

রেজিস্টার্ড নং ডি এ-১

বাংলাদেশ



গেজেট

অতিরিক্ত সংখ্যা
কর্তৃপক্ষ কর্তৃক প্রকাশিত

বুধবার, এপ্রিল ২০, ২০১৬

[অর্থের বিনিময়ে জারীকৃত বিজ্ঞাপন ও নোটিশসমূহ]

Government of the People's Republic of Bangladesh
BANGLADESH ENERGY REGULATORY COMMISSION
NOTIFICATION

Dated: 13 April 2016

BERC Regulations (with amendments) No-2 /2016.—In exercise of the powers conferred by sections 59 and 60 of the Bangladesh Energy Regulatory Commission Act, 2003 (Act No. 13 of 2003), read with section 40 thereof, and in consultation with the Law and Justice Division, Ministry of Law, Justice and Parliamentary Affairs, Government of the Peoples Republic of Bangladesh, the Bangladesh Energy Regulatory Commission is pleased to make the following regulations, namely:—

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

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);
- (b) “Arbitral Tribunal” means the Arbitral Tribunal constituted under regulation 12;

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- (ba) "Arbitration" means any arbitration which is administered under the provision of these Regulations;
- (c) "award" means an award made by the BERC Tribunal or Arbitral Tribunal, as the case may be;
- (ca) "Bangladesh Energy Regulatory Commission Tribunal" or "BERC Tribunal" means the Tribunal constituted under regulation 3A;
- (d) "claimant" means a person who refers any dispute to the Commission for settlement;
- (da) "Code of Civil Procedure" means Code of Civil Procedure, 1908 (Act V of 1908);
- (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;
- (fa) "energy" means the electricity, gas and petroleum product;
- (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;
- (ga) "Member" means any member of the BERC Tribunal or Arbitral Tribunal as the case may be, and it shall include the Chairman of the BERC Tribunal or Arbitral Tribunal;
- (gb) "misconduct" means any unlawful conduct on the part of a person concerned in the administration of justice which is prejudicial to the rights of parties to the disputes or to the right determination of the cause, or any act of an office-holder in an official capacity for personal gain, and shall include bribery, gross negligence and any other unlawful act in respect of a person's official responsibility;

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- (h) “party” means any party to a dispute;
 - (i) “respondent” means the opposite party to the claimant;
 - (ia) “Right to Information Act” means the Right to Information Act, 2009 (Act. No. XX of 2009);
 - (ib) “Search Committee” means the Search Committee constituted under Regulation 3A(3);
 - (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.

3A. Establishment of Bangladesh Energy Regulatory Commission Tribunal or BERC Tribunal.—(1) A Tribunal to be called Bangladesh Energy Regulatory Commission Tribunal (hereinafter termed as BERC Tribunal) shall be established as soon as these Regulations come into force, consisting of not more than seven members of which two members shall be of legal background, two members shall be of general background with experiences as magistrates, and the other three members shall be technical experts—one member with background of electricity sector, one member with background of natural gas sector and the other with background of petroleum sector.

(2)(a) The Chairman of the Tribunal shall have at least a post graduate degree in Energy Law and Policy or Energy and Infrastructure Law or Competition Law or Investment Law or Economic Law or Development Law or Business Regulation, Litigation and Arbitration from a reputed University and shall have at least twenty years work experiences in the respective field including experiences in dispute settlement through arbitration and other mechanisms. Provided that if the Commission cannot find any suitable person with the abovementioned academic qualification, the former Chairmen or Members of the Commission may be deemed to be qualified for appointment as Chairman of the BERC Tribunal considering the fact that they have acquired adequate experiences and expertise in the dispute settlement in the energy sector.

(b) The Member with legal background shall have at least a post graduate degree in Law from a reputed University and shall have at least twenty years work experiences in the respective field including experiences in dispute settlement through arbitration and other mechanisms.

Provided that a Judicial Officer not below the rank of a District Judge may be appointed as a Member on deputation at the nomination of the Law and Justice Division, Ministry of Law, Justice and Parliamentary Affairs, Government of the Peoples Republic of Bangladesh.

