

# BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

Vidyut Niyamak Bhawan, Vibhuti Khand, Gomti Nagar, Lucknow-226010

## IN THE MATTER OF

Comments and Suggestions on draft Uttar Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2019

SUBMISSION BY PRAYAS (ENERGY GROUP), PUNE

30<sup>th</sup> September, 2019

The Uttar Pradesh Electricity Regulatory Commission (UPERC) has issued a public notice (Ref. UPERC/Secy/2019/1101) on 4<sup>th</sup> September, 2019, and has invited stakeholders and interested parties to submit comments and suggestions on the draft Uttar Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2019. In response to this public notice, Prayas (Energy Group) would like to make the following submission. We request the Commission to accept this submission on record and to allow us to make further submissions in this matter, if any.

It is indeed a welcome step that UPERC has taken the initiative to revise its Conduct of Business Regulations. The draft regulations have been modified to include regulations on adjudication, enabling provisions for proceedings before the Commission and appointment of staff.

The Conduct of Business Regulations are extremely crucial for effective functioning of the State Electricity Regulatory Commission. Therefore, it is crucial that the proceedings before the Commissions and processes are laid out in these regulations such that it ensures fairness for all stakeholders, protects public interest and leads to effective functioning of the Commission as well as increased consumer participation. Our comments and suggestions on the draft regulations are in this regard and are detailed in the following sections. In some cases, the specific suggested change in the regulation is also mentioned and is marked in blue. Our comments and suggestions are detailed below.

## 1. Functioning and processes of the Commission

### 1.1. Commission's office and office hours

While it is recognised that flexibility of the Commission's working is required, given increased number of proceedings before the Commission, **timings of working** of the Commission provide increased access to the regulatory institution. To ensure maximum access to the regulatory institution, the Commission must ensure that directions regarding working hours of the Commission are prominently displayed on the Commission's website and in licensees' offices.

**Regulation 4.b.** states that Commission offices "shall open at such hours as the Commission may direct from time to time".

**Suggested modification:** *"Unless otherwise directed, the headquarters and other offices of the Commission shall open daily, except on Saturdays, Sundays and holidays notified by the Government of Uttar Pradesh. The headquarters and other offices of the Commission shall open at such hours as the Commission may direct from time to time. Such directions shall be prominently displayed at the Commission's office, website, and in licensees' offices."*

## 1.2. Roles and responsibilities of the secretary

In **Regulation 8.c**, in order to ensure smooth functioning of the Commission, we suggest the following to be incorporated to the **Secretary's role**.

*“He shall scrutinize documents, including, inter alia, Petitions, appeals, applications or references and shall be entitled to seek clarifications or rectifications upon the same and issue appropriate directions pertaining to the acceptance or rejection of such documents.”*

In addition, **Regulation 26** can also be amended to ensure streamlined processes with the following addition to the regulation:

*“The Secretary or in his absence an Officer of the Commission designated by the Chairperson, shall record the minutes of the meetings and maintain a register which will, amongst other things, contain the names and designation of Members and invitees present in the meeting, a record of proceedings and notes of dissent, if any. The draft minutes shall, as soon as practicable, be sent to the Chairperson and the attending Members.”*

## 1.3. Processes and functioning of the Commission

- a) In **Regulation 11c**, to ensure streamline processes and ensure effective functioning of the Commission, the following can be incorporated:

*“The Chairperson may call for a meeting as and when required, or on receipt of a requisition in writing from any Member stating the issues for consideration at the Meeting.”*

- b) **Regulation 26 c** elaborates on how **dissent notes** are to be recorded in orders. While the draft regulations has enabling provisions, we think that the processes should be detailed further. In addition, the regulations should specify that the dissent order or note filed by the dissenting member is reproduced as is rather than summarised to safeguard the interests of all stakeholders. In this context, it is suggested that the following provisions are included in Regulation 26c.

- *“If the Members of a bench of the Commission consisting of two Members (including the Chairperson) differ in opinion on any point, they shall state the point or points on which they differ, and refer the case on such point or points of difference by the third Member of the Commission.*
- *In the cases so referred, the third Member after perusing the records and the Orders written by the two Members, shall write his own judgement. In such cases, the decision of the majority shall prevail. Provided that the final order shall record the dissenting findings arrived at by any Member.*
- *The Member or Members deciding the reference may, at his/their discretion, require the parties to the matter to make additional submissions before him/them before arriving at a decision.*
- *No appeal shall lie from an order referring a matter to the Chairperson or for reference to another/other Member or Members.”*

## 2. Proceedings and orders of the Commission

### 2.1. Language of the Commission

**Regulation 5** states the language use for proceedings of the Commission. While the sub-regulations ensure diversity of use of language, we suggest that in public interest the Commission by itself also directs for translation of certain petitions. This will ensure wider participation. We suggest the inclusion of the following regulation after Regulation 5.c.

*d. “The Commission may, in appropriate cases, direct translation of Petitions and their accompanying documents into English or Hindi.”*

### 2.2. Quorum of the Commission

**Regulation 12** has been introduced in the present draft. This was not present in the Conduct of Business Regulations, 2004. The proposed regulations mention that quorum can be attained even if one member is present. While it is understood that given the realities with regard to vacancies and planned leaves of members, this clause may facilitate an expedited process for decision making and for disposing cases. However, it is most desirable that all members of the Commission are present while hearing and passing an order