

b. Publication and Service of Notice.

(1). A notice issued on the directions of the Commission may be served on the party concerned, as the Commission may direct, and the Commission may direct the service to be effected through any one or more of the following modes of service, namely:

(i) by hand delivery through a messenger;

(ii) by registered post acknowledgment due; or

(iii) by publication in one English language and one Bangla language national daily newspaper, and by advertisement in the electronic media in cases where the Commission is satisfied that it is not reasonably practicable to serve notices in any other manner.

(2) Every notice or process required to be served on, or delivered to, any person may be sent to the person at the address furnished by him for service, or at the place where the person or his agent ordinarily resides or conducts business or personally works for gain. When a person is to be served during the course of the proceedings and such person has authorized in writing an agent or representative to represent him in the proceedings, such agent or representative shall be considered duly authorized to accept service of a notice and process on behalf of the person concerned.

(3) The Commission will issue notice of filing to the public by publication in one English language and one Bangla language national daily newspaper or on the Commission's website.

c. Processing of Application:

(1) The processing of a tariff application shall begin when the application is officially accepted by the Commission and registered with the Secretary of the Commission. A date stamp shall be put on first page of the Application. An appropriate receipt for the application fee shall be prepared and provided to the Applicant.

(2) All paperwork pertaining to a tariff application shall be maintained by the Commission in a separate case file for each applicant. The Commission shall maintain a registration log of all orders issued and this information, including Commission's resolutions, shall be available to the public for review by any interested parties, with exception of the information defined as confidential according to Commission Regulations or written order. Copies of the application, Commission order, and all written testimony and transcripts of oral testimony given in a hearing shall also be filed in this case.

7. EVALUATION OF THE APPLICATION:

a. The Commission shall evaluate the respective application once it has been accepted. The application shall be evaluated in accordance with published Commission tariff methodology.

b. The Commission may perform investigations to collect necessary information, and generally take any measure or action it considers necessary to decide whether or not to approve such an application.

8. REJECTION OF APPLICATION:

a. The Commission may reject an application, after a hearing, for reasons that include, but are not limited to, the following:

(1) The enclosed documents to the application do not comply with the requirements of this tariff regulation and/or the applicant has not filed supplemental information pursuant to a request for data from Commission Staff within the required filing deadline, or the application violates other applicable laws of Bangladesh;

(2) The submitted documents contain materially false information;

(3) The applicant does not have a right to request the tariff change under the Act, this Tariff Regulation and any other Regulations issued by the Commission.

b. The reason for an application rejection by the Commission shall be recorded in writing and provided to the applicant within thirty (30) days of the Commission's order.

9. INTERVENTION, OBJECTION AND HEARING:

a. The Commission shall within 60 days of official acceptance of the application schedule a public hearing at which all parties to the case may present testimony and be cross examined concerning the proposed tariff application. The public hearing shall be in accordance with the Commissions Public Hearing Regulation.

b. The Staff of the Commission will be required to provide written testimony, and be available for cross examination at the public hearing explaining its analysis of the application and its recommendations for Commission action. Copies of the written testimony will be made available to registered parties to the case, at least one week before the date of the hearing. Similarly, all other parties in addition to the Staff shall provide copies, to all other registered parties and to the Staff, of any written testimony that they wish to file in the case, at least one week before the hearing.

c. Any person seeking to intervene in a rate proceeding or objecting to the tariff application may present his/her motion to intervene and objection by sending a signed original and four (4) copies to the Secretary of the Commission within fifteen (15) days of publication of notice of acceptance of a tariff application. The motion to intervene and objection must clearly state the name and address of the person seeking intervention and objecting to the application, and the factual grounds for intervention and objection. The objection shall be deemed filed only when it is actually received by the Commission and is accompanied by the

required filing fee, which will be fixed by the Commission from time to time. Filing an objection in and of itself does not make a person a party to the proceeding. In order to become a party to a tariff proceeding, a person must file a motion to intervene.

d. The Commission, after review of the motion to intervene, may accept persons as a party to the case. The intervening party's participation in the proceeding will be in accordance with the terms and provisions of the Commission's Public Hearing Regulations.

e. In the event of the Commission's denial of a motion to intervene, the moving person shall have the right to a motion's hearing, to provide additional bases in support of his motion to intervene in the proceeding. The motion hearing shall be conducted in accordance with the terms and provisions of the Commission's Public Hearing Regulations.

10. CONTACTS WITH APPLICANT:

Consistent with the Commission's Public Hearing Regulations, from the time the application for consideration of an initial tariff or a change to an existing tariff is officially accepted by the Commission, until the Commission has made a decision in writing and sent it to the Applicant, all contacts with the Applicant shall be in writing through the Secretary of the Commission, or his designated representative. All contact with the Applicant shall relate only to matters of clarification and additional information, to be provided in writing by the Applicant to the Commission. Any other communications will be considered prohibited and grounds for dismissal of the proceeding or rejection of the application.

11. DECISION OF THE COMMISSION:

a. The Commission shall decide an application within 90 days after its official acceptance and issue a written determination or order therefrom, signed or initialed by each Member.

b. All Commission determinations and orders are final.

c. Notwithstanding a Commission's final order, a party, within thirty (30) days of the final determination, may petition the Commission for reconsideration. Such petition and the Commission's actions associated therewith are subject to the provisions of the Commission's Hearing Regulations.

d. Copies of all orders, determinations and decisions made or issued by the Commission, shall be certified under the signature of the Secretary and the seal of the Commission, and shall be made available to any person on payment of such fees as the Commission may, from time to time, determine. Copies of all such

orders, determinations and decisions shall be available on the Commission's website or at the principal office at Dhaka for public inspection free of cost.

12. TERM OF TARIFF:

a. The tariff shall become effective pursuant to the date specified in the order issued by the Commission.

b. The Commission determined tariff or rate schedule shall remain in effect until such time as the Licensee shall file for a revision of the tariff, a materially affected party files or the Commission itself initiates a case for revision of the tariff. In the latter case the burden of proof lies with the affected party to show that the current tariff is improper.

c. In no case shall consideration of a new tariff application be considered within twelve (12) months of the effective date of that initial tariff or rate. The exception would be if an applicant can materially demonstrate that he will endure extreme and undue hardship in absence of revision. The burden of proof of extreme and undue hardship lies with the applicant, and the Commission will not normally consider such a requirement in variance with the Act.

13. NOTIFICATION TO CUSTOMERS OF INITIAL TARIFF OR CHANGE IN TARIFF:

a. The applicant shall send a customer notice, to each of its customers; indicating either the Commission determined initial tariff; or the Commission approved revised tariff as evidenced by a copy of the original tariff, and the subsequent revised tariff. The notification shall be sent not later than two weeks after the Commission's decision, and not less than seven days prior to the effective date.

b. The applicant shall publish a notice in at least two widely circulated national daily newspapers, one in English and one in Bangla, showing therein the original tariff, and the respective changes. This notification shall be published not later than seven days prior to the date the tariff will be effective.

By the order of the Commission

Dr. Mujibur Rahman Khan
Chairman