

Bangladesh Energy Regulatory Commission

The Bangladesh Energy Regulatory Commission, in exercise of the powers conferred by Article 59 of the Bangladesh Energy Regulatory Commission Act, 2003 (Act No. 13 of 2003), as amended, hereby adopts pursuant to Articles 22, 23, 34, 35, 36, and 37 the following regulation.

1. Short Title and Commencement:

- a. This regulation shall be called as the Bangladesh Energy Regulatory Commission Hearing Regulations, 2005.
- b. This regulation shall come into force upon publication in the official Gazette.

2. Scope and Application:

- a. This regulation establishes the reasonable and appropriate procedures for the orderly conduct of all hearings authorized and scheduled to establish a factual and other basis for any and all interim and final decisions or other actions under the Act. It shall give a person an opportunity in the process of decision making by the Commission, to express on issues arising out under the Act.
- b. This regulation applies to any and all hearings duly noticed and conducted by the Commission to receive any and all evidence relevant to the issues that any application or other proper request for an interim or final decision or other action filed with the Commission may raise to decide the application or other request for a decision or other action.

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 this regulation.
- b. Words, terms and phrases that are not defined in the Bangladesh Energy Regulatory Commission Act, 2003 (Act No 13 of 2003), including subsequent amendments to the Act and Commission's Rules and Regulations, shall have the meaning assigned to them in the Electricity Act, 1910 (Act No 9 of 1910); the Petroleum Act, 1974 (Act LXIX of 1974) or other applicable legislation. Such words, terms, and phrases not so defined shall be defined by the Commission as needed.

c. Unless the context requires otherwise, the following words, terms and phrases in this regulation and any attachments hereto shall have the following meanings:

(1) “Act” means the Bangladesh Energy Regulatory Commission Act, 2003 (Act No. 13 of 2003) including any subsequent amendments.

(2) “Agent” means any person including a lawyer who represents a client acting at the request and/or on behalf of any person engaged in any energy activity that requires a decision or other action from the Commission.

(3) “Commission” means the Bangladesh Energy Regulatory Commission.

(4) “Contested case” means a proceeding in which an applicant or other person files with the Commission against another person a claim concerning a substantial economic interest in an energy activity that the other person is materially affecting directly.

(5) “Decision” means the collective action of each member orally or in writing that leads to and results in one or more written orders.

(6) “Evidence” means any oral or written testimony and/or exhibits that a person presents as a witness under oath on the record during a hearing that creates the official record for each member to read and/or rely on.

(7) “Exhibit” means any writing of any nature including any graph, chart, photograph, tangible paper, and/or other media without any limit on the number of pages that contain information that the person offering such writing claims to be relevant to the issues in the hearing.

(8) “Ex parte communication” means any oral or written communication of any nature by or from any person to any Member, except any such communication to and/or with a Member requested from or initiated by any Commission employee competent to discuss the merits of any proceeding during the time that begins when the application or other proper request for a decision or other action is filed with the Commission and ends after the time for any appeal expires.

(9) “Final decision” means any document that decides the proceeding filed, conducted, and resolved by the Commission under the Act.

(10) “Hearing” means a proceeding that is held after a notice is given to any interested person and the public to receive evidence that is relevant to support or oppose any application or other proper request for a decision or other action.

(11) “License” means a Commission issued authority granted to any applicant in writing for the generation of electricity and transmission, transportation, marketing, distribution, storage, and supply of energy.

(12) “Licensee” means any person who has received a Commission license for generation of electricity, and transmission, transportation, marketing, distribution, storage and supply of energy.

(13) “Notice” means any announcement in writing of the name of the proceeding, nature, location, time, and date of a hearing provided to the applicant and any other interested person and published in the newspaper, the Commission’s website, and any other location reasonably calculated to inform the public of the proceeding.

(14) “Order” means any writing that presents any interim and/or final order that resolves and decides any issue in any proceeding under the Act.

(15) “Other actions” means a clarifying statement of law, preliminary or permanent injunction, stay, penalty, or any other recognized relief under the civil or criminal law granted to the Commission under the Act.

(16) “Party” means any person including the client of an agent who has a material economic interest in a proceeding and whose substantial interest may be affected by the decision following the hearing.

(17) “Person” means, but is not limited to, any individual, firm, entity, company, or association or body of individuals whether incorporated or not.

(18) “Post-hearing” means the time that begins one day after the Commission issues its final decision in any proceeding.

(19) “Pre-hearing” means the time that begins after a claim is filed with the Commission and ends on the date of the hearing.

(20) “Pre-filed testimony” means the testimony submitted in writing before a hearing is held that includes the evidence and testimony that would and may be offered orally during the hearing if the witness appears at the hearing and affirms under oath that such evidence is true and correct.

(21) “Presiding officer(s)” means one or more Members of the Commission, or any Commission employee designated by Commission regulation or order to conduct the proceeding.

(22) "Public interest" means a benefit, advantage, or other economic or social improvement to and/or for the citizens of the Country or any of its various subdivisions or geographic areas that can reasonably result from and be a consequence of a decision the Commission may render after a hearing.

(23) "Uncontested case" means a proceeding in which an applicant or other person files with the Commission under the Act an unchallenged claim concerning a substantial economic interest in an energy activity that the Commission may approve or disapprove under the Act.

