

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

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UERC (Conduct of Business) Regulations, 2014

Statement of Reasons

The Uttarakhand Electricity Regulatory Commission is vested with the authority to notify Regulations under section 181(1) of the Electricity Act, 2003 (hereinafter "the Act"). In exercise of the powers conferred under section 181 of the Act read with all relevant provisions of the Central Act and the State Act, the Uttarakhand Electricity Regulatory Commission had notified the UERC (Conduct of Business) Regulations, 2004 in September 14, 2004. The Conduct of Business Regulations governs all matters relating to proceedings of and before the Commission. The Regulations which were framed continued as such with various provisions providing powers and assigning functions to the sole Member of the Commission, i.e. Chairperson. However, the State Government vide its order no. 1250/1/2004-02(3)/20/2003 dated 11th March 2005 had notified the Commission as a three member Commission. Further, on the basis of the experience gained since 2004, it was considered necessary to replace the 2004 Conduct of Business Regulations to address the following issues:-

- a) To review the existing provisions which provided for functioning of the Commission as a Single Member Commission consequent to State Government's notification making it a three member Commission.
 - b) To omit the provisions for which separate Regulations have been notified.
 - c) To update the regulation and make it relevant in dynamic market condition;
 - d) To address certain gaps and discrepancies in the regulations.
 - e) To enumerate various possible violations of the Electricity Act, 2003, regulations or orders of Commission and provide for the regulatory mechanism to deal with such violations.
2. The Commission issued the draft regulations on 17.09.2014 inviting comments/objections/suggestions on the same from the stakeholders. Last date of submission of comments/objections/suggestions was stipulated as 27.10.2014. Only three (3) comments/responses

were received on the draft UERC (Conduct of Business) Regulations, 2014 from the following stakeholders:

- a) M/s Kashi Vishwanath Steels Ltd.
 - b) UJVN Ltd.
 - c) Uttarakhand Power Corporation Ltd.
3. The Commission held a public hearing on 27.11.2014 to facilitate oral submission of the stakeholders and other interested persons. Representatives from UJVN Ltd. and UPCL were present during the hearing. UJVN Ltd. reiterated the submissions already made in writing before the Commission during the hearing. The comments/objections/suggestions received from the stakeholders and the views of the Commission on the same are discussed in the subsequent paragraphs.

4. **Suggestions and objections of the stakeholders on the Draft UERC (Conduct of Business) Regulations, 2014 and the Commission's views on the same:**

4.1. **Regulation 2 : Definitions**

(a) *Provision in the Draft Regulations:*

"(n) Petition" means and includes all applications, complaints, appeals, replies, rejoinders, and supplemental pleadings as filed in accordance with Regulation 10."

M/s Kashi Vishwanath Steels Ltd. suggested to modify the definition as under:

"Petition" means and includes all applications, complaints, appeals, replies, rejoinders, and supplemental pleadings as filed in accordance with this Regulation 10.

Analysis & decision:

"Regulation" has already been defined in **Regulation 2(r)** of the draft Regulations to mean the Uttarakhand Electricity Regulatory Commission (Conduct of Business Regulations), 2014. Therefore, the Commission does not consider it necessary to modify the definition as proposed by the stakeholder.

(b) *Provision in the Draft Regulations:*

"(q) Receiving Officer" shall mean the officer designated by the Commission for discharge of functions specified in Regulation 11 and such other functions as may be assigned to him/her by the Commission from time to time."

M/s Kashi Vishwanath Steels Ltd. suggested to modify the definition as under:

"Receiving Officer" shall mean the officer designated by the Commission for discharge of functions specified in this Regulation 11 and such other functions as may be assigned to

him/her by the Commission from time to time.

Analysis & decision:

“Regulation” has already been defined in **Regulation 2(r)** of the draft Regulations as meaning the Uttarakhand Electricity Regulatory Commission (Conduct of Business Regulations), 2014. Therefore, the Commission does not consider it necessary to modify the definition as proposed by the stakeholder.

4.2. Regulation 3: Commission’s offices, office hours, sittings and Administrative Functions

Provision in the Draft Regulations:

“(2) Unless otherwise directed, the headquarters and other offices of the Commission shall open daily, except on Saturdays, Sundays and holidays notified by the State Government. The headquarters and other offices of the Commission shall open at such hours as the Commission may direct from time to time.”

