

**No.L-7/142/157/2008-CERC
CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

- 1. Dr. Pramod Deo, Chairperson**
- 2. Shri R. Krishnamoorthy, Member**
- 3. Shri S. Jayaraman, Member**

In the matter of

The Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2008

STATEMENT OF REASONS

In supersession of the Central Electricity Regulatory Commission (Payment of Fee) Regulations, 2004 the Commission had proposed to frame fresh regulations on payment of fees. Accordingly, the draft regulations were published on 3.9.2008 to invite comments/suggestions/objections from the stakeholders. In response, the following stakeholders have submitted their views:

- (i) NTPC Limited (NTPC)
- (ii) Power Grid Corporation of India Limited (PGCIL)
- (iii) M.P. Power Trading Co. Ltd. (MPPTCL)
- (iv) GMR Energy Trading Limited (GMR)
- (v) Indian Energy Exchange Limited (IEX)

2. The views of the above noted stakeholders have been carefully considered by the Commission. These are discussed in the paragraphs that follow.

3. NTPC has suggested that the fees proposed to be levied on the generating companies and the transmission licensees should be allowed as pass through in tariff. A similar suggestion has been made by PGCIL.

4. The Commission in Regulation 42 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2008 published as draft has proposed that the application filing fee may, at the discretion of the Commission, be allowed to be recovered by the generating company or transmission licensee, as the case may be. The Commission is thus alive to the issue. This provision when finally notified will generally take care of the issue raised by NTPC and PGCIL as the question is intended to be left open to be decided in future.

5. NTPC has further suggested that annual fees are proposed to be collected as per MW in case of generating companies and, therefore, the filing fee paid should cover all other fees payable in respect of the generating station. NTPC has thus submitted that fees for interlocutory application, application for obtaining certified copy and inspection of judicial records, application for review, etc, should be exempted from fees.

6. The fees proposed to be specified on per MW basis cover determination and re-determination of tariff consequent to additional capitalization, etc. However, for all other applications, fees are proposed to be levied. It is not desirable to exempt any other category of application from payment of fees, to discourage frivolous and vexatious applications.

7. In the view of PGCIL, fees proposed in the draft regulations are generally payable while making an application for determination of tariff. Therefore, charging of fee year after year is not justified after determination of tariff for the project.

8. In the draft regulations, fees proposed are generally payable while making an application for determination of tariff. However, for sake of convenience of the utilities approaching the Commission for determination of tariff, it has been proposed that fees can be paid in five yearly instalments. PGCIL, if it so desires, may pay the full amount of fee along with the application.

9. PGCIL has pointed out that the fee hike proposed in its case is abnormal as seen from the fact that PGCIL's total expenditure on filing fee during 2004-09 would be to the extent of Rs.11.9 crore, whereas similar expenditure during the period 2009-14 is to work out to Rs.76 crore, thereby showing increase of about 600%. It has further stated that the fees proposed for NTPC generating stations, work out to Rs.40 crore where PGCIL's total estimated liability on account of filing fee will be around Rs.76 crore. On the contrary average tariff for NTPC stations works out to 200 paise/kWh, against PGCIL's 20 paise/kWh. It has represented that increase in fees, if considered necessary, should be in the proportion of tariff applicable to generating stations of NTPC and PGCIL.

10. We find merit in the suggestion made by PGCIL. In order to rationalize the fee structure, the fees for approval of transmission tariff are being specified at the rate of 0.05% per year of the transmission charges payable to PGCIL. In this manner, fees

payable by PGCIL for determination of tariff will come down to one-third of the fees proposed in the draft regulations.

11. PGCIL has also suggested that the increased fees should be applicable for tariff period commencing on 1.4.2009. This suggestion of PGCIL has not been accepted. The revised regulations shall be applicable from the date of their publication in the Official Gazette. Accordingly, the revised fees shall be chargeable for any application made after their notification. The tariff petitions already decided shall not be re-opened for this purpose.

12. MPPTCL has stated that the fees proposed are being increased without any justification and accordingly has requested for reconsideration of the proposal in view of the fact that increase may cause unfair burden on the ultimate consumer. GMR has also referred to this aspect. According to GMR the licence fee for trading licensees has been increased by 250% for category III and up to 625% for Category II and up to 430% for Category I. It has pleaded that fees should not be increased.

13. The revised fees are proposed to defray the expenditure to be incurred by the Commission for providing the services to the Central and the State utilities and the licensees. In that view, increase is justified. The Hon'ble Supreme Court in its various judgments has upheld levy of fees which are generally commensurate with the recovery of the expenditure incurred for the service rendered. The fees proposed are considered just and sufficient to recover the expenditure of the Commission. The Commission is considered to be an autonomous body, which receives grant and loans

from the Central Government. The fees proposed to be levied to the extent of recovery, will go to reduce burden on the Central Government.

14. MPPTCL has further submitted that filing fees for review application should not exceed Rs.50,000/- since the Appellate Tribunal has prescribed fees of Rs.30,000/- for such application.

15. The analogy drawn by MPPTCL with Appellate Tribunal may not be appropriate for the reason that the expenditure of the Appellate Tribunal is part of the budget of Ministry of Power. The Commission is on the other hand considered functionally and financially autonomous. The fees proposed are considered just and sufficient to recover the budgeted expenditure of the Commission.

16. According to MPPTCL, late payment surcharge proposed in the draft regulations for delay in payment of fees is not proper since the Commission is not a commercial entity. Late payment surcharge is being levied to ensure timely payments of fees by the utilities.

17. GMR has also suggested that payment made should include other modes such as ECS electronic transfer.

18. This suggestion is welcome. However, it can be implemented at a later stage, for which the modalities are to be considered separately. For the present, fees may continue to be deposited through Bank Draft, etc as proposed in the draft regulations.

19. According to IEXL, as the first power exchange in India, it is complimenting the Commission's efforts for market development. Therefore, it should be exempt from payment of fees for submitting applications for changes in Rules, bye-laws, etc.

20. IEXL being a commercial organization, cannot be exempted from payment of fees for making an application before the Commission.

21. We direct that the draft of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2008 be finalized in the light of above decisions, and notified in the Official Gazette accordingly.

Sd/-
(S. JAYARAMAN)
MEMBER

Sd/-
(R. KRISHNAMOORTHY)
MEMBER

Sd/-
(DR. PRAMOD DEO)
CHAIRPERSON

New Delhi, dated the 13th October, 2008