



Bihar Electricity Regulatory Commission (BERC)
Vidyut Bhawan-II, Ground floor, J.L. Nehru Marg, Patna

Notice No.-09

Patna, Dated – 03.06.19

PUBLIC NOTICE
**For Inviting Comments/Suggestions/Objections
from General Public and Stakeholders.**

Bihar Electricity Regulatory Commission (BERC), empowered to make Regulations under section 181 of the Electricity Act, 2003 (36 of 2003), had notified Bihar Electricity Regulatory Commission (Fee, Fines and Charges) Regulations, 2005 and it was published in Bihar Gazette No.95 dated 10.02.2006. These Regulations had been amended four times, but despite these Amendments, the amended Regulations need further amendments to keep pace with changing Power sector scenario as well as to rationalise it in line with regulations prevalent in other states.

2. Therefore Commission, in supersession of previous regulations and all amendments has drafted a fresh “**Bihar Electricity Regulatory Commission (Fee, Fines and Charges) Regulations, 2019**” and a consultative paper which is available on the website of the Commission for information. Accordingly a Suo-Motu proceeding no. 13/2019 has been initiated to finalise the process of fresh regulations.

3. Comments/suggestions/objections from general public, stakeholders, on the aforesaid fresh draft regulations are invited which should reach The Secretary, Bihar Electricity Regulatory Commission, Vidyut Bhawan-II, Ground Floor, J.L. Nehru Marg, Patna – 800021 not later than 5.00 PM on **10th July, 2019**.

4. **Commission shall hear this matter on 11.07.2019 in its Court Room at Patna at 11.00 AM.**

Sd/-
(R.P. Das)
Secretary,
BERC

CONSULTATIVE PAPER FOR MAKING BERC FEES FINES AND CHARGES)
REGULATION 2019 REPEALING PREVIOUS REGULATION

1. Section 103 of Electricity Act, 2003 (36 of 2003) provides as below:-

(1) There shall be constituted a Fund to be called the State Electricity Regulatory Commission fund and there shall be credited thereto-

(a) any grants and loans made to the State Commission by the State Government under section 102;

(b) all fees received by the State Commission under this Act; (c) all sums received by the State Commission from such other sources as may be decided upon by the State Government.

(2) The Fund shall be applied for meeting –

(a) the salary, allowances and other remuneration of Chairperson, Members, Secretary, officers and other employees of the State Commission;

(b) the expenses of the State Commission in discharge of its function under Section 86; and

(c) the expenses on objects and for purposes authorised by this Act.

(3) The State Government may, in consultation with the Comptroller and Auditor-

General of India, prescribe the manner of applying the Fund for meeting the expenses specified in clause (b) or clause (c) of sub-section (2).

2. Bihar Electricity Regulatory Commission which is functioning from 15.08.2005, does not receive any financial help from Govt. of Bihar. Commission has constituted a "Bihar State Electricity Regulatory Commission Fund". All income from application fee and license fee etc are deposited in the aforesaid fund and all the expenditures of the Commission are meet from this fund.

3. Bihar Electricity Regulatory Commission is empowered to make regulations under section 181 of Electricity Act, 2003. Therefore Bihar Electricity Regulatory Commission had made a draft of regulations for application fee and license fee called BERC (Fees Fines and Charges) Regulations 2005. It was published in Bihar Gazette No.95 dated

10.05.2006. This regulation has been amended from time to time for removal of difficulties as stated below:-

Amendments	Notification Number and Date	Publication in Gazette No. and date
1 st Amendment	08 dated 31.10.2007	978 dated 01.11.2007
2 nd Amendment	01 dated 31.01.2012	55 dated 07.02.2012
3 rd Amendment	899 dated 07.09.2012	468 dated 10.09.2012
4 th Amendment	03 dated 20.05.2015	dated 25.05.2015