Provided further that if a District Judge is not nominated for appointment on deputation by the Law and Justice Division, Ministry of Law, Justice and Parliamentary Affairs within a reasonable time, the Commission shall appoint a Member of the Tribunal in light of qualifications mentioned in sub-regulation 2(b).

(c) The Members with general background who shall have experiences as Magistrates 1st class at least for five years, shall have a post graduate degree in any academic discipline from a reputed university and shall have at least twenty years service experiences.

(d) (i) Among the Members with technical background, two Members shall have at least bachelor's engineering degree either in the field of Chemical or Mechanical or Petroleum or Mineral Resources studies, or at least post graduate degree either in the field of Geology or Geoscience or Chemistry or Applied Chemistry from a reputed university.

(ii) Among the two Members with technical background as mentioned in sub-regulation (d)(i), one Member shall have at least twenty years practical work experiences in natural gas sector and the other Member shall have at least twenty years practical work experiences in petroleum sector.

(iii) One Member with technical background shall have at least bachelor's engineering degree in the field of Electrical studies and shall have at least twenty years practical work experiences in the power sector.

(3) The Commission shall, at the recommendation of a Search Committee constituted by the Commission, appoint the Chairman and Members of the Tribunal for a tenure of three years from the date of assumption of office.

The Chairman or any Member of the Tribunal on completion of his respective tenure is eligible for reappointment, if the Commission deems fit and proper.

(4) The Commission shall appoint the Chairman and two Members of the Tribunal as soon as these Regulations come into force and the rest of the members shall be appointed within a reasonable time.

(5) A person shall not be qualified for appointment as the Chairman or a Member if he is-(a) not a citizen of Bangladesh; (b) declared a loan defaulter by a bank or any financial institution; (c) declared bankrupt by a competent Court; (d) has been convicted for a criminal offence involving moral turpitude and sentenced to imprisonment for a term not less than two years or more and a period of five years has elapsed since his release.

(6) If the post of the Chairman or any Member of the Tribunal falls vacant due to expiry of the tenure or any other reason, the Commission may appoint an acting Chairman or a Member temporarily for a period determined by the Commission not exceeding three months from the date of such appointment.

(7) The Chairman or a Member of the Tribunal before the completion of the tenure as mentioned in sub-regulation (2) may resign from the post by giving one month's notice in writing under his hand addressed to the Chairman of the Commission.

(8) The Chairman or any Member of the Tribunal shall not be removed except on the ground of proved misconduct or physical or mental incapacity.

(9) Persons having business interest in any matter within the scope of the Tribunal shall not be eligible to be appointed as Chairman or Member of the Tribunal.

(10) On being appointed as Chairman or Member, a person cannot engage himself in a business in energy sector either in his own name or in the name of his family members.

(11) The Commission shall pay the Chairman and Members of the Tribunal such honorariums, and extend benefits and facilities as may be determined by the Commission from time to time. Provided that the honorariums, benefits and facilities of the Chairman and Members of the Tribunal shall be determined considering their past appointments.

(12) For the purpose of carrying out the functions of the Tribunal effectively, the Commission shall appoint required number of officers and staffs for the Tribunal.

(13) The salaries and other benefits of the officers and staffs of the Tribunal shall be regulated under Bangladesh Energy Regulatory Commission Employees Service Regulations, 2008.

(14) All expenditures of the BERC Tribunal including expenditures for the personnel of the BERC Tribunal shall be paid from the source under Regulation 24 and the Bangladesh Energy Regulatory Commission Fund Regulations 2004.

(15) The Commission may, for the cause of public interest and ends of justice, establish such number of Tribunals as Commission deems fit.

3B. Functions of the BERC Tribunal.—Subject to the BERC Act 2003 and these Regulations, the BERC Tribunal shall act as a judicial wing of the Commission and the functions of the BERC Tribunal shall be as follows:—

- (a) The Tribunal shall be responsible to adjudicate the disputes between licensees or between licensees and consumers that are placed before it under these Regulations and place their awards to the Commission for decision;
- (b) The Tribunal shall conduct hearing of the parties to settle the disputes that are placed before it under these Regulations;
- (c) The Tribunal shall have all those powers for the purposes of an investigation or proceedings exercisable by a Civil Court at the time of trial under the Code of Civil Procedure, which are exercisable by the Commission under the Act such as:—
 - (i) to summon a witness and ensure his presence and examination of the witness on oath;
 - (ii) to detect and present any important document which may be submitted as a document or evidence;
 - (iii) to collect evidence through an affidavit;
 - (iv) to call for public record from any court or office;
 - (v) to adjourn hearing;
 - (vi) to ensure presence and absence of the parties.

