

# NATIONAL ELECTRIC POWER REGULATORY AUTHORITY

## Tariff Standards and Procedure Rules

EXTRAORDINARY

PUBLISHED BY AUTHORITY

ISLAMABAD, THURSDAY, DECEMBER 31, 1998

PART II

**Statutory Notifications (S.R.O.)**

GOVERNMENT OF PAKISTAN

NOTIFICATION

*Islamabad, the 23<sup>rd</sup> December, 1998*

**S.R.O. 1399 (I)/98.**—In exercise of the powers conferred by section 46 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (XL of 1997), the National Electric Power Regulatory Authority, with the approval of the Federal Government, is pleased to make the following rules, namely :—

PART 1

### SHORT TITLE, COMMENCEMENT AND DEFINITIONS

**1. Short title and commencement.—**

- (1) These rules may be called the National Electric Power Regulatory Authority (Tariff Standards and Procedure) Rules, 1998.
- (2) They shall come into force at once.

**2. Definitions.—**

- (1) In these rules, unless there is anything repugnant in the subject or context, —
  - (a) "Act" means the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (XL of 1997);

- (b) "Authority" shall bear the meaning ascribed thereto in the Act, and where the context so admits, shall mean the presiding officer;
- (c) "communication" means any information, comment, data, filing, summary, written statement, representation, pleadings, correspondence, or evidence filed with the Registrar, the presiding officer or the Authority in connection with any proceedings;
- (d) "information direction" means a direction issued by the Authority or the presiding officer to any person to provide information to the Authority;
- (e) "intervention request" means an intervention request filed under rule 6;
- (f) "motion" means any oral or, if so directed by the Authority, written application in relation to any matter of procedure under these rules;
- (g) "petition" means a petition made to the Authority for the determination, modification or revision of tariff;
- (h) "pleadings" means the petition, the replies to the petition and rejoinders to replies;
- (i) "presiding officer" means the presiding officer appointed by the Authority under sub-rule (5) of rule 9 and, for the purpose of these rules, where the context so admits, shall also mean the Authority;
- (j) "proceedings" means the entire process commencing from the date of filing of petition with the Registrar or, where the Authority initiates the process of determination of tariff, the date of such initiation by the Authority, and ending on the date the Authority makes its final determination on a petition, and shall include any stage during the proceedings;
- (k) "register" means the register maintained by the Registrar wherein shall be entered the title and number of all petitions and communications in such manner and with such details as the Authority may from time to time direct;
- (l) "Registrar" means a person designated by the Authority to register and record the receipt of communications and

petitions filed with the Authority and to perform such other duties under these rules as may from time to time be assigned by the Authority; and

- (m) "tariff" means the rates, charges, terms and conditions for generation of electric power, transmission, inter-connection, distribution services and sales of electric power to consumers by a licensee.
- (2) Words and expressions used but not defined in these rules shall have the same meaning as in the Act.

## PART II

### PROCEDURE

#### **3. Filling of petitions and communications.—**

- (1) Any licensee, consumer or person interested in the tariff may file a petition with the Authority by filing it with the Registrar along with such fees as may be determined by the Authority from time to time. The Authority may also initiate proceedings suo moto.
- (2) A petition filed under sub-rule (1) shall —
  - (a) state the name and address of the petitioner and the grounds giving rise to the petitioner's interest forming the basis of the petition and, where the petitioner is a licensee, the number and other relevant details of the licence as may be determined by the Authority from time to time;
  - (b) state in a concise manner the grounds and the facts forming the basis of the petition;
  - (c) the relief or determination sought;
  - (d) be accompanied with comparative schedules of charges, costs, units, price and other items comprising the existing tariff and the proposed tariff, or such other details as may be determined from time to time by the Authority for the purpose;
  - (e) be accompanied with a comparative table of the existing tariff design and the proposed tariff design on the basis of the categories of consumers likely to be affected by a

modification of the tariff, their consumption patterns and charges payable by them; and

- (f) be supported with a summary of evidence giving brief particulars of the data, facts and evidence in support of the petition.
- (3) The Registrar shall examine the contents of the petition in order to satisfy himself of the conformity thereof with the provisions of sub-rule (2), and —
- (a) shall return the petition to the petitioner with directions to amend and re-file the petition in accordance with the provisions of sub-rule (2), if the petition is found by the Registrar not to be in conformity with sub-rule (2), provided that, no petition shall be returned after the expiry of seven days of filing thereof with the Registrar; or
  - (b) where the petition is found to be in conformity with the requirements of sub-rule (2), shall accept the petition and endorse thereon a stamp acknowledging the filing along with the number given thereto in the Register:

provided that, where a petition is re-filed by the petitioner, and the Registrar is not satisfied of the conformity thereof with sub-rule (2), the Registrar shall place the petition before the Authority for directions which shall be made by the Authority not later than seven days of the date of re-filing thereof by the petitioner. The Authority shall not reject a petition on the grounds of any defect therein without giving the petitioner an opportunity of rectifying the defect within the time specified for the purpose by the Authority.