M/s Kashi Vishwanath Steels Ltd. suggested to modify this sub-Regulation as under:

“Unless otherwise directed, the headquarters and other offices of the Commission shall open daily from (1000 hrs to 1800 hrs), except on Saturdays, Sundays and holidays notified by the State Government. The headquarters and other offices of the Commission shall open at such hours as the Commission may direct from time to time.”

Analysis & decision:

Fixing office hours and days is the sole discretion of the Commission. Based on this premises, the draft Regulations specified that the Offices of the Commission shall be open at such hours as the Commission may direct from time to time through an Order. In case of any exigencies the Commission may decide to amend or modify its working days or the working hours. However, if anything is specified under the Regulations, the same can be amended only through the public process which may not be warranted in case of emergencies. Hence, if there is any need for change it will be done through an office order. Therefore, the Commission does not consider it necessary to modify the definition as proposed by the stakeholder.

4.3. Regulation 4 : Language of the Commission

Provision in the Draft Regulations:

“(2) The Petition, documents or other matters contained in any language other than Hindi or English shall be accepted by the Commission only if the same is accompanied by a translation

thereof in English.”

UPCL has proposed to substitute the same as under:

“The Petition, documents or other matters contained in any language other than Hindi or English shall be accepted by the Commission only if the same is accompanied by a translation thereof in English or Hindi.”

Analysis & decision:

Since, the proceedings of the Commission are also permitted to be conducted in Hindi or English and the Petition, documents or other matters are also accepted in English or Hindi, hence, translation of any petition in any other language can be accepted in either Hindi or English. The comment of UPCL is accepted and is being incorporated appropriately.

4.4. Regulation 7: Proceedings before the Commission

Provision in the Draft Regulations:

“(3) It shall be open to the Commission to permit any association or other body corporate to participate in any proceedings before the Commission on such terms and conditions, including in regard to the nature and extent of participation, as the Commission may consider appropriate.”

UPCL has proposed to substitute the same as under:

“It shall be open to the Commission to permit any individual, association or other corporate body to participate in any proceedings before the Commission on such terms and conditions, including in regard to the nature and extent of participation, as the Commission may consider appropriate.”

Analysis & decision:

The Commission accepts UPCL’s comments to include Individual also to participate in the proceedings of the Commission. However, with regard to UPCL’s proposal of replacing body corporate by corporate body, the Commission is of the view that body corporate is a wider term in comparison to a corporate body.

The Companies Act, 2013 defines a body corporate as “including a company incorporated outside India, but not including:

- (i) A co-operative society registered under any law relating to co-operative societies; and

- (ii) Any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf.

Accordingly, a body corporate shall include: a company, a foreign company, a corporation, a statutory company, a statutory body, an LLP, etc. and such bodies that have separate legal existence. Accordingly, considering the legal definition of a “body corporate” in the Company Act, 2013 having an expansive meaning as compared to “corporate body”, the comment of UPCL is not being considered.

4.5. Regulation 8 : Authorized Representative before the Commission

Provision in the Draft Regulations:

“(1) A person may authorize an advocate to represent him and act and plead on his behalf before the Commission. The person may also appear himself or may authorize any of his employees not below the rank of Chief Engineer/General Manager to appear before the Commission and to act and plead on his behalf. The vakalatnama in favour of the Advocate and, in the event the Petition is being presented by an authorized agent or representative, the document authorizing the agent or representative shall be presented along with the Petition, if not already filed on the record of the case.”

M/s. KV Steel Ltd. has suggested including “Manager” also as an Authorized Representative to appear before the Commission.

UPCL has also proposed that any employee not below the rank of Superintending Engineer/Deputy General Manager may be allowed to appear before the Commission as an Authorized Representative.

Analysis & decision:

The suggestions of both M/s. KV Steel Ltd. and UPCL are not accepted as every Company has a General Manager (GM) and the intent of this provision in the draft Regulation was to have a senior functionary of the Company to represent the case before the Commission on behalf of the Company, who can make commitments, if required, on behalf of the Company in giving timelines before the Commission for implementing its directions and Orders and also furnish undertakings on behalf of the Company. Accordingly, the proposal is not being considered and no modification in the draft with regard to this suggestion is being made.