(24) "Undertaking" means any activity arising from and relating to energy including, but not limited to, the generation of electricity and transmission, transportation, storage, marketing, distribution or supply of energy under the Act.

4. Hearing

- a. A hearing will be arranged by the Office of the Commission on a scheduled date and time which will be notified to all interested through advertisement in the newspapers and on the Commission's website.
- b. The Commission on its own motion may decide to initiate, notice, and conduct a hearing to receive from stakeholders and the public oral or written comment about any policy issue related to the functions of the Commission and the exercise of its authority under the Act.
- c. Any person who files with the Commission an application, claim or other writing, regarding energy related undertakings pursuant to the Act, shall have the right to a hearing.
- d. Any person who files with the Commission a claim or other writing that does not directly relate to an energy undertaking pursuant to the Act, may in the Commission's discretion have a hearing to clarify the issue. That person may file a writ petition to ascertain the authority of the Commission under the Act.
- e. No person may engage with any member of the Commission any ex parte communication when such communication concerns directly or indirectly the subject of any contested or uncontested case.

5. Notice of Hearing

- a. A hearing will be initiated by order of the Commission; or notice by the Secretary at the direction of the Commission or under Commission delegated authority.

b. Any order or notice initiating a hearing will set forth:

- (1) the authority and jurisdiction under which the hearing is being held;
- (2) the nature of the proceeding;
- (3) the final date for the filing of interventions;
- (4) the presiding officer, if designated at the time; and
- (5) the date, time, and location of the hearing, if known; and
- (6) any other appropriate matter.

c. Notice of hearing shall be served on the applicant and all parties, if any, and shall be published in an English and Bengali newspaper, on the Commission website, and posted in a public place in the offices of the Commission no later than seven (7) days before the scheduled date of the hearing.

6. Conduct of Hearing for Contested and Uncontested Cases:

a. Right of participants to present evidence:

- (1) A participant has the right to present evidence, including rebuttal evidence;
- (2) To make such objections and arguments; and
- (3) To conduct such cross examination, as may be necessary to assure true and full disclosure of the facts.

b. Hearing procedure

- (1) The Commission, member, or other official conducting the hearing shall follow the generally accepted rules and procedures under the civil law then in effect when conducting a hearing. If any doubt about the proper procedure to follow arises, the person conducting the hearing in his discretion shall conduct the hearing in any manner reasonably calculated to achieve fundamental fairness to all parties to reasonably assure all parties a full and complete opportunity to present a all relevant evidence in support of or opposition to the claim to be resolved at the hearing.

(2) The presiding officer will cause all appearances during a hearing to be entered on the record with a notation in whose behalf each appearance is made.

(3) The presiding officer will establish the order of presentation of the evidence in the hearing.

(4) A recorder, designated by the Commission, shall transcribe the hearing to make a record of all evidence and other matters received and discussed during the hearing.

(5) A record for the Commission to consider and discuss will include:

(i) all applications and other papers including amendments, motions, exhibits and any appendices, and rulings;

(ii) all evidence received and considered, stipulations, and admissions;

(iii) a statement of any official government records that may be received;

(iv) all questions raised, offers of proof, objections, and rulings;

(v) any proposed findings of fact and conclusions of law;

(vi) any recommended decision, opinion, or report.

(6) The record will be presented to the Commission to consider, discuss, and decide the case unless the Commission presides at the hearing. Notwithstanding the Commission presiding and conducting the hearing, a record should be made to preserve the information relevant to the case.

(7) Any proceeding set for hearing may be resolved in whole or in part before the scheduled date of the hearing, during the hearing itself, and at any time up to the time the Commission or any delegated authority may consider and determine the case. Such resolution can be by summary disposition, stipulation or other agreement between the parties, in writing, and filed with the Commission.

7. Conduct of Hearing for Policy and Regulation Proceedings:

a. Hearing procedure:

(1) The Commission, member, or other official conducting the hearing shall announce the nature of the proceeding, the comments should be

related to the nature of the policy or regulation issue, and the amount of time each person may have to testify, if a time limit is needed based on the number of people who appear to testify.

(2) Any person may submit written comments about the proposed policy or regulation at any time up to the time the hearing ends.

(3) Any person testifying at a hearing about any proposed policy or regulation issue may be asked questions to clarify the information offered but the person may not be subject to any cross examination.

(4) The Commission shall direct a reporter, designated by the Commission, to transcribe all the comments made at the hearing.

(5) If any doubt about the proper procedure for the hearing arises, the person conducting the hearing in his discretion shall conduct the hearing in any manner reasonably calculated to allow any person who wants to speak about the proposed policy or regulation to speak.

8. Reconsideration of final order:

a. Petition for reconsideration. Notwithstanding a Commission order is a final order for the proceeding out of which the order arises, any party may request the Commission to reconsider a final order. If a person elects to file a petition for reconsideration, the person must file with the Commission a petition for reconsideration. The petition should identify the action the Commission should reconsider and state as clearly as possible all the reasons the Commission acted improperly and the law it violated. If the Commission does not decide the petition within thirty (30) days after the date the petition is filed, the petition is denied.

b. An interim order is not a final order.

By the order of the Commission

(Dr. Mujibur Rahman Khan)
Chairman