4. Despite above amendments, the existing amended regulations need further amendments to keep pace with charging power sector scenario as well as rationalised it in line with regulations prevalent in other States. As the amendments required in existing regulation are substantial, Commission is of the view that existing regulations should be repealed and a fresh regulations be notified.
5. In light of the above view Commission has drafted an enclosed fresh "**BERC (Fees Fines and Charges) Regulations 2019**" on which Comments/Suggestions/Objections from general public and stakeholders are invited. A copy of the draft is uploaded on the website **www.berc.co.in** of the Commission for information.
6. Interested general public and stakeholders may submit their Comments/Suggestions/Objections on the proposed draft to "**Secretary, Bihar Electricity Regulatory Commission, Vidyut Bhawan-II, Ground Floor, J.L. Nehru Marg, Patna-21** by 10.07.2019 and also appear if they so wish in the public hearing of the Commission for oral submissions.

Commission shall hear this matter on 11.07.2019 in the court Room of the Commission at 11.0 A.M.

Encloses- **Draft Regulation**
Principal Regulation

Sd/-
Secretary

DRAFT

**BIHAR ELECTRICITY REGULATORY COMMISSION, PATNA
FEES, FINES AND CHARGES REGULATIONS, 2019**

NOTIFICATION

The _____, 2019

No. BERC.....–In exercise of powers conferred on it by Section 181 read with clause (g) of sub-section (1) of Section 86 of the Electricity Act 2003 (Act 36 of 2003) and all powers enabling it in that behalf, and in supersession of Notification dated 2nd February 2006, published in Bihar Gazette No. 95 dated 10.02.2006 (as amended time to time), the Bihar Electricity Regulatory Commission hereby makes the following regulations :-

CHAPTER -I

GENERAL

1. Short title, extent and commencement

- (1) These regulations may be called the **Bihar Electricity Regulatory Commission (Fees, Fines and Charges) Regulations, 2019.**
- (2) These Regulations extend to the whole of the State of Bihar.
- (3) These Regulations shall come into force on the date of their publication in the Official Gazette.

2. Definitions and Interpretations

- (1) In these Regulations, unless the context otherwise requires:
 - (a) “Act” means the Electricity Act, 2003.
 - (b) "Application" means and includes all petitions, replies, rejoinders, supplemental proceedings, other papers and documents filed in relation thereto before the Commission in proceedings in the manner provided in Bihar Electricity Regulatory Commission (conduct of Business) Regulations,2005.
 - (c) “Commission” means the Bihar Electricity Regulatory Commission.
 - (d) "Energy proposed to be handled" :- The energy proposed to be handled by the Distribution Licensee shall mean the total energy purchased by the Distribution Licensee excluding losses in the inter-state and intra-state transmission and sale in U.I but shall include purchase in U.I and proposed in the ARR.

- (e) “Fees” mean fees mentioned in the schedule.
 - (f) “Fines and/or Charges” refers to fines and/or charges that the Commission is empowered to impose under the Act.
 - (g) “Fund” shall mean the State Regulatory Commission Fund constituted under section 103 of the Act.
 - (h) “Licensees” mean licensees under the Act.
 - (i) “Proceedings” mean and include proceedings of all nature that the Commission may hold in the discharge of its functions under the Act.
 - (j) “Regulations” mean the Bihar Electricity Regulatory Commission (Fees, Fines and Charges) Regulations, 2005.
 - (k) “Schedule” refers to the schedule appended to these Regulations.
 - (l) “Secretary” means Secretary of the Bihar Electricity Regulatory Commission.
 - (m) “State Govt.” means the Government of Bihar.
- (2) Words and expressions used and not defined in these Regulations but defined in the Act shall have the meanings assigned to them in the Act. Expressions used herein but not specifically defined in these Regulations or in the Act but defined under any law passed by a competent legislature and applicable to the electricity industry in the State shall have the meaning assigned to them in such law. Subject to the above, expressions used herein but not specifically defined in these Regulations or in the Act or any law passed by a competent legislature shall have the meaning as is generally assigned in the electricity industry.
- (3) In the interpretation of these Regulations, unless the context otherwise requires:
- (a) words in the singular or plural term, as the case may be, shall also be deemed to include the plural or the singular term, respectively;
 - (b) references herein to the “Regulations” shall be construed as a reference to these Regulations as amended or modified by the Commission from time to time in accordance with the applicable laws in force.
 - (c) the headings are inserted for convenience and may not be taken into account for the purpose of interpretation of these Regulations.
 - (d) reference to the statutes, regulations or guidelines shall be construed as including all provisions consolidating, amending or replacing such statutes, regulations or guidelines, as the case may be, referred to.