4.6. Regulation 10 : Petitions and pleadings before the Commission

Provision in the Draft Regulations:

“(2) Every Petition filed shall be verified by an affidavit and every such affidavit shall be in Form-II attached to these Regulations or as otherwise directed by the Commission from time to time. In case, where the Petition is filed by a company, the Petition & affidavit will be sworn by the Managing Director/Director or any officer not below the rank of Chief Engineer/General Manager of the Company.

Provided, in case of Tariff petitions, Investment approval petition and Review petition in the aforesaid matters, the petition & the affidavit has to be signed and verified only by the Managing Director or Director, alongwith the resolution of the Board of Directors of the company approving such petitions.”

M/s. KV Steels Ltd. has suggested including “Manager” also for swearing the Petition and affidavit filed before the Commission.

UPCL has also proposed that any employee not below the rank of SE/DGM may be allowed to swear upon the Petition and Affidavit before the Commission.

Analysis & decision:

For reasons already discussed in Para 4.5 above by the Commission, the suggestions are rejected and no modification is being made in the regulation.

4.7. Regulation 10 : Petitions and pleadings before the Commission

Provision in the Draft Regulations:

“(5) All Petitions to be filed before the Commission shall be typewritten, cyclostyled or printed neatly and legibly on both sides of white paper and every page shall be consecutively numbered. The contents of the Petition shall be divided appropriately into separate paragraphs, which shall be numbered serially.”

M/s Kashi Vishwanath Steels Ltd. suggested to substitute the said sub-Regulation as under:

“(5) All Petitions to be filed before the Commission shall be typewritten, Computer typed, cyclostyled or printed neatly and legibly on A-4 size white paper and every page shall be consecutively numbered. The contents of the Petition shall be divided appropriately into separate paragraphs, which shall be numbered serially.”

Analysis & decision:

The Commission examined the comment of M/s. KV Steels Ltd. to include computer

typed also as a manner in which the Petition may be filed. The definition of "typewritten" is something written or produced using a keyboard on a typewriter or a computer and hence, words computer typed is not required as it is covered in typewritten and thus, the suggestion is not being accepted.

Further, the paper size cannot be restricted to A-4 as some documents would also be required to be filed in legal or A-3 size like Maps, etc. as may be required by the Commission. Accordingly, this suggestion is also not accepted.

4.8. Regulation 10 : Petitions and pleadings before the Commission

Provision in the Draft Regulations:

"(6) The Petition shall be filed in seven copies or such other number of copies which the Commission may direct along with the soft copy of the same in MS WORD/EXCEL and all such copies shall be complete in all respects. All Petitions shall contain a clear and concise statement of the facts with material particulars, the relief sought, the provisions of law under which the Petition is being filed and the basis for such relief."

M/s. K.V. Steels Ltd. has suggested to include "One +Six" so as to clarify seven copies are required to be filed as the number of copies of petition to be submitted in the Petitions and Pleadings before the Commission.

UPCL has proposed to substitute the same by following:

"The Petition shall be filed in seven copies or such other number of copies which the Commission may direct along with the soft copy of the same in MS WORD/EXCEL/PDF or any other format specified by the Commission from time to time and all such copies shall be complete in all respects. All Petitions shall contain a clear and concise statement of the facts with material particulars, the relief sought, the provisions of law under which the Petition is being filed and the basis for such relief."

Analysis & decision:

The response of M/s. K.V. Steels Ltd. of clarifying the number of copies of the petition to be filed as (One +Six) is accepted so as to clarify that one original copy and 6 copies of the original are required to be filed before the Commission.

Further, UPCL's submissions of soft copy of the Petition in MS WORD/EXCEL/PDF or any other format as may be specified by the Commission from time to time is being accepted as there may be some documents which are not available in MS

WORD or Excel formats. Thus, such documents forming part of the Petition may be accepted in PDF format or any other format as the Commission may specify from time to time.

Accordingly, the responses are accepted.