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- (d) The Tribunal shall, on request of the Commission, provide legal opinion to the Commission on matters relating to the Act and other laws, rules, regulations policies, contracts, and licensing, tariff, and other regulatory issues.
 - (e) The Tribunal shall, on request of the Commission, conduct hearing on legal issues of tariff applications and other issues. The Tribunal shall submit its findings to the Commission on matters as mentioned in this sub-regulation.
 - (f) The Tribunal shall perform any other functions considered appropriate by it for the fulfillment of the objectives of these Regulations.

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.

4A. Reference of dispute to the BERC Tribunal.—The Commission shall refer any dispute to the BERC Tribunal for processing which is referred to the Commission under Regulation 4.

5. Acceptance or rejection of application.—(1) The BERC Tribunal shall, after examination of the application made under Regulation 4, decide to accept or reject such application and shall give reasons for its decision.

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

(3) If any application is rejected under sub-regulation 1, the Claimant may file an appeal before the Commission challenging the decision of such rejection and the Commission shall give its decision on such appeal.

(4) The decision of the Commission taken under sub-regulation 3 is final.

6. Statement of defence.—On the acceptance of an application, the BEREC Tribunal 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 BEREC Tribunal, 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 BEREC Tribunal.

(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 BEREC Tribunal.

(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 BEREC Tribunal by the parties to a dispute and all documents appended thereto shall be in seven copies.

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 BEREC Tribunal at the earliest possible time. The BEREC Tribunal shall decide whether such amendment shall be allowed or rejected.

Provided that any party aggrieved by the decision of the BEREC Tribunal at this stage may file an appeal before the Commission challenging such decision. The decision of the Commission under this Regulation is final.

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

(2) If the Commission finds it necessary for any reason, the Commission may refer the dispute to the BERC Tribunal for preliminary hearing under sub-regulation (1).

(3) On the date fixed for preliminary hearing, the Commission or the BERC Tribunal, as the case may be, shall examine the statement of claim and statement of defence and documents filed by the parties and shall also hear them.

(4) At the preliminary hearing, the Commission or the BERC Tribunal, as the case may be, shall ascertain the points at issue between the parties and shall attempt to settle the dispute by compromise or reconciliation between them.

(5) The Commission or the BERC Tribunal, as the case may be, may direct the parties to try to resolve the dispute through amicable settlement within such period as may be fixed by the Commission or the BERC Tribunal, as the case may be.

(6) Where a dispute is settled by compromise or reconciliation or amicable settlement, the Commission or the BERC Tribunal, as the case may be, shall give its decision in accordance with the compromise or reconciliation or amicable settlement agreed upon by the parties.

(7) Where a dispute is settled by the BERC Tribunal under sub-regulation 5, the BERC Tribunal shall submit its decision to the Commission for approval and the decision of the Commission is final.

11. Reference of dispute to the BERC Tribunal or Arbitral Tribunal.—(1) Where a dispute could not be settled at the preliminary hearing by compromise or reconciliation or amicable settlement, the BERC Tribunal shall inform the Commission about the matter with its opinion whether the matter can be referred before the BERC Tribunal for full hearing for settlement or the matter can be referred to an Arbitral 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 Tribunal for disposal. The award, on such applications, shall be given separately in each case.

(3) Where a dispute has not been settled through methods under sub-regulations (3) and (4) of Regulation 10, the Commission shall decide whether the dispute shall be referred to the BERC Tribunal or an Arbitral Tribunal for settlement.

(4) Where the Commission decides to refer a dispute to the BERC Tribunal under sub-regulation (3), the Commission shall, in consultation with the Chairman of the BERC Tribunal, constitute a bench of the BERC Tribunal comprising those Members of the Tribunal who are found to be relevant for settlement of the dispute.

Provided that every bench of the Tribunal shall consist of odd number of Members of the Tribunal.