CHAPTER - II

FEES

3. Fees on Application and Petitions

- (1) Every petition, application or appeal made to the Commission shall be made by payment of the appropriate fees specified by the Govt. of Bihar.
- (2) The fees payable to the Commission as prescribed under these Regulations shall be paid by means of bank draft or pay order, drawn in favour of Bihar Electricity Regulatory Commission, payable at Patna.
- (3) The fees received by the Secretary of the Commission under these Regulations shall be deposited in a bank account to be maintained by the Commission at such Bank and in such branches as Commission may direct from time to time.
- (4) All fees received by the Commission under these Regulations shall be credited to the Fund.

4. Licensing Fee

- (1) As stipulated in sub-section (2) (a) under Section 180 of the Act, the fee for application of grant of various licences shall be payable at the rates prescribed by the State Government from time to time.
- (2) The licensees including newly granted licensee as well as deemed licensees shall pay the annual licence fee for each Financial Year at rates specified in the schedule appended to these Regulations.
- (3) All annual licence fees shall be paid by 30th April each year.
- (4) In case of late payment of annual licence fee, interest will be payable on the delayed amount at the rate of one and quarter percent (1.25%) per month.

CHAPTER - III

FINES AND / OR CHARGES

5. Imposition of Fines and / or Charges

- (1) Subject to the provisions of the Act, the Commission may, while deciding any matter or proceeding pending before the Commission or at any other time, initiate a proceeding for imposition of Fines and/or Charges against any person including generating companies and licensees for non-compliance or violation on their part of the provisions or requirements of the Act or Rules, Regulations or Codes framed under the Act or the directions or orders of the Commission made from time to time. The fines and charges for various offences and non compliance or violations shall be

governed by the respective provisions of the Act and the Bihar Electricity Regulatory Commission (Conduct of Business) Regulations, 2005.

- (2) The provisions of the Bihar Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 and its amendments from time to time applicable to the proceedings shall apply mutatis mutandis to a proceeding for imposition of fines and / or charges.
- (3) While determining the quantum or extent of the Fines and/or Charges to be imposed, the Commission shall consider, amongst other relevant things, the following:
 - (a) The nature and extent of non-compliance or violation;
 - (b) The wrongful gain or unfair advantage derived as a result of the non-compliance or violation;
 - (c) the loss or degree of harassment caused to any person(s) as a result of the non-compliance or violation; and
 - (d) the repetitive nature of the non-compliance or violation
- (4) Before imposing any Fines and/or Charges, the Commission shall give an opportunity to the person upon whom such Fines and/or Charges are proposed to be imposed, to represent against the proposal to impose such Fines and/or Charges and also on the quantum or extent of the Fines and/or Charges proposed to be imposed.
- (5) The Commission shall issue a notice to the person specifying the nature of non-compliance or violation on the person's part and also call upon him to show cause within the time specified in the notice as to why Fines and/or Charges may not be imposed on him for such non-compliance or violation.
- (6) Where in reply to the notice, the person admits non compliance or violation in writing, the Commission shall record it and may impose such Fines and/or Charges as it may consider fit in the circumstances of the case, subject to the provisions of the Act.
- (7) If the person to whom a notice has been issued under sub clause (5) above fails to show cause or denies non compliance with or violation of any provision of the Act or rules or regulations or an order of the Commission, the Commission may enquire into the matter in such manner as it deems fit.
- (8) The Commission, may, on being satisfied that no non-compliance or violation of any provision of Act, rules or regulations or an order of the Commission has been committed, discharge the notice.