4.9. Regulation 10 : Petitions and pleadings before the Commission

Provision in the Draft Regulations:

“(8) The fee specified by the Commission shall be paid at the time of presentation of the Petition. ”

M/s. Kashi Vishwanath Steels Ltd. has suggested to include “as per UERC (Fees and Fines) Regulations” after fees specified by the Commission in the sub-Regulation.

UPCL has submitted that the form in which the fee is to be paid and detail of the same as to in whose favor the same is to be deposited may also be specified.

Analysis & decision:

The Commission accepts the comment of M/s. K.V. Steels Ltd. to specify that the fee shall be as specified in UERC (Fees and Fines) Regulations in order to provide more clarity.

Regarding UPCL’s comments to specify the mode of payment of fee and the person in whose favor the fee is to be deposited, the Commission is rejecting the same as it has already been elaborated in Fee & Fine Regulations and hence, is not being reiterated.

4.10. Regulation 11: Presentation and scrutiny of the pleadings, etc.

Provision in the Draft Regulations:

“(1) All Petitions shall be submitted at the headquarters or such other filing centre or as may be notified by the Commission from time to time and during official hours either by hand or by registered post with acknowledgement due/speed post.”

M/s Kashi Vishwanath Steels Ltd. suggested specifying official hours as “10:00 hrs to 18:00 hrs” and also to include “Courier” as a mode of submission of the Petition.

Analysis & decision:

In response to the comment, the Commission’s view as already discussed in Para 4.2

above, is that it is the discretion of the Commission to fix office days and hours. The Office days and hours may be fixed by the Commission through an office Order. Accordingly, the Commission rejects the suggestion & no changes in the draft Regulations to this effect is being made.

However, the Commission has accepted the response for inclusion of courier as a mode for submission of the Petition and has, accordingly, making the required modification in the Regulations.

4.11. Regulation 11: Presentation and scrutiny of the pleadings, etc.

Provision in the Draft Regulations:

“(8) The Commission may admit the Petition without requiring the attendance of the parties. The Commission shall not pass an order refusing admission without giving the party(s) concerned an opportunity of being heard.”

M/s Kashi Vishwanath Steels Ltd. suggested to substitute the sub-Regulation by the following:

“(8) The Commission may admit the Petition without requiring the attendance of the parties under intimation to the parties that the same has been admitted along with next date for submission of counter. The Commission shall not pass an order refusing admission without giving the party(s) concerned an opportunity of being heard.”

Analysis & decision:

The Commission accepts the insertion proposed by the stakeholder as the parties would be required to be informed of the admission of the Petition as they would also be required to submit the replies/counter to the Petition. Accordingly, the draft regulation is amended.

4.12. New sub-Regulation proposed to be inserted as Regulation 11(10):

M/s Kashi Vishwanath Steels Ltd. has suggested to insert the following sub-Regulation:

“(10) The counter and Re-joinder shall be submitted to the Commission through courier/speed post/e-mail by petitioners/respondents directly without appearance under the intimation to the other parties. Appearance of both of the parties should be after completion of counter and re-joinder, on the date finally fixed by the Commission.”

Analysis & decision:

The Commission accepts the suggestion of the stakeholder of adding another provision in the regulation to the effect that the counter and Re-joinder shall be submitted to the Commission through courier/speed post by the Petitioner/Respondent directly without appearance under the intimation to the other parties. As of now e-filing is not in practice hence, mode of filing the same through e-mail is being rejected by the Commission. However, the Petitioner/Respondent has to submit the soft copy of the counter and Re-joinder which can be submitted through e-mail also. Further, appearance of both the parties may be required at times during admission of the Petition, in case the issue of maintainability arises, hence, this suggestion is rejected.

4.13. New sub-Regulation proposed to be inserted as Regulation 12(1)(f):

M/s Kashi Vishwanath Steels Ltd. has suggested to include E-mail also as one of the mode of service of any notice, summons issued by the Commission or any processes.