Notwithstanding any provision of these Regulations, the Commission, in consultation with the Chairman of the Tribunal, may, because of the experiences and expertise in dispute settlement in the energy sector, co-opt as Chairman or a Member of a bench of the Tribunal a former Chairman or a former Member of the Commission or any person who is qualified to be appointed as a member of the Tribunal under sub-regulations (2)(a), (2)(b) and (2)(c) of Regulation 3A. The co-opted Chairman or Member of a bench of the Tribunal shall be paid such honorariums and other facilities as may be determined by the Commission from time to time.

Provided that the honorariums, benefits and facilities of the co-opted Chairmen and Members of the benches of Tribunal shall be determined considering their past appointments.

(5) The orders, decisions or awards of every bench of the BERC Tribunal shall be regarded as orders, decisions or awards of the BERC Tribunal.

(6) The decisions of the BERC Tribunal or Arbitral Tribunal, as the case may be, shall be taken by a majority of decisions of the Members of the Tribunal present.

(7) The benches of the BERC Tribunal may sit on circuit basis in locations outside Dhaka.

12. Constitution of Arbitral Tribunal and appointment of arbitrators.—(1) An Arbitral 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, in consultation with the Chairman of the BERC Tribunal, appoint any arbitrator from amongst former Chairman or Member of the Commission or the Member of BERC Tribunal or any other person as it deems suitable to perform the functions of an arbitrator:

Provided that where the Tribunal consists of three or more arbitrators, at least one arbitrator shall be appointed from each of the following groups: (a) the Members of BERC Tribunal; (b) legal experts; and (c) technical experts having specialization on the subject matter in question.

Provided further that considering the experiences and expertise in the dispute settlement in the energy sector, the former Chairmen or Members of the Commission are deemed to be qualified to be appointed as Chairmen or Members of Arbitral Tribunals constituted under this Regulation.

(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 seven working days from the date the appointment of such arbitrator was communicated to the party or within seven working 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 dispute settlement proceedings.—The Commission may prescribe the time limit for completion of dispute settlement proceedings of the BEREC Tribunal or arbitration proceedings, as the case may be, and may also extend the time considering the complexity and technicality of the matter in question.

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

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

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

(3) The parties shall do everything necessary to enable the BEREC Tribunal or Arbitral Tribunal, as the case may be, 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 BEREC Tribunal or Arbitral Tribunal, as the case may be, may deem reasonable.

(4) The BEREC Tribunal proceedings or arbitration session, as the case may be, shall, as far as possible, continue on a day-to-day basis once the hearing begins. The BEREC Tribunal or Arbitral Tribunal, as the case may be, 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 BEREC Tribunal or Arbitral Tribunal, as the case may be, is satisfied that reasons and circumstances for the adjournment are justified. While granting an adjournment, the BEREC Tribunal or Arbitral Tribunal, as the case may be, may make such order regarding payment of costs by one or both of the parties, as it may deem fit and reasonable.

(5) The BERC Tribunal or Arbitral Tribunal, as the case may be, 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 subject matter, 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.

(6) The parties and any witness on their behalf shall—

- (a) produce before the BERC Tribunal or Arbitral Tribunal, as the case may be, 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 BERC Tribunal or Arbitral Tribunal, as the case may be, may require.

(7) In presenting evidences before the BERC Tribunal or Arbitral Tribunal, as the case may be, the following principles shall be followed, namely:—

- (a) the evidence may be given before the BERC Tribunal or Arbitral Tribunal, as the case may be, orally or in writing or by affidavit;
- (b) the BERC Tribunal or Arbitral Tribunal, as the case may be, 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 BERC Tribunal or Arbitral Tribunal, as the case may be, shall determine the admissibility, relevance and weight of evidence and shall not be bound by formal rules of evidence applicable in court proceedings;

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- (e) the BERC Tribunal or Arbitral Tribunal, as the case may be, may administer the parties to the dispute such interrogatories as it may consider necessary;
 - (f) the BERC Tribunal or Arbitral Tribunal, as the case may be, has the objective 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 BERC Tribunal or Arbitral Tribunal, as the case may be, and may be required by the BERC Tribunal or Arbitral Tribunal, as the case may be, to testify under oath or affirmation; the BERC Tribunal or Arbitral Tribunal, as the case may be, 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 BERC Tribunal or Arbitral Tribunal, as the case may be, may order that such statements or affidavits shall stand as evidence-in-chief.