6. Payment of Fines and Charges.

- (1) The Fines and/or Charges imposed by the Commission shall be paid within 30 days of the order of the Commission imposing the Fines or Charges or within such extended date as may be allowed by the Commission in such order.
- (2) The Fines and/or Charges shall be payable in the same manner as provided under sub clause (2) of clause 3 of these Regulations.
- (3) All amounts received as fines and / or charges under these Regulations shall be deposited in a separate Bank Account opened and maintained by the Commission therefor and shall form part of the Fund after the State Govt. so notifies, under clause (c) of sub-section (1) of Section 103 of the Act.
- (4) If the Fines and/or Charges ordered by the Commission are not paid within the prescribed time, they shall be recoverable as arrears of land revenue.

**CHAPTER - IV
MISCELLANEOUS**

7. Power to Amend

The Commission shall be entitled to add, amend or alter or vary any provisions of these Regulations by order, from time to time, as it deems fit for the purpose of meeting the objectives with which these Regulations have been framed.

8. Repeal and Savings

- (1) The BERC (Fees, Fines & Charges) Regulations, 2005 (Principal Regulation) and all subsequent amendments from time to time is hereby repealed with effect from the date of publication of Bihar Electricity Regulatory Commission (Fee, Fines & Charges) Regulations, 2019 in the Bihar Gazette.
- (2) Nothing in these Regulations shall be deemed to limit or otherwise affect the power of the Commission to make such orders as may be necessary to meet the ends of justice.
- (3) Nothing in these Regulations shall bar the Commission from adopting in conformity with provisions of the Act, a procedure which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or a class of matters and for reasons to be recorded in writing, deems it just or expedient for deciding such matter or class of matters.
- (4) Nothing in these Regulations shall, expressly or impliedly, bar the Commission dealing with any matter or exercising any power under the Act for which no regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner, as it considers just and appropriate.

9. Power to Remove Difficulties

If any difficulty arises in giving effect to any of these Regulations, the Commission may by general or special order do anything not being inconsistent with the provisions of the Act which appears to it to be necessary or expedient for the purpose of removing the difficulties.

By the order of the Commission

Secretary

SCHEDULE
BIHAR ELECTRICITY REGULATORY COMMISSION
(Fees, Fines and Charges) Regulations, 2019

Sl No.	Nature of petition / application	Fees
1	Determination of tariff for supply of electricity by generating company to distribution licensee under the provisions of clause (a) of sub-section (1) of Section 62 of the Act.	
(a)	Conventional fuel based (coal, gas, oil etc) Plant	Rs 10,00,000 (Rs. Ten lakhs) for capacity upto 100 MW. Rs 2,500 (Rs. Two thousand five hundred) for each additional MW capacity or part thereof
(b)	Non-conventional & Renewable Sources of Energy, including co-generation	Rs 10,000 (Rs. Ten thousand) for the first one MW of capacity Rs 2500 (Rs. Two thousand five hundred fifty) for each additional MW of capacity or part thereof
2	(a) Determination of tariff for transmission of electricity under the provisions of clause (b) of sub-section (1) of Section 62 of the Act. (b) Determination of Fees & Charges of SLDC	Rs 10,00,000 (Rs. Ten lakhs) Rs 2,00,000 (Rs. Two lakhs)
3	Determination of tariff for wheeling of electricity under the provisions of clause (c) of sub-section (1) of Section 62 of the Act	Rs 5,00,000 (Rs. Five lakhs)
4	Determination of tariff for retail sale of electricity under the provisions of clause (d) of sub-section (1) of Section 62 of the Act	One paise for each 20 kwh (Energy proposed to be handled) Minimum Rs. 5,00,000 (Rs. Five lakhs) Maximum Rs. 75,00,000 (Rs. Seventy five lakhs)
5	In case of (a) Multi Year Tariff of Distribution /Transmission Company(ies) frame work, annual review of tariffs and performance of the licensee during the control period as may be necessary, to	Rs 5,00,000 (Rs. Five lakhs)

	be paid by the Licensee. (b) MYT of SLDC	Rs 1,00,000 (Rs. One lakhs)
6	Petition for fixing trading margin in the Intra-state trading	One paisa for each 20 KWh of energy proposed to be traded subject to minimum amount of Rs. 5,00,000/- (Five Lakh)
7	<u>Review of Tariff Order of Company</u>	
(a)	Distribution / Transmission (ies).	Rs.2,00,000 (Rs. Two lakhs)
(b)	Generating Company (ies)	
	(i) Conventional fuel based (coal, gas, oil etc.) plant.	Rs.2,00,000 (Rs. Two lakhs)
	(ii) Renewable energy based plant including co-generation.	Rs.2,00,00 (Rs. Twenty thousand)
(c)	(iii) Review as Tariff order of SLDC	Rs.1,00,000 (Rs. One lakhs)
8	Approval/Adoption of price/tariff for Power Purchase or procurement process by distribution licensee (short term, medium term and long term basis)	
(a)	Conventional	
(i)	Long term/Medium Term	Rs. 10,00,000 (Rs. Ten lakh) for 100 MW. Rs.2500 (Two thousand five hundred) for each additional MW capacity or part thereof .
(ii)	Short term	Rs. 5,00,000 (Rs. Five lakh) for 100 MW. Rs.1000 (One thousand) for each additional MW capacity or part thereof .
(b)	Non-conventional	
(i)	Long term/Medium Term	Rs. 2,50,000 (Rs. Two lakh fifty thousand) for 100 MW. Rs.1000 (One thousand) for each additional MW capacity or part thereof .
(ii)	Short term	Rs. 1,25,000 (Rs. One lakh twenty five thousand) for 100 MW. Rs.1000 (One thousand) for each additional MW capacity or part thereof .

9	Approval of proposal for deviation in guidelines for Tariff based on competitive bidding.	Rs. 1,00,000 (Rs. One lakh)
10	Application for review of Order for power purchase or power procurement process	Rs. 1,00,000 (Rs. One lakh)
11	Application for approval of the schedule of charges of a Distribution Licensee under Section 45 and Section 46 of the Act	Rs. 50,000 (Rs. Fifty thousand)
12	Application for adjudication of Disputes under the provisions of the Act:	
	(i) made by a Licensee or by a Generating Company, other than a Generating Company referred to in (ii) below;	Conventional fuel-based (coal, gas, oil, etc.) Generation Plant, Hydro Power Plant (above 25 MW), and a Licensee: Rs. 3,00,000/- (Three lakh) and Non-conventional or Renewable Energy Plant, including Co-Generation Plant: Rs. 1,00,000 (One lakh)
	(ii) made by a person owning a Captive Generating plant;	Rs. 50,000/- (Fifty thousand)
	(iii) made by a consumer or a consumer representative	Rs.15,000/- (Fifteen thousand)
13	Appeal preferred to the Appellate authority under sub section (1) of Section 127 of the Act	As specified u/s 127 of the Act.
14	Appeal against the decision of a Chief Electrical Inspector or an Electrical Inspector	As specified in rule notified by State Govt. u/s 162 of the Act.
15	Interlocutory Application	Rs. 50,000 (Rs. Fifty thousand)
16	Disputes arising under sub section 4 and 5 of Section 67 of the Act, (opening of Streets, Railways etc)	Rs. 10,000 (Rs. Ten thousand)
17	Application for review or reconsideration of any order of the Commission not covered elsewhere in these Regulations, or review of any	Rs. 10,000 (Rs. Ten thousand)

	order on grounds of clerical error/mistake	
18	Request for Inspection of documents as may be permitted	Rs. 500 (Rs. Five hundred) per day
19	Request for obtaining certified copies as may be permitted.	Rs. 10 (Rs. Ten) per page
20	Any other petition / Application (a) By utility/licensee/deemed licensee/person granted exemption from licence (b) By Institution/ Organisation / Company other than (a) above (c) By Consumer Groups registered with appropriate Govt. (d) Individual Consumer other than (e) below (e) Individual Consumer (BPL)	(a) Rs. 20,000 (Rs. Twenty thousand) (b) Rs. 10,000 (Rs. Ten thousand) (c) Rs. 5,000 (Rs. Five thousand) (d) Rs. 1,000 (Rs. One thousand) (e) Rs. 25 (Rs. Twenty five)
21	Annual licence fee for a licensee/deemed licensee under section 14 of the Act	
(a)	For Transmission of Electricity	Rs. 1,00,00,000 (one crore)
(b)	For Distribution of Electricity	Rs. 1,00,00,000 (one crore)
(c)	For Trading of Electricity	Rs. 10,00,000 (Ten Lakh)
22	Petition / Application for approval of FPPCA	Rs. 50,000/- (Rs. Fifty thousand)
23	Review petition for FPPCA order	Rs. 10,000/- (Ten thousand)
24	Petition for approval of capital investment work/scheme (CAPEX) of the licensee.	Rs. 10,000/- (Ten thousand)
25	Petition for determination of rates, charges, terms and conditions under proviso to sub-section (1) of section 36 of the Electricity Act, 2003.	Rs. 1,000(one thousand) per MW or part thereof transmission capacity with a minimum of Rs. 25,000 (twenty five thousand).
26	Application under section 35 of the Act for seeking use of intervening transmission facilities.	Rs. 20,000(Twenty thousand)
27	Application seeking prior approval under section 17 of the Electricity Act, 2003.	License fee as applicable under Sl. 21 of the schedule.
28	Application for amendment of license	License fee as applicable under Sl.

	under section 18 of the Electricity Act, 2003.	21 of the schedule.
29	Application for revocation of license under sub-section (2) of section 19 of the Electricity Act, 2003.	License fee as applicable under Sl. 21 of the schedule.
30	Petition for amendment of supply code and connected matters specified under sections 43 to 48, 50, 55 and 56 excluding those required as a result of State Govt. directives.	By Licensee-Rs.20,000(Twenty thousand) By Consumer Association-Rs.5,000(Five thousand) By Individual consumer-Rs.1,000 (One thousand)
31.	Adjudication of disputes regarding provisions of non-discriminatory open access under sub-section 47 of section 2 read with sub-section (2), (3) and (4) of section 42 of the Electricity Act, 2003.	Rs. 20,000 (Twenty thousand)
32.	Adjudication of disputes under section 9(2)/33(4)/35/43/67(4) of the Electricity Act, 2003.	Rs. 20,000(Twenty thousand)
33	Application seeking adjournment/extension in time	Rs. 1000(one thousand)
34	Application fee for grant of electricity licence under section 15 of Electricity Act, 2003	As fixed and notified by the State Govt. u/s 180 of E.A-2003.
35	Approval of Business Plan (a) Generating Company (b) Transmission Company (c) Distribution Company (d) SLDC	0.001% of the proposed CAPEX investment during MYT control period subject to a minimum of Rs. 5,00,000 (Five lakh) Rs. 10,00,000 (Ten lakh) Rs. 10,00,000 (Ten lakh) Rs. 1,00,000 (One lakh)
36.	Other matters not covered above	As may be decided by the Commission

Secretary