- (4) Any communication proposed to be filed by a licensee, consumer or other interested person shall contain the name and address of the communicator, the subject-matter of the communication and the title of the proceedings, and shall be filed with the Registrar who shall acknowledge receipt thereof either on a copy of the communication or through a written receipt in a format to be determined by the Authority and shall also endorse on the filing receipt the number of the petition in connection with which the communication is filed and the number assigned to the communication on the register.
- (5) All petitions shall be deemed to be filed on the date of filing thereof with the Registrar, and where refiled in accordance with the

provisions of sub-rules (2) and (3), on the date the Registrar or the Authority, as the case may be, accepts the filing thereof. A communication shall be deemed to be filed on the date on which it is filed with the Registrar.

- (6) The contents of any communication shall pertain to a single petition in respect of which it is filed.
- (7) A petition or communication shall be signed by the petitioner or communicator or by one or more of his authorized representatives in their individual names on behalf of the petitioner or the communicator.
- (8) Any petition or communication, where in any statement of fact or opinion is made by the petitioner or the communicator, shall be verified by an affidavit, drawn up in the first person stating the full name, age, occupation and address of the deponent and the capacity in which he is signing and indicating that the statement made therein is true to the best of the knowledge of the deponent, information received by the deponent and belief of the deponent, and shall be signed and sworn before a person lawfully authorized to take and receive affidavits, provided that, a communication filed during the course of a hearing may be affirmed in person before the Authority by the person filing the same.
- (9) Where any statement in an affidavit given under sub-rule (8) is stated to be true according to the information received by the deponent, the affidavit shall also disclose the source of such information.
- (10) A petition or communication shall be filed with such number of copies as the Authority may from time to time determine. Each set of the petition or communication shall be complete in all respects.
- (11) A petition or communication shall be lodged for registration during office hours at the principal office of, or such other office as may be directed by the Authority. A petition or communication may be forwarded to the Authority through registered post or courier service. If an authorized agent files a petition or communication on behalf of any party, the document authorizing the agent to do so shall be filed along with the petition or communication, if not already filed in the record of the case.

**3. Admission of petition.—**

- (1) As soon as may be, but no later than fourteen days of the date of filing of the petition, it shall be placed before the Authority for admission.
- (2) The Authority may call for submission by the petitioner of any further supporting communication within the time specified for the purpose of admission of the petition, and the Authority shall not be required to entertain or admit any petition until such time such supporting communication is furnished.
- (3) The Authority may admit the petition for hearing without requiring attendance of the petitioner.
- (4) The Authority shall not pass an order refusing admission without giving the petitioner an opportunity of being heard or making a written representation.
- (5) In case the Authority admits the petition, it may give such orders and directions for the service of notices to —
  - (a) the respondents and other parties affected or interested which in the opinion of the Authority are likely to be affected or interested; and
  - (b) to persons who, by reason of their calling or expertise, may be of assistance to the Authority in arriving at a just and informed determination of the proceedings,

for filing replies or communications in opposition or in support of the petition in such form as the Authority may direct, or for purposes of expeditious and efficient conduct of the proceedings.

- (6) The Authority may, if deemed appropriate, also direct the advertisement by publication of the title and brief description of the petition in any one or more newspapers specified for the purpose by the Authority. Such publication shall also contain a notice of the availability of a copy of the petition at the office of the Authority upon payment of fee determined for the purpose by the Authority.
- (7) The Authority may, while admitting a petition, allow the immediate application of the proposed tariff subject to an order for refund for the protection of consumers, or for satisfactory security to be provided for refund, while the proceedings are pending before the Authority.

**5. Publication and Service of notices.—**

- (1) A notice or process issued on the directions of the Authority may be served by the Registrar or the party concerned as the Authority may direct, and the Authority may direct the service to be effected through any one or more of the following modes service, namely:-
  - (a) by hand delivery through a messenger;
  - (b) by registered post with acknowledgement due ; or
  - (c) by publication in a national daily newspaper in the English language and two national daily newspapers in the Urdu language in cases where the Authority is satisfied that it is not reasonably practicable to serve notices in any other manner.
- (2) Every notice or process required to be served on or delivered to any person may be sent to the person at the address furnished by him for service or at the place where the person or his agent ordinarily resides or conducts business or personally works for gain and where the person to be served in a petition pending before the Authority has authorized an agent or representative to represent him in the petition, such agent or representative shall be considered duly authorized to accept service of a notice and process on behalf of the person concerned.
- (3) The Authority shall be entitled to decide in each case the requirements for service of a notice, any other appropriate process and publication, if any, directed by the Authority. The Authority shall decide as to who shall bear the cost of such service and publication and the time and the manner of recovery or reimbursement of such costs if directed to be borne by any party to the proceedings.
- (4) Where any petition is required to be advertised, it shall be advertised within such time as the Authority may determine.
- (5) In default of compliance with the requirements of these rules or directions of the Authority as regards service or publication, the Authority may either dismiss the petition or give such further directions, as it deems fit and proper.
- (6) No service or publication shall be deemed invalid by reason of any defect in the name of description of a person, provided that the

Authority is satisfied that such service or publication is in all other respects sufficient.

**6. Intervention.—**

- (1) Any interested person who desires to participate in any proceedings may file an intervention request for leave to intervene along with the fees determined for the purpose by the Authority.
- (2) The intervention request shall state the name and address of the person filing the same and shall describe the manner in which such person is or is likely to be substantially and specifically affected by any determination in the proceedings. The intervention request shall state the contention of the person making the same, the relief sought and brief particulars of the evidence such person shall present in case the intervention request is granted.
- (3) Unless otherwise provided in the notice of proceedings given pursuant to sub-rule (2) or (3) of rule 4, or in any other notice required to be given by the petitioner pursuant to the directions of the Authority to this effect, an intervention request must be filed no later than seven days prior to the first date of hearing in any proceedings, provided that following the commencement of a hearing, an intervention request may be filed at any time during office hours prior to the next date of hearing. The Authority may grant leave to intervene, subject to such conditions, if any, as the Authority may deem appropriate.
- (4) The Authority, while refusing leave to intervene, may direct the person making the intervention request to file such communications before the Authority as may have been referred to in the intervention request, and such communications may be taken into account by the Authority in accordance with sub-rule (3) of rule 8.
- (5) No intervention request may be filed or acted upon during a hearing unless permitted by the Authority after opportunity for all parties to object thereto, which may be made orally or in writing, as the Authority may direct. If no objection is made, the Authority may decide to accept or deny the intervention request based on the procedural and substantive merits of the intervention request.
- (6) No intervention request may be filed or acted upon after the close of evidence in the proceedings.

**7. Reply and Rejoinder.—**

- (1) Each respondent to whom a notice of the filing of petition is issued, or any person whose intervention request has been accepted by the Authority, who intends to oppose or support the petition may file a reply within fifteen days of the date of service of notice, the date of publication of the petition, or the date of acceptance of intervention request, as the case may be, with such number of copies as may be directed by the Authority. The format and contents of replies shall be in accordance with the provisions of sub rule (2) of rule (3).
- (2) In the event the respondent, or the intervener, does not file a reply, the Authority may decide the petition on the basis of, *inter alia*, the documents and evidence submitted by the petitioner.
- (3) In the reply, the respondent or the intervener shall specifically admit, deny or explain the facts stated in the petition and may also state additional facts which are relevant and necessary for reaching a just and informed decision in the proceedings. The reply shall be signed, verified and supported by means of an affidavit in the same manner as in the case of the petition.
- (4) The respondent or the intervener, if he elects to file a reply, shall serve a copy of the reply duly attested as true copy on the petitioner or his authorized representative and file proof of such service with the Registrar at the time of filing the reply.
- (5) Where the respondent or the intervener states additional facts, data or reports, the Authority may allow the petitioner to file a rejoinder to the reply filed by the respondent or the intervener within fourteen days of the order of the Authority to this effect. The procedure described in this rule for filing of the reply shall also apply to the filing of the rejoinder.

#### **8. Comments and Participation.—**

- (1) A person, other than an intervener or a person to whom a notice has been issued, who intends to file any comments in regard to any proceedings before the Authority, pursuant to an advertisement and publication issued for the purpose, shall deliver to the Registrar a statement of comments.
- (2) The Authority may permit such person to participate in the proceedings, if the Authority considers that the participation of such person shall facilitate the proceedings and decision in the matter. The person filing the comments shall not be entitled as of right to participate in the proceedings.

- (3) The Authority shall be entitled to take into account the contents of any statement of comments filed pursuant to sub-rule (1) in the final determination, provided that , if deemed fit by the Authority, the Authority may invite written representations by the parties in the proceedings in response to the statement of comments.

**9. Hearings by the Authority.—**

- (1) After filing of the pleadings, the Authority shall examine the same and determine whether a hearing is required to arrive at a just and informed decision. For the purposes of making such an order, the Authority may (i) administer discoveries and interrogatories to any person; (ii) make information directions; or (iii) require the appearance of any person.
- (2) In case the Authority orders a hearing, the Authority shall fix the date of hearing for the parties to present written or oral arguments on the basis of the pleadings. The Authority may also frame the issues over which the parties may be allowed to address arguments and present evidence before the Authority and the Authority may decide as to which issues may be allowed to be addressed during the course of the hearing. In framing the issues, the Authority may exclude one or more issues or matters raised or stated in the pleadings.
- (3) In case the Authority determines not to hold a hearing, it shall inform the parties of its decision no later than seven days of such determination. The parties shall, no later than ten days of receiving the notice as aforesaid, file with the Registrar the detailed evidence referred to in the summaries of evidence.
- (4) Notice of the commencement of a hearing shall be given at least fourteen days prior thereto, unless the Authority finds for reasons to be recorded, in writing, that a shorter period of notice is consistent with the public interest, provided that, once hearing in the proceedings has commenced, the notice of the next date of hearing may be of any period as determined by the Authority and may be announced by the Authority at the time of adjournment of the hearing or notices may be given to the parties in accordance with sub-rule (1) of rule 5.
- (5) A hearing may be conducted by only one member of the Authority who shall be designated as the presiding officer by the Authority for the purpose, provided that the final decision or determination in the

proceedings shall be taken by the Authority on the basis of the record in the proceedings.

- (6) The parties may be allowed to present such written or oral evidence as the presiding officer may allow and shall present such written or oral evidence as the presiding officer may direct. The presiding officer may in his discretion allow the parties the right to cross examination or re-examination in respect of any evidence presented.
- (7) The presiding officer may co-opt such staff, officers, consultants or experts as deemed appropriate. The presiding officer shall be empowered to administer affirmations, issue or direct the issuance of notices, and make all decisions regarding the admission or exclusion of evidence or any other procedural matters which may arise during the course of the hearing.
- (8) The presiding officer may direct the parties to attend a pre-hearing conference to discuss procedural matters relating to the proceedings at any time before the commencement of the hearing. The presiding officer shall, through written memorandum to the parties or announcement on the record, announce any action taken at the pre-hearing conference.
- (9) The presiding officer may, to the extent deemed necessary and practicable, establish a detailed schedule for the proceedings. The schedule may include, without limitation, the dates for the filing of communications, interrogatories, discovery motions, objections to discovery motions, responses to objections or any other procedural matters that may aid in the orderly disposition of the proceedings. Any schedule established by the presiding officer shall be binding on the parties unless later modified by the presiding officer after notice to all parties.
- (10) The Authority shall maintain a public listing of all proceedings set for hearing.
- (11) All hearings shall be held at the principle office of the Authority unless the presiding officer designates a different location in the notice for hearing.
- (12) Where, on a fixed date for hearing, any of the parties does not appear when the matter is called for, the Authority may either dismiss the petition for default of appearance or proceed against the party in default and hear and decide the petition.

- (13) Where a petition has been dismissed or decided in default of appearance of a party, the person aggrieved may file an application within ten days from the date of such dismissal or decision. The applicant may seek recall of the order passed. The presiding officer may recall the order on such terms as it considers fit, if he is satisfied that there was a sufficient cause for non-appearance when the petition was called for hearing.
- (14) All parties, counsel, witnesses and other persons present at a hearing shall conduct themselves with decorum and deference to the presiding officer. The presiding officer may order the removal of any person from the hearing who displays disrespect to the presiding officer or obstructs the hearing.
- (15) The presiding officer shall declare close of evidence following the submission of all the evidence by the parties as may be allowed or required by the presiding officer during the proceedings. Following a declaration of close of evidence by the presiding officer, the record in the proceedings shall be presented before the Authority for its decision.
- (16) Notwithstanding close of evidence in the proceedings, for the purposes of arriving at its final decision in the proceedings, the Authority may (i) administer discoveries and interrogatories to any person; (ii) make information directions; or (iii) require the appearance of any person.
- (17) The presiding officer may, upon its own motion, or upon motion by a party or an intervener, order proceedings involving a common question of law or fact to be consolidated for hearing on any or all of the matters in issue in such proceedings.
- (18) The presiding officer may allow and fix a time for the presentation of oral arguments or the examination or cross-examination of any witness during hearing, imposing such limits of time on the argument, examination or cross examination, as the case may be, as deemed reasonable by the presiding officer. The parties shall strictly comply with such time limits, and no prejudice shall be deemed to have been caused to any party as a result of the refusal of the presiding officer to allow further time to such party.
- (19) A party shall not present additional evidence after it has closed its evidence nor may any hearing be reopened after having been closed, except upon motion and where a good cause is shown. The presiding officer shall give notice to all parties of the ruling upon such motion. Notwithstanding anything in the sub-rule, the

Authority may, at any time prior to the rendering of a decision, reopen the hearing on its own, in which case the parties shall be given a notice and the hearing shall not be convened less than five days after the sending of such notice.

- (20) Where the Authority decides not to hold a hearing, it shall render its final determination in the proceedings on the basis of the evidence filed by the parties and the communications filed by any person of their own volition or upon the direction of the Authority, provided that the Authority may invite written representations by the person seeking the modification of the tariff in respect of any communication materially adverse to his interests, in order to arrive at a just and informed decision. Where the Authority decides not to hold a hearing, the evidence shall be deemed to have been closed thirty days prior to the expiry of the time prescribed under sub-rule (2) of rule 16.
- (21) The Authority may appoint one or more days during the course of the proceedings for the participation of the general public in an informal manner.

**10. Discovery.—**

- (1) At any stage of the proceedings, the Authority may require any person to produce such documentary or other evidence as the Authority may consider necessary for the purpose of enabling it to conduct a fair hearing and to arrive at a just and informed decision.
- (2) A party to any proceedings may, at any time before the close of evidence, make a motion to the Authority for discovery of any document or other information from any other party to the proceedings or from any other person. The motion for discovery shall specify the nature and content of the discovery sought and its relevance to the issues in the proceedings.
- (3) The Authority may —
  - (i) after giving an opportunity of responding orally or in writing, as deemed fit by the Authority, within the time limit specified for the purpose, to the party by whom the discovery is sought, reject the motion for discovery if deemed by the Authority to be irrelevant, unnecessary for purposes of the proceedings or unlikely to be of assistance to the Authority in its decision; or

- (ii) after giving an opportunity of responding orally or in writing, as deemed fit by the Authority, within the time limit specified for the purpose, to the party against whom the discovery is sought, accept the same subject to any amendments to the contents or extent of the discovery requested in the motion.
- (4) Upon the acceptance of a motion for discovery, the Authority shall direct the person from whom the discovery is sought to produce the required documents or information before the Authority within the time limit directed in this respect by the Authority and upon production as aforesaid, shall provide a copy thereof to the party making the motion for discovery.
- (5) Notwithstanding anything contained in sub rules (1) and (2), the presiding officer may establish different or additional discovery procedures in each case, which take into account the legitimate rights of the parties in the context of the proceedings, in accordance with the provisions of the Act. In establishing discovery procedures, the presiding officer shall exercise his discretion to balance the interests of the parties and shall ensure that the information necessary to complete the record is produced within the time for discovery directed in each case by the presiding officer.
- (6) Where the directions for discovery made by the Authority on the motion of a party are not complied with within the time limit determined for the purpose, the party making the motion for discovery shall immediately bring such failure of discovery to the notice of the Authority. Failure of a party to file a motion to compel discovery in a timely manner may result in a waiver of its right to compel the discovery.
- (7) A party which has produced any document or information in response to a direction for discovery, shall be under a continuing duty to bring to the notice of the Authority any changes rendering the contents and meaning of any documents or information no longer accurate or complete and shall amend such documents or information in accordance with the directions of the Authority.

**11. Interrogatories.—**

- (1) The Authority may, whether by itself or on a motion made by any party and granted by the Authority on such terms as it may deem fit, administer written interrogatories to any person. The interrogatories shall state the questions whose answers are sought by the Authority or any party to the proceedings, provided that the

Authority shall ensure that the questions stated in the interrogatories are relevant to the issues in the proceedings.

- (2) A person to whom interrogatories are administered, shall respond thereto within the time limit directed by the Authority. The response to interrogatories shall be in writing and shall be filed with the Registrar.
- (3) Where the interrogatories administered on the motion of a party are not responded to within the time limit directed for the purpose by the Authority, the party making the motion for interrogatories shall immediately bring such failure of response to the notice of the Authority.
- (4) Failure of a party to make a motion to compel response to the interrogatories in a timely manner may result in a waiver of its right to compel the response.

**12. Rulings.—**

- (1) The presiding officer may make rulings during the course of a hearing upon a motion for ruling made by a party, and may also make rulings of its own motion. The presiding officer may require, at his discretion, written memoranda or permit oral argument on any issue in respect of which a party seeks a ruling. The presiding officer may rule at the time of the request or take any matter under advisement.
- (2) The presiding officer shall make ruling promptly after submission of a motion for ruling and generally not later than the next hearing date.
- (3) The Authority may review rulings made by the presiding officer when issuing its final decision in the proceedings.
- (4) A ruling of the presiding officer shall remain in full force and effect unless and until set aside or modified by the Authority.
- (5) A ruling of the presiding officer may be appealed to the Authority, by filing the appeal in writing with the Registrar, within seven days of the date of announcement of the ruling. The Authority shall decide the appeal not later than fourteen days if the date of filing of the appeal.
- (6) A party wishing to appeal a ruling of the presiding officer shall immediately give notice to the presiding officer of its intent to do so,

on the record if possible, and shall provide copies of the appeal to all the other parties to the proceedings, within seven days time limit.

- (7) Any party to the proceedings may file replies to the appeal by filing them with the Registrar.
- (8) The Authority may decide the appeal on the basis of the record alone, or may permit oral or written argument by any or all the parties to the proceedings.
- (9) The presiding officer may, but shall not be required to, stay the proceedings until such time the Authority has rendered its decision in appeal on a ruling, if in his opinion the conduct of the proceedings pending the decision on the appeal shall be prejudicial to the party filing the appeal.

**13. Transcripts.—**

- (1) The Authority may at its own and shall on motion made by any party in writing at least seven days before the date fixed for hearing, arrange that the hearings at the proceedings be officially recorded by a person appointed for the purpose.
- (2) A party requesting a copy of the transcript shall pay to the Authority the reasonable cost of preparing the copy before the Authority makes the copy available to the party.
- (3) A correction in the official transcript may be made only to make it conform to the evidence presented at the hearing.
- (4) A correction in the official transcript agreed to by the parties may be incorporated into the record, if and when approved by the presiding officer, at any time during the hearing; or after the close of evidence, but, in any event, not more than ten days from the date of receipt of the transcript by the parties. The presiding officer may call for the submission of proposed corrections in the official transcript and may make dispositions thereof at appropriate times during the course of the proceedings.

**14. Tentative Opinions.—**

- (1) At any stage in a proceeding, the presiding officer may call all parties together for a conference and may recess the hearing for such conference. The presiding officer shall record, in writing, the tentative opinion of the Authority or the presiding officer on the basis of the evidence on the record. The purpose of recording the

tentative opinion shall be to afford an opportunity to the parties to appraise the prospects of their case in the proceedings and accordingly to consider settlement or withdrawal of their case or to modify the evidence proposed to be presented.

- (2) The presiding officer shall record, in writing, the result of the conference referred to in sub-rule (1). The tentative opinion shall contain a statement of reasons and a determination of each issue relevant to such opinion.
- (3) Neither the Authority nor any party shall be bound, or in any manner restricted, by a tentative opinion, or any determination in respect of any issue in a tentative opinion, rendered in accordance with the provisions of this rule and nothing recorded in a tentative decision shall be used in any manner prejudicial to the Authority or any party to the proceedings.

**15. Evidence.—**

- (1) Subject to the provisions of sub-rule (7) of rule 9 and sub-rule (1) of rule 25, any matter contained in any record, report, communication and document in the possession of the Authority of which a party or the Authority desires to avail itself as evidence in a proceeding, may be offered and made a part of the record in the proceedings. Such record, report, communication and other document need not be produced or marked for identification, but may be offered in evidence by specifying the report, document or other file containing the matter so offered.
- (2) The presiding officer may allow to be prepared a written statement of the evidence of any witness along with an affidavit of accuracy to be offered as an exhibit in lieu of oral evidence. Copies of such proposed exhibit shall be served upon all parties to the proceedings who have filed an appearance at least seven days in advance of the session of the hearing at which such exhibit is to be offered.
- (3) Parties to a proceeding may file with the Authority and serve on all other parties a written statement of specific facts or issues. The written statement shall be supported by evidence along with a summary thereof. Other parties may file any response to the written statement within such period of time after service, as may be fixed by the presiding officer. The presiding officer shall give his decision as to the relevance and admissibility, in whole or in part, of the written statement at the next due date of hearing, or where the written statement is presented during the course of hearing, then

prior to the admission of such written statement in evidence in the proceedings.

- (4) A summary of evidence shall contain:
  - (i) an abstract of the relevant and necessary evidence relied upon by the party filing, with reference to the pages of record or exhibits where the evidence appears; and
  - (ii) arguments and authorities in support.
- (5) Any exhibit referred to in the summary of evidence should not be reproduced therein. Such exhibit shall be produced before the Authority when so directed by the Authority within the time limit specified by it.
- (6) Any analysis of an exhibit relied on should be included in the relevant part of the summary of evidence under the subject to which it pertains.
- (7) No summary of evidence shall be more than twenty pages in length.

**16. Decisions, etc., by the Authority.—**

- (1) All orders, determinations and decisions of the Authority shall be taken in writing.
- (2) The Authority shall decide a petition within six months of the date of filing of the petition, provided that, the Authority may, only for causes beyond its control including, without limitation, the failure by any person to comply with the provisions of these rules or the orders and directions of the Authority, extend the aforesaid six months period by a further period of one month, provided further that, the Authority shall not extend the time for its final determination in a proceedings beyond an aggregate period of six months. The reasons for such extension in time shall be recorded in writing.
- (3) The reasons given by the Authority in support of its orders, determinations and decisions including those by the dissenting members, if any, shall form a part of the order, determination or decision. Copies of all orders, determinations and decisions shall be available at the principal office of the Authority for public inspection.

- (4) All orders, determinations and decisions made or issued by the Authority shall be certified under the signature of the Registrar and the seal of the Authority, and copies similarly certified shall be made available to any person on payment of such fees as the Authority may from time to time determine.
- (5) Within five days of service of a final order, determination or decision of the Authority, a party may file a motion for recalculation based on an alleged inadvertent error in a calculation contained in the final order, determination or decision, as the case may be. The motion shall set forth in detail the proposed adjustments and the basis for the changes. The Authority may, in its directions, convene a conference or hearing to discuss the motion. The Authority shall act upon a motion for recalculation within seven days of receipt of such motion unless it gives notice to the parties, in writing, that a longer period of time will be required and specifies the additional length of time necessary to consider the motion.
- (6) Within ten days of service of a final order, determination or decision of the Authority, a party may file a motion for leave for review by the full strength of the Authority of such final order, determination or decision, as the case be.
- (7) A motion for leave for review shall specify the grounds on which review is sought by the party. Parties to the proceedings shall be afforded a reasonable opportunity, orally or in writing as deemed fit by the Authority, to respond to a motion for leave for review.
- (8) The Authority shall act upon a motion for leave for review within ten days of receipts of such motion unless it gives notice to the parties, in writing, that a longer period of time will be required and specifies the additional length of time necessary to consider the motion.
- (9) The Authority may refuse leave for review if it considers that the review would not result in the withdrawal or modification of the final order, determination or decision.
- (10) The Authority may grant leave for review on such conditions as deemed appropriate by the Authority including, without limitation, the conditions pertaining to any limits on time or additional evidence proposed to be presented in review.
- (11) A final order, determination or decision given by the Authority in any proceeding and, where applicable, following a determination in respect of a motion for review pursuant to sub-rule (6), shall be intimated by the Authority to the Federal Government as soon as

may be but in any event not later than three days after the date of such final order, determination or decision, as the case may be for the purpose of notification thereof in the official Gazette under sub-section (4) of section 31 of the Act.

- (12) The Authority shall, within fifteen days of a request by the Federal Government for reconsideration by the Authority of its final order, determination or decision in a proceeding, reconsider such final order, determination or decision anew and shall intimate the result thereof to the Federal Government within a period of fifteen days for notification in the official Gazette under sub-section (4) or section 31 of the Act.

### PART III

#### STANDARDS AND GUIDELINES

##### **17. Standards and guidelines.—**

- (1) The Authority may, from time to time, set and issue standards and guidelines regarding the substance or contents of filings to provide assistance to persons seeking to file petitions and communications. The Authority may hold public hearings in accordance with these rules in the development of standards and guidelines. The persons filing the petitions and communications shall comply with any and all standards or guidelines issued by the Authority.
- (2) The Authority may, at any time, modify, amend or revoke the standards or the guidelines by publishing the proposed modification, amendment or revocation in the official Gazette thirty days in advance of the effective date thereof, provided that, no modification, amendment or revocation shall be effective in respect of any proceedings pending before the Authority at the time such modification, amendment or revocation becomes effective. The Authority shall, before publishing the modification, amendment or revocation in the official Gazette, take into consideration any comments received within the aforesaid period of thirty days.
- (3) Tariffs shall be determined, modified or revised on the basis of, and in accordance with, the following standards, namely:-
  - (i) tariffs should allow licensees the recovery of any and all costs prudently incurred to meet the demonstrated needs of their customers, provided that, assessments of licensees'

prudence may not be required where tariffs are set on other than cost-of-service basis, such as formula-based tariffs that are designed to be in place for more than one year;

- (ii) tariffs should generally be calculated by including a depreciation charge and a rate of return on the capital investment of each licensee commensurate to that earned by other investments of comparable risk;
- (iii) tariffs should allow licensees a rate of return which promotes continued reasonable investment in equipment and facilities for improved and efficient service;
- (iv) tariffs should include a mechanism to allow licensees a benefit from, and penalties for failure to achieve, the efficiencies in the cost of providing the service and the quality of service;
- (v) tariffs should reflect marginal cost principles to the extent feasible, keeping in view the financial stability of the sector;
- (vi) the Authority shall have a preference for competition rather than regulation and shall adopt policies and establish tariffs towards that end;
- (vii) the tariff regime should clearly identify interclass and inter-region subsidies and shall provide such subsidies transparently if found essential, with a view to minimizing if not eliminating them, keeping in view the need for an adequate transition period;
- (viii) tariffs may be set below the level of cost of providing the service to consumers consuming electric power below the consumption levels determined for the purpose from time to time by the Authority, as long as such tariffs are financially sustainable;
- (ix) tariffs should, to the extent feasible, reflect the full cost of service to consumer groups with similar service requirements;
- (x) tariffs should take into account Government subsidies or the need for adjustment to finance rural electrification in accordance with the policies of the Government;

- (xi) the application of the tariffs should allow reasonable transition periods for the adjustments of tariffs to meet the standards and other requirements pursuant to the Act including the performance standards, industry standards and the uniform codes of conduct;
  - (xii) tariffs should seek to provide stability and predict ability for customers; and
  - (xiii) tariffs should be comprehensible, free of misinterpretation and shall state explicitly each component thereof.
- (4) The Authority may amend, modify, supplement, revise or revoke the standards prescribed under sub-rule (3), provided that no action as aforesaid shall be taken to the prejudice of a party to any proceedings pending before the Authority.
  - (5) The Authority shall, in determining the tariff, strike a balance, to the extent possible, among the tariff standards in order to optimize the benefits to all persons likely to be affected by the tariff.

#### PART IV

### TARIFFS, SCHEDULES AND CONTRACTS

#### **18. Filling of tariff.—**

- (1) Every licensee shall have approved tariffs filed with the Authority. The Authority may order the licensees to file tariffs if not already filed with or approved by the Authority in accordance with thesis rules. In case such tariffs have not already been approved by the Authority, the Authority may direct the licensee to file a petition for the purposes of approval of the tariffs applied by such licensee.
- (2) A tariff determined by the Authority shall not become effective until such time it is published in the official Gazette in accordance with sub-section (4) of section 31 of the Act.

#### **19. Format of tariffs.—**

- (1) A tariff, and any schedule or contract in connection with the tariff, shall be typewritten, printed, or otherwise legibly duplicated and shall be filed with the Authority in such number of copies as the Authority may direct.

- (2) A tariff, and any schedule or contracts in connection with such tariff, shall show plainly all requisite detail necessary or appropriate to explain the basis of all charges to be made.
- (3) A schedule in connection with a tariff shall show the price or unit upon which it is based, meter rentals, service charges, basis for determining demand, discounts, and any other detail necessary for a complete understanding of the charges comprised in the tariff.
- (4) A tariff, and the schedule or contract in connection with the tariff, shall be marked with identification numbers and letters in accordance with the method determined for the purpose by the Authority. Each tariff shall show plainly, the date of issue and the date of effectiveness.

**20. Posting of rates.—**

A tariff, and any schedule or contract in connection with the tariff, filed by a licensee or approved by the Authority, shall be printed and copies thereof shall be made available to the public free of cost at the licensees' offices.

**21. Notice of general rate changes to customers of licensee.—**

In any publication ordered by the Authority under sub-rule (2) of rule 4 on a petition filed by a licensee, the publication shall, in addition to the information directed by the Authority to be published, contain the following information, namely:-

- (a) total rupee amount of the proposed rate change;
- (b) total percentage change in annual revenues;
- (c) typical bill impact of the proposed change on each class of customers;
- (d) if applicable, a statement indicating that the Authority has ordered immediate implementation of the proposed tariff subject to an order for refund protection to the customers; and
- (e) the telephone number of a representative of the licensee who can be called for further information.

PART V

**MISCELLANEOUS**

**22. Seal of the Authority.—**

- (1) there shall be a seal of the Authority, which shall remain in the custody of the Registrar.
- (2) The seal of the Authority shall be affixed by the Registrar on all orders, determinations, decisions or communications made, notices issued or certified copies granted by the Authority.

**23. Effect of irregularity in proceedings.—**

No proceedings of the Authority shall be invalid by reason of any defect or irregularity unless the Authority, on an objection taken by any party, is of the opinion that substantial injustice has been caused by such defect or irregularity or there are otherwise sufficient reasons for doing so, and the Authority may in such event make such orders as deemed appropriate by it for the rectification of such defect or irregularity.

**24. Inspection by public.—**

- (1) subject to the provisions of sub-rule (1) of rule 25, the Authority shall maintain a policy for inspection and examination of its files and records in relation to any proceedings.
- (2) The Authority shall fix the fees for providing copies of any document available with the Authority to the public. The Authority shall also specify the times of public access to files and records.
- (3) Records of every proceedings shall be open for inspection, except those parts specified by the Authority as confidential or privileged under sub-rule (1) of rule 25.
- (4) Public access to records of the Authority shall be subject to compliance with such terms as the Authority may direct from time to time, including the time, place and manner and the payment of fees for inspection.
- (5) The Authority may develop record keeping systems, numbering systems and case management systems as it may deem appropriate.

**25. Confidentiality.—**

- (1) The Authority may issue such standards for confidentiality, as it may deem appropriate. The Authority may change, amend or revoke standards of confidentiality at any time, consistent with the provisions of these rules and the Act, provided that, no change in the standards of confidentiality shall be applicable in case of documents marked or declared confidential by the Authority prior to such change.
- (2) Any person compelled to produce a document may claim that some or all of the information contained in a particular document is exempt from production in accordance with the confidentiality standards of the Authority. The person making such claim shall file a statement specifying the justification for a claim of confidentiality, the Authority shall have the right to make the determination with regard to any claim of Confidentiality, provided that, in making such determination, the Authority shall reject any general claims of confidentiality, and shall make its determination on a claim for confidentiality only on the basis of detailed information furnished to the Authority to make an informed decision of the request for confidential treatment.
- (3) Notice of the decision by the Authority to deny a claim, in whole or in part, and an opportunity to respond shall be given to a person claiming confidentiality no less than five days before its public disclosure.

**26. Extension of time.—**

- (1) Subject to the provisions of sub-rule (2) of rule 16, the Authority may, for good cause shown, extend any time limit as prescribed by these rules or directed by the presiding officer.
- (2) All requests for extension of the time shall be made by motion before the expiration of the period originally prescribed or as previously extended.
- (3) The Authority shall give notice to all parties of the Authority's determination upon the motion made under sub-rule (2).

**27. Penalty.—**

- (1) Subject to sub-rule (2), any person who contravenes any of these rules shall be punishable with fines which may extend to three hundred thousand rupees and, in the case of a continuing

contravention with an additional fine which may extend to three hundred thousand rupees for every day during which such contravention continues after the first contravention.

- (2) In imposing any fine under these rules, the Authority shall keep in view the principle of proportionality of the fine to the gravity of the contravention and shall allow the person liable to be penalized to show cause, orally or in writing and in the manner deemed fit by the Authority, as to why the fine may not be imposed.

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*National Electric Power Regulatory Authority*