(8) The BERC Tribunal or Arbitral Tribunal, as the case may be, may, by award, dismiss the application or claim if the claimant does not appear before the BERC Tribunal or 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 BERC Tribunal or Arbitral Tribunal, as the case may be.

(9) The BERC Tribunal or Arbitral Tribunal, as the case may be, may make an ex-parte award if the respondent neglects or refuses to appear before the Tribunal 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 BERC Tribunal or Arbitral Tribunal, as the case may be.

(10) The BERC Tribunal or Arbitral Tribunal, as the case may be, 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 or for ensuring justice to any or all of the parties without prejudice to the rights of the parties on the final determination of the dispute.

16. Language.—The official languages of the BERC Tribunal proceedings or arbitration proceedings, as the case may be, shall be either Bangla or English.

17. Representation and assistance.—(1) Each party shall advise, in writing, the other party and the BERC Tribunal or Arbitral Tribunal, as the case may be, 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 refer dispute to Commission.

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

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

(3) In all cases, the BERC Tribunal or Arbitral Tribunal, as the case may be, 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 BERC Tribunal or Arbitral Tribunal, as the case may be, 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 the BERC Tribunal proceedings or the arbitration, as the case may be, and the award shall be deemed to have been made at that place.

(4) The BERC Tribunal or Arbitral Tribunal, as the case may be, 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 member of the BERC Tribunal or Arbitral Tribunal, as the case may be, shall sign the award.

(6) The BERC Tribunal or Arbitral Tribunal, as the case may be, shall submit their awards to the Commission within two months of the completion of the hearings of the dispute.

20. Confirmation and implementation of the award.—(1) The BERC Tribunal or Arbitral Tribunal, as the case may be, 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 proceedings under these regulations or at any time before its commencement, the Commission may make any such interim order as it may consider appropriate.

Provided that where the Commission needs to make any such interim order in response to an urgent matter or a matter of emergency, the Chairman, or in the absence of the Chairman, any Member, in consultation with other available Members of the Commission, may make such an interim order.

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 Commission—

- (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 Commission 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 Commission 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 Commission, 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 Commission considers the request to be justified, it shall make the additional award within fourteen days from the receipt of such request.

(5) The Commission 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 installments, such sums of money as it deems necessary to defray expenses of the BERC Tribunal proceedings or arbitration, as the case may be, including the administrative charges and BERC Tribunal members' honorariums and other benefits 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 BERC Tribunal or Arbitral Tribunal, as the case may be, for settlement.

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

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

24A. Tribunal to act independently.—The BERC Tribunal or Arbitral Tribunal, as the case may be, shall be independent in the exercise of their judicial functions.

24B. Arbitral Tribunal members to continue until disposal of the case.—Members of the Arbitral Tribunal shall continue to perform as members of the Tribunal until the final disposal of the case.

24C. Enforcement of the order.—If any party or parties, without a valid reason, refuses or fails to enforce any order or directive given by the Commission or BERC Tribunal or Arbitral Tribunal under these Regulations,

- (a) the Commission may impose upon such party or parties administrative fines determined by the Commission and such fines shall be liable to be realized as Public Demand; or
- (b) it will be treated as an offence and for such offence the said person shall be liable to be sentenced with imprisonment for a term not exceeding 3 (three) months or with fine not less than Taka 2000 (two thousand) or with both; and in case of continuation of the offence he shall be liable to be fined with an amount not exceeding Taka 500 (five hundred) for each day.

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) Subject to the provisions of the Right to Information Act, 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 including the Tribunals, 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 the Chairman or any member, officer or staff of the BERC Tribunal or Arbitral 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.

27A. Establishment of Tribunals outside Dhaka.—(1) The Commission may establish such number of Tribunals in different locations outside Dhaka as it determines from time to time in order to resolve disputes between licensees or between licensees and consumers in the manner the Commission determines.

(2) The pecuniary jurisdiction of such tribunals shall be determined by the Commission from time to time.

Provided that the fees of the members of such Tribunals and other expenses thereof shall be determined by the Commission from time to time.

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,

Md. Faizur Rahman
Secretary