Analysis & decision:

The proposed suggestion of the stakeholder has been examined and the Commission is rejecting the same. Regulation 12(1) specifies the manner in which notice, summons has to be served and clause (e) of the Regulation specifies in any other manner as considered appropriate by the Commission also as the mode of service which may also include E-Mail. However, it has been observed that at times the parties have taken the plea that the e-mail was accessed late by them. However, if required the Commission may direct the service of notice, summons through e-mail also which would be covered under Regulation 12(1)(e) and accordingly, no changes are being made in the draft Regulation.

4.14. Regulation 13: Filing of Reply, Counter Reply, Rejoinder, Opposition, Objections, etc.

Provision in the draft Regulations:

“(1) Each person to whom the notice of hearing of the Petition is issued (hereinafter the respondent) who intends to oppose or support the Petition shall file the paragraph wise reply consistent with the petition and the documents relied upon within such period and in such number of copies as may be fixed by the Commission. In the reply filed, the respondent shall specifically admit, deny or explain the facts stated in the notice of inquiry or the Petition and

may also state such additional facts as he considers necessary for just decision of the case. The reply shall be signed and verified and supported by affidavit in the same manner as in the case of the Petition. The respondent shall also indicate whether he wishes to participate in the proceedings."

M/s Kashi Vishwanath Steels Ltd. has suggested including a limitation of not more than 20 days for filing of Reply, Counter Reply, Rejoinder, Opposition, Objections, etc.

Analysis & decision:

The Commission has examined the suggestion and the same is rejected as the time period for submission of Reply, Counter Reply, Rejoinder, Opposition, Objections cannot be limited to 20 days. In some cases the filing of reply would require detailed scrutiny, analysis, processing etc. which may require more time exceeding more than 20 days. Hence, the same may be left to the discretion of the Commission based on the nature of the proceedings. Accordingly, the suggestion is being rejected and no modification is being made in the regulation.

4.15. Regulation 13: Filing of Reply, Counter Reply, Rejoinder, Opposition, Objections, etc.

Provision in the draft Regulations:

"(3) Where the respondent states additional facts, as may be necessary for the just decision of the case, the Commission may allow the petitioner to file a rejoinder to the reply filed by the respondents. The procedure mentioned in sub-regulation (2) above for filing of the reply shall apply mutatis mutandis to the filing of the rejoinder."

M/s Kashi Vishwanath Steels Ltd. has again suggested including a limitation period of not more than 20 days from the date of notice for filing of Reply, Counter Reply, Rejoinder, Opposition, Objections, etc.

Analysis & decision:

For reasons already discussed in Para 4.14 above by the Commission, the suggestion is rejected and no modification is being made in the regulation.

4.16. Regulation 14: Hearing of the matter

Provisions in the draft Regulations:

"(6) The Commission may grant a maximum of three adjournments for the hearing scheduled in the proceedings to a party on its request, on such grounds as the Commission considers to

be valid.”

M/s Kashi Vishwanath Steels Ltd. has suggested to substitute the sub-Regulation as under:

“The Commission may grant a maximum of three adjournments for the preparation of reply, but not more than 20 days time from the date fixed earlier by the Commission for the hearing scheduled in the proceedings to a party on its request, on such grounds as the Commission considers to be valid. The request for adjournment by the party should be delivered to the Commission as well as to the opposite party before 4 working days of the date fixed by the Commission, through courier/Regd. Post/Speed Post.”

Analysis & decision:

The Commission examined the suggestion of the stakeholder and is rejecting the same as the time period may not be limited to 20 day. In some cases the filing of reply would require detailed scrutiny, analysis, etc. and perusal of records and also seeking comments from the third parties which may require more than 20 days. Moreover, Commission may decide to hold the hearing even in the absence of replies by the parties to the proceedings. Hence, this is the sole discretion of the Commission based on the nature of the case. Further, the time limit for seeking adjournment as proposed by the stakeholder may not be spelt as in case of exigencies, adjournment may have to be granted even on the date of hearing. Moreover, Regulation 14(6) already specifies that the Commission may grant a maximum of three adjournments for the hearing scheduled in the proceedings to a party on its request, on such grounds as the Commission considers as valid. Hence, no change is warranted to this effect in the Regulations.

4.17. Regulation 17: Procedure to be followed where any party does not appear

Provisions in the draft Regulations:

“(1) Where, on the date fixed for hearing or any other date to which such hearing may be adjourned, any of the party his authorized representative does not appear when the matter is called for hearing, the Commission may, in its discretion, either dismiss the Petition for default when the petitioner is absent or proceed ex-parte to hear and decide the petition in the absence of other party. Where a Petition is dismissed in absence or decided ex-parte, the person aggrieved may file an application within 30 days from the date of such dismissal or being proceeded ex-parte, as the case may be, for recall of the order passed, and the Commission may recall the order on such terms as it thinks fit, if the Commission is satisfied

that there was sufficient cause for the non-appearance when the Petition was called for hearing."

M/s Kashi Vishwanath Steels Ltd. has suggested that the Commission may, in its discretion, either dismiss the Petition for default when the petitioner is absent or proceed ex-parte to hear and decide the petition in the absence of other party "on the basis of facts submitted in their complaint/ petition/reply".

Analysis & decision:

The Commission has examined the suggestion of the stakeholder and has rejected the same because all the proceedings before the Commission are held as proceedings in a Civil Court under Code of Civil Procedure. Therefore, the suggested change in the Regulation is not required. The Commission may follow the guidelines under the Code of Civil Procedure in all such aspects. Accordingly, no modifications in the regulation are being made.

4.18. Regulation 19 : Inspection of records and supply of certified copies

Provision in the draft Regulations:

"(2) Records of every proceeding shall be open, to the inspection of the parties or their authorized representatives at any time either during the proceeding or after the Order is passed, subject to payment of fees and complying with such other terms as the Commission may direct."

M/s Kashi Vishwanath Steels Ltd. has suggested that the records of every proceeding shall be open for inspection by the parties at any time either "during the pendency of the case" or after the Order is passed. The stakeholder has also proposed to clarify that the fees for such inspection shall be "as per UERC (Fees and Fines) Regulations".

Analysis & decision:

The Commission has examined the suggestion of the stakeholder and is rejecting the same as "during the pendency of the case" has the same meaning as "during the proceedings". Accordingly, the Commission is not making any changes in the Regulations.

Further, the second suggestion made by the stakeholder regarding clarifying the "payment of fee" shall be as specified in "UERC (Fees and Fines) Regulations." The Commission accepts the comment and is modifying the Regulation to this extent.

4.19. Regulation 19 : Inspection of records and supply of certified copies

Provision in the draft Regulations:

“(3) Records of every proceeding, which are not confidential or privileged, shall be open to inspection by any person other than the parties to the Petition, either during the proceeding or after the Orders have been passed, subject to such person complying with such terms as the Commission may direct from time to time including the time, place and manner of inspection and payment of fees.”

M/s Kashi Vishwanath Steels Ltd. has suggested that the records of every proceeding shall be open for inspection by any person other than the parties either “during the pendency of the case” or after the Order is passed. The stakeholder has also proposed to clarify that the fees for such inspection shall be “as per UERC (Fees and Fines) Regulations”.

Analysis & decision:

The Commission has examined the suggestions of the stakeholder and for reasons already elaborated in Para 4.18 above has decided only to amend the Regulation to the effect of clarifying that the “payment of fee” shall be as specified in “UERC (Fees and Fines) Regulations.”

4.20. Regulation 40: Requirement for Investment Approval by the Commission

Provision in the draft Regulations:

“(1) Unless otherwise directed by the Commission, every licensee and SLDC shall obtain prior approval of the Commission for making investment in its business if such investment is above the limits laid down by the Commission from time to time by a general or special Order.

(2) The generating company (other than non conventional/renewable sources of energy) or the transmission company, as the case may be, for meeting the expenditure on renovation, modernization and upgradation (RMU) for the purpose of extension of life beyond the useful life of the generating station or a unit thereof or the transmission system, shall make an application before the Commission for approval of the proposal with a Detailed Project Report giving complete scope, justification, cost-benefit analysis, estimated life extension from a reference date, financial package, phasing of expenditure, schedule of completion, reference price level, estimated completion cost including foreign exchange component, if any, record of consultation with beneficiaries and any other information

considered to be relevant by the generating company or the transmission company.

- (3) *In the application for investment approval, the licensee, SLDC and generating company (other than non conventional/ renewable sources of energy), as the case may be shall furnish the following information or particulars:*
- (a) *A detailed project report containing examination of an economic technical system and environmental aspects of the investment together with the outline of the work to be undertaken, the salient features and particulars demonstrating the need for investment;*
 - (b) *The project cost together with the cost benefit analysis;*
 - (c) *Whether the investment is in a new project or for expansion or up-gradation of an existing system;*
 - (d) *Sanctions and statutory clearances required for execution of the project and status of such sanctions and statutory clearances;*
 - (e) *Phasing of investment over the financial years and the commissioning schedule;*
 - (f) *The manner in which investments will be capitalized for the purposes of inclusion in the revenue requirements of the licensee/SLDC & generating Company (other than non-conventional/renewable sources of energy);*
 - (g) *Constraints which the licensee/SLDC & generating Company (other than non-conventional/renewable sources of energy) may face in making the investments or in implementing the project including constraints on information available;*
 - (h) *Resource mobilization and financial plans for meeting the investment;*
 - (i) *Process for inviting and finalizing tenders for procurement of equipment, material and/or services relating to investment, in accordance with a transparent tendering procedure as may be approved by the Commission; and*
 - (j) *Such other particulars as the Commission may from time to time direct."*

UJVN Ltd. has suggested to remove the requirement of "record of consultation with beneficiaries" since the decision/order of the Commission would be final and binding on both the generating Company as well as the beneficiary.

UPCL has proposed to include the following:

- Limit of Rs. 10 Crore may be specified in the regulation, which can be modified by the Commission by an Order from time to time. Rs. 2.5

Crore was specified by the earlier conduct of business regulations. Considering the inflation this should be increased to Rs. 10 Crore.

- Also, a proviso for post facto approval in case of emergency requirement may be added.

Analysis & decision:

The Commission examined the suggestion of UJVN Ltd. and rejects the suggestion for removal of “record of consultation with the beneficiaries.” The Commission is of the considered opinion that record of consultation with the beneficiaries is essential as the impact of any investment is to be passed on to the beneficiaries. Accordingly, where the beneficiaries are identified and are limited in number, the same has to be provided as the beneficiary would also have to plan for its load/network in case of any investment where generating station is required to be shut down and the beneficiary in such case, would have to resort to procure power from other sources to meet its demand, etc. Accordingly, the proposed modification is being rejected.

With regard to the suggestions made by UPCL, the Commission does not accept the same as UPCL’s proposal of increasing the limit is not relevant as the CBR does not contain any monetary limit for seeking investment approval and the same is provided under the licenses issued by the Commission. However, the Commission is of the opinion that the same may be reviewed by the Commission while issuing separate Regulations on license conditions. Accordingly, this suggestion of UPCL is not being considered here.

However, the Commission finds some merit in the comment of UPCL for the need for post facto approval in case of emergency requirement. Although the same would only arise in case of force majeure conditions like act of God, earthquakes, etc. In day to day operations, emergency requirement would not arise. Hence, if the same is to be provided some rider like force majeure etc. would have to be inbuilt as investment in normal course of business is planned and is not an emergency requirement. Appropriate amendment to this effect is being made in the Regulations.

4.21. Regulation 41: Proceedings by the Commission

Provision in the draft Regulations:

“(1) The application for investment approval for the proposed Schemes/projects planned by the licensee or SLDC as above, for the ensuing year, shall be accompanied with the complete

details as provided in sub-regulation 3 of Regulation 40 and submitted along with the Tariff Petition for the ensuing year."

UPCL has proposed to delete this clause and has proposed that the licensee may be allowed to submit the application for investment approval for the proposed Schemes/projects any time during the year when need arises.

Analysis & decision:

The Commission has analyzed the suggestion of the stakeholder and rejects the suggestion for removing the said provision from the regulation. Licensee should be aware and plan its investment requirement well in advance. Further, the investment approval has a bearing on the beneficiaries, i.e. end consumers and hence, following the principles of Natural justice, the beneficiaries should also be heard before any order is passed. It was in this context that the provision requiring that the petition for investment approval be filed alongwith the tariff petition so that the hearings of investment approval may be clubbed with the tariff hearings and the end consumers may also be heard. The Commission, accordingly, has made no modification in the regulations.

4.22. Regulation 53: Review of the decisions, directions and orders

Provision in the draft Regulations:

"(1) The Commission may on its own or on the application of any of the persons or parties concerned, within 45 days of the making of any decision, direction or Order, review such decisions, directions or Orders and pass such appropriate orders as the Commission thinks fit."

UJVN Ltd. has suggested that the period of 45 days for submitting a review application is too short as their system is such that they have to take approval from the management for filing review, then a consultant is appointed to make a case for review and prepare the Petition which is time consuming. The Respondent also suggested that as per CERC Regulation 2013 time frame for disposal of the review whether admitted or not should also be included. The respondent further suggested that a timeframe for disposal of petitions pertaining to adjudication and investment approvals may be fixed in accordance with the CERC (Conduct of Business) (Amendment) Regulation 2013.

Analysis & decision:

The Commission had proposed the time period for filing/undertaking review as 45 days consequent to the direction of the Hon'ble Appellate Tribunal for Electricity, that the period for filing review cannot be more than the period for filing the appeal.

However, keeping in view the practical difficulty expressed by the stakeholders to collect and collate the necessary inputs for filing the review petition, the Commission is taking a lenient view and is increasing the limitation period to 60 days from 45 days for filing of a review petition.

Further, regarding the suggestion to incorporate the timeframe for disposal of review petition and other petitions, the Commission has accepted the same to ensure timely disposal of petitions. Accordingly, appropriate changes are being made in the earlier draft.

4.23. Other General Comments

- (i) UPCL has suggested that the draft conduct of business regulation does not cover the aspects of "Quorum" for meeting/hearing/issuance of order, decision by majority in case difference in opinion amongst member etc. which are required in case of multi member Commission.

Analysis & decision:

The Central Act or the State Act does not specify any quorum for meeting or hearing. Further, Section 92(3) provides that all questions which come up before any meeting of the Appropriate Commission shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote. Further, Section 93 of the Electricity Act, 2003 stipulates that no act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Appropriate Commission. In view of this, Commission finds no need to specify any quorum.

- (ii) UPCL further suggested that as per Section 95 of the Electricity Act, 2003, all proceedings before the Commission shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Commission shall be deemed to be a Civil Court for the purpose of sections

345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974). A section specifying same may be added in the Conduct of Business Regulations.

Analysis & decision:

The response of UPCL has already been dealt by the Commission in the Chapter dealing with Proceeding before the Commission in Regulation 15. Accordingly, no change to this effect is being made.

- (iii) UPCL further suggested to detail the process for getting certified copy of orders/decisions etc. in the Conduct of Business Regulations.

Analysis & decision:

The Commission has examined the comment of UPCL. All the aspects with regard to getting certified copies by parties and public have already been specified under Regulation 19 and 56. Accordingly, no modification in this regard is being made.

- (iv) UPCL also suggested for including Provision for e-filing/filing of information through Regulatory Information Management System (in future).

Analysis & decision:

The Commission has examined the suggestion of UPCL and is rejecting the same. However, as and when the Commission decides to adopt and implement e-filing/filing of information through Regulatory Information Management System, necessary amendment to this effect will be issued. Accordingly, no change to this effect is being made in the Regulations.

- (v) UPCL also submitted that CERC is in the process of modifying the conduct of business regulations and the Commission may wait for CERC conduct of business regulations to be finalized before finalizing the UERC conduct of business regulations.

Analysis & decision:

CERC has recently issued amendment to its Conduct of Business Regulations, 2013 on 14.11.2013 and the amendments made by CERC has already been considered by the Commission while finalizing the draft Regulations. Further, the Commission has to be guided by CERC Regulations only while specifying the Tariff Regulations under Section 61 of the Electricity Act, 2003. The Conduct of Business Regulations is the Regulations which specify the manner in which the proceedings of the

Commission and other day to day functioning of the Commission would be carried out and the working of this Commission may differ from the working of CERC considering the state of affairs of utilities under the purview of this Commission and that of CERC, and, hence, the CBR of this Commission need not be necessarily aligned with the CBR of CERC.