

রেজিস্টার্ড নং ডি এ-১

বাংলাদেশ



গেজেট

অতিরিক্ত সংখ্যা
কর্তৃপক্ষ কর্তৃক প্রকাশিত

বুধবার, জানুয়ারি ২২, ২০১৪

[বেসরকারি ব্যক্তি এবং কর্পোরেশন কর্তৃক অর্থের বিনিময়ে জারীকৃত বিজ্ঞাপন ও নোটিশসমূহ]

BANGLADESH ENERGY REGULATORY COMMISSION

NOTIFICATION

Dated : 20th January 2014

BERC Regulations No-1/2014.—In exercise of the powers conferred by section 59 of the Bangladesh Energy Regulatory Commission Act, 2003 (Act No. 13 of 2003), read with section 40 thereof, the Bangladesh Energy Regulatory Commission is pleased to make the following regulations, namely:—

1. Short title and application.—(1) These regulations may be called the Bangladesh Energy Regulatory Commission Dispute Settlement Regulations, 2014.

(2) They shall apply to the settlement of disputes arising between the licensees or between the licensees and consumers.

2. Definitions.—In these regulations, unless there is anything repugnant in the subject or context,—

(a) “Act” means the Bangladesh Energy Regulatory Commission Act, 2003 (Act No. 13 of 2003);

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- (b) “Arbitration Tribunal” or “Tribunal” means the Arbitration Tribunal constituted under regulation 12;
 - (c) "award" means an award made by the Arbitration Tribunal;
 - (d) “claimant” means a person who refers any dispute to the Commission for settlement;
 - (e) “Commission” means the Bangladesh Energy Regulatory Commission established under the Act;
 - (f) “consumer” means a person who receives electricity, gas or petroleum product supplied by a licensee in the premises or installation owned or possessed by that person under any rules, regulations, by laws or other instruments having the force of law.
 - (g) “licensee” means a person who has obtained a licence under the Act for generation of electricity or transmission, marketing, distribution, storage and supply of energy;
 - (h) “party” means any party to a dispute;
 - (i) “respondent” means the opposite party to the claimant;
 - (j) “statement of claim” includes the reply to a counter claim and any amendment thereto; and
 - (k) “statement of defence” includes any counter claim and any amendment thereto.

3. Interpretation of regulations.—The decision of the Commission on any question relating to interpretation of these regulations or any procedural matter thereunder shall be final and binding on the parties.

4. Reference of dispute to the Commission.—(1) Any dispute arising between the licensees or between the licensees and consumers shall, by application in writing, be referred to the Commission for settlement.

(2) The application shall be accompanied by—

- (a) the names and full addresses of the parties to the dispute,
- (b) a statement of claim and facts supporting the claim, points at issue and relief or remedy sought, with other details of the claimant's case,
- (c) original or duly certified copies of all documents and other evidences relied upon or referred to in the application.

5. Acceptance or rejection of application.—(1) The Commission shall have discretion in deciding to accept or reject an application made under regulation 4 and shall give reasons for its decision.

(2) The Commission may, before it decides on the acceptability of an application, ask the applicant to furnish any additional information and other particulars of his claim.

6. Statement of defence.—On the acceptance of an application, the Commission shall send to the respondent a copy of the statement of claim and the documents accompanied therewith and ask the respondent to furnish, within such period as may be determined by the Commission, a statement of defence setting out his case including a statement of facts supporting the defence, the points at issue, the relief or remedy sought, the legal grounds or arguments supporting the defence accompanied by all documents and other evidences relied upon or referred to in those statements.

7. Counter claim and reply to counter claim.—(1) The respondent may make a counter claim stating in details against the claim made by the claimant supported by all relevant documents and information within such period as may be determined by the Commission.

(2) A copy of the counter claim and all documents, if any, appended thereto shall be sent to the claimant for information.

(3) The claimant may also submit a statement in reply to the counter claim within such period as may be determined by the Commission.

(4) A copy of the reply of the claimant to the counter claim and all documents, if any, appended thereto shall be sent to the respondent for information.

8. Copies of statements, etc.—All statements, replies and other documents and papers submitted to the Commission by the parties to a dispute and all documents appended thereto shall be in triplicate.

9. Amendment of statements, etc.—Any amendment to a statement of claim, statement of defence, counter claim or reply to counter claim shall be in writing and shall be submitted to the Commission at the earliest possible time. The Commission shall decide whether such amendment shall be allowed or rejected.

10. Preliminary conference and amicable settlement.—(1) When the statement of defence is filed, the Commission shall hold a preliminary conference of the parties to the dispute at the earliest possible opportunity, and in any event, not later than seven days following the submission of the statement of defence.

(2) On the date fixed for preliminary conference, the Commission shall examine the statement of claim and statement of defence and documents filed by the parties and shall also hear them.

(3) At the preliminary conference, the Commission shall ascertain the points at issue between the parties and shall attempt to settle the dispute by compromise or reconciliation between them.

(4) The Commission may direct the parties to try to resolve the dispute through amicable settlement within such period as may be fixed by the Commission.

(5) Where a dispute is settled by compromise or reconciliation or amicable settlement, the Commission shall give its decision in accordance with the compromise or reconciliation or amicable settlement agreed upon by the parties.

11. Reference of dispute to the Arbitration Tribunal.—(1) Where a dispute could not be settled at the preliminary conference by compromise or reconciliation or amicable settlement, the Commission shall refer the dispute to an Arbitration Tribunal for settlement.

(2) Where there are two or more applications for settlement of disputes and the issues involved in the disputes have arisen out of the same transaction, the Commission may, if it thinks fit to do so, refer all the applications to the same Arbitration Tribunal for disposal. The award, on such applications, shall be given separately in each case.

12. Constitution of Arbitration Tribunal and appointment of arbitrators.—(1) An Arbitration Tribunal shall consist of such odd number of arbitrators as may be determined by the Commission from time to time. Where the Commission appoints more than one arbitrator, one of the arbitrators shall be designated as the Chairman of the Tribunal.

(2) The Commission shall have exclusive authority to appoint any arbitrator from amongst its members, officials or any other persons as it deems suitable to perform the functions of an arbitrator:

Provided that where the Tribunal consists of three or more arbitrators, the majority of them shall be of legal background and at least one arbitrator shall be appointed from amongst the members or officials of the Commission and at least one arbitrator from amongst the independent technical experts having specialization on the subject matter in question.

(3) Before accepting the appointment, a prospective arbitrator shall disclose any circumstances, such as financial or personal interest in the outcome of the award, likely to disqualify him as an impartial arbitrator.

(4) Any party may make objection to the appointment of an arbitrator, if—

- (a) the circumstances exist that give rise to a reasonable doubt as to the independence or impartiality of such arbitrator, or
- (b) such arbitrator does not possess the qualifications to be an arbitrator:

Provided that such objection shall be made within five days from the date the appointment of such arbitrator was communicated to the party or within five days of its becoming aware of the reasons for which the objection is sought to be made.

(5) The Commission may, after examining the arguments put forward in favour of such objection, accept or reject the objection and the decision of the Commission in this regard shall be final and binding on the parties.

(6) If an arbitrator resigns or dies, he ceases to be an arbitrator, or if he becomes incapable of performing his functions or neglects or fails to act expeditiously, prior to or during the arbitration hearings, or fails to make the award within the prescribed time, the Commission may terminate his appointment.

(7) In the case of resignation or death or termination of appointment of an arbitrator under sub-regulation (6), a new arbitrator shall be appointed in his place by the Commission.

(8) The newly appointed arbitrator shall proceed with the arbitration as the record of evidence and proceedings then exist and shall make the award expeditiously within the time prescribed by the Commission.

13. Time limit for arbitration proceedings.—The Commission may prescribe the time limit for completion of arbitration proceedings and may also extend the time considering the complexity and technicality of the matter in question.

14. Place of arbitration proceedings.—The place of arbitration shall be at the office of the Commission or any such other place as may be determined by the Commission.

15. Hearing of arbitration proceedings.—(1) The parties shall be entitled to appear at the hearing before the Tribunal in person or through their duly appointed lawyers or duly authorised representatives.

(2) The Tribunal may proceed with the arbitration notwithstanding any failure by a party to comply with any of the directions of the Tribunal and may also proceed with the arbitration proceedings in the absence of any or both of the parties who fail or neglect to attend at the time and place appointed by the Tribunal in spite of a notice duly served on it or them.

(3) The parties shall do everything necessary to enable the Tribunal to make an award expeditiously and shall not do or cause or allow to be done anything which may delay the proceedings and if any party does, causes or allows to be done any such thing, that party shall pay such costs as the Tribunal may deem reasonable.

(4) The arbitration session shall, as far as possible, continue on a day-to-day basis once the hearing begins. The Tribunal shall not ordinarily adjourn a hearing at the request of any party, except where the circumstances are beyond the control of the party and the Tribunal is satisfied that reasons and circumstances for the adjournment are justified. While granting an adjournment, the Tribunal may make such order regarding payment of costs by one or both of the parties, as it may deem fit and reasonable.

(5) The Tribunal may, at its discretion at any time before making the award and at the expenses of the party or parties concerned, consult any person having special knowledge relating to the particular industry, commodity, produce or branch of trade concerned in the reference or any expert or qualified accountant and may also at the like expenses of the party or parties, consult legal experts upon any technical question of law, evidence, practice or procedure arising in the course of the reference. If the parties agree, the Tribunal may, at the expenses of the parties, appoint any expert, accountant or lawyer to sit with it as an assessor and take into account the advice of such assessor.

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- (6) The parties and any witness on their behalf shall—
- (a) produce before the Tribunal all books, deeds, papers, accounts, writings and documents in their possession or power which may be required or called for by the Tribunal;
 - (b) comply with the requirements of the Tribunal as to the production or selection of samples; and
 - (c) generally do all other things which, during the pendency of the reference, the Tribunal may require.
- (7) In presenting evidences before the Tribunal, the following principles shall be followed, namely:—
- (a) the evidence may be given before the Tribunal orally or in writing or by affidavit;
 - (b) the Tribunal may administer an oath or affirmation to a witness;
 - (c) each party shall have the burden of proving the facts relied on to support its claim or defence; parties shall have a full and equal opportunity to present relevant and reliable evidence and oral and written arguments in support of their propositions;
 - (d) the Tribunal shall determine the admissibility, relevance and weight of evidence and shall not be bound by formal rules of evidence applicable in court proceedings;
 - (e) the Tribunal may administer the parties to the dispute such interrogatories as it may consider necessary;
 - (f) the Tribunal has discretion to allow, limit, or refuse to allow the appearance of a witness, whether a witness of fact or an expert witness;
 - (g) any witness who gives oral evidence may be questioned by each party or its representative under the control of the Tribunal, and may be required by the Tribunal to testify under oath or affirmation; the Tribunal may question the witnesses at any stage of the examination;
 - (h) the testimony of witnesses may be presented in written form, either as signed statements or by duly sworn affidavits, and the Tribunal may order that such statements or affidavits shall stand as evidence-in-chief.

(8) The Tribunal may, by award, dismiss the application or claim if the claimant does not appear before the arbitration proceedings or fails to file the requisite papers within the time granted, or neglects or refuses to pay the dues or deposits ordered to be paid, by the Tribunal.

(9) The Tribunal may make an ex-parte award if the respondent neglects or refuses to appear before it and make his defence or fails to file the requisite papers within the time granted, or neglects or refuses to pay the dues or deposits ordered to be paid, by the Tribunal.

(10) The Tribunal may issue such orders or directions as it may deem necessary for safeguarding, interim custody, preservation, protection, storage, sale or disposal of the whole or part of the subject matter of the dispute or for its inspection or sampling without prejudice to the rights of the parties on the final determination of the dispute.

16. Language.—The official languages of the arbitration proceedings shall be Bangla and English.

17. Representation and assistance.—(1) Each party shall advise, in writing, the other party and the Arbitration Tribunal of—

- (a) the names and addresses of persons who shall represent or assist it;
- (b) the capacity in which those persons shall act; and
- (c) any changes in clauses (a) and (b) above.

(2) Each party shall provide—

- (a) proof of authorization of persons that shall represent it;
- (b) proof of authority to file the arbitration.

18. Applicable law.—(1) The Arbitration Tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute, failing which the Arbitration Tribunal shall apply the law which it determines to be appropriate.

(2) The Arbitration Tribunal may decide a case amiable compositeur or ex aequo et bono only if the parties have expressly authorised the Arbitration Tribunal to do so through a special declaration.

(3) In all cases, the Arbitration Tribunal shall decide in accordance with the terms of the contract, if any, to the extent they are consistent with the existing laws, rules, regulations and orders having the force of law.

19. Award of the Tribunal.—(1) Where the parties to a dispute arrive at a settlement of the dispute by common agreement before the Tribunal and the Tribunal is satisfied that such agreement is genuine and does not defeat the purposes of any law, the Tribunal shall make an award as per agreement of the parties, otherwise, the Tribunal shall make the award on the basis of the documents, evidence, etc. filed before it by the parties.

(2) The award shall state the reasons upon which it is based, unless it is an award on the agreed terms of the parties.

(3) The award shall state the date and place of arbitration and the award shall be deemed to have been made at that place.

(4) The Tribunal may make an interim award, and may, by such an award, determine and order what shall be done by either or any of the parties, respecting the matters referred to it.

(5) Every arbitrator shall sign the award.

20. Confirmation and implementation of the award.—(1) The Tribunal shall submit its award to the Commission and the Commission may pass appropriate order on its basis as to—

- (a) the approval and implementation of the award;
- (b) the cancellation or amendment of the award; or
- (c) sending the award to the Tribunal for review.

(2) An order given by the Commission under sub-regulation (1) shall be deemed to be final and be implemented as if it is a decree of a civil court.

(3) The Commission may require either party to notify the Commission of the compliance with the award.

21. Power to make interim order by the Commission.—At any time during the continuance of the arbitration proceedings under these regulations or at any time before its commencement, the Commission may make any such interim order as it may consider appropriate.

22. Review.—Any party aggrieved by any decision of the Commission may file an application to it for review within fifteen days of making such decision and the decision of the Commission thereon shall be final and conclusive.

23. Correction and interpretation of award and additional award.—(1) Within fourteen days from the receipt of the award, any party may, with notice to the other party, request the Arbitration Tribunal—

- (a) to correct any computation, clerical or typographical error or any other errors of a similar nature occurring in the award; and/or
- (b) to give an interpretation of a specific point in the award.

(2) If the Arbitration Tribunal considers the request made under sub-regulation (1) to be justified it shall make the correction and/or give the interpretation within fourteen days from the receipt of the request and the interpretation shall form part of the award.

(3) The Arbitration Tribunal may correct any error of the type referred to above, on its own initiative, within fourteen days from the date of the award.

(4) A party may, with notice to the other party, request the Arbitration Tribunal, within fourteen days from the receipt of the award, to make an additional award as to claims presented in the arbitration proceedings but omitted from the award. If the Arbitration Tribunal considers the request to be justified, it shall make the additional award within fourteen days from the receipt of such request.

(5) The Arbitration Tribunal may, if it thinks necessary, extend the period within which it shall make a correction, give an interpretation or make an additional award.

24. Deposits and expenses.—(1) The Commission may require the parties to deposit, in advance, in one or more instalments, such sums of money as it deems necessary to defray expenses of the arbitration including the administrative charges and arbitrators fees.

(2) The deposits shall be in equal shares from the claimant and the respondent.

(3) Where one of the parties neglects or refuses to make the deposit as may be required under sub-regulation (1), the Commission may require such deposit, whether in relation to a claim or a counter claim, to be made by the other party to the dispute (claimant or respondent, as the case may be) and where the whole or any part of the deposit remains unpaid, the Commission shall be under no obligation to place the dispute before the Arbitration Tribunal for settlement.

(4) All deposits towards costs and expenses shall be made with the Commission and no payment shall be made to the arbitrators directly by the parties.

(5) The Commission shall pay the arbitrators such fees and other expenses as may be determined by it from time to time.

25. Return of documents.—Unless required to be filed in a court of law, the Commission shall have full discretion to retain or return all books, documents or papers produced before it by the parties and may at any time return any or all of them to the parties producing them on such terms and conditions as the Commission may impose.

26. Confidentiality.—(1) All matters relating to the proceedings under these regulations except final award or decision of the Commission shall be treated as confidential and no person, without the prior written consent of the Commission, shall disclose them to the third party.

(2) The Commission may print, publish or otherwise circulate any award or decision made under these regulations, in any journal, magazine, report or in any publication authorized by the Commission for the cause of academic and professional development and no party to the dispute shall have any objection to such printing, publication or circulation.

(3) Additional copies of the award or decision certified by the Commission shall be made available to the parties and to any person on request and on payment of such fees as may be fixed by the Commission.

27. Indemnity.—The Chairman, any member, officer or employee of the Commission or any arbitrator of the Arbitration Tribunal or any expert connected therewith, shall not be liable for anything done or omitted to be done in good faith in connection with, or in relation to, dispute settlement proceedings under these regulations.

28. Disputes already referred to the Commission.—Any dispute already referred to the Commission for settlement before the commencement of these regulations and is pending for disposal before the Commission or the Tribunal constituted therefor shall be deemed to have been referred under these regulations and shall be disposed of accordingly.

By the order of the Commission,

Abdul Khaleque

Secretary

Bangladesh Energy Regulatory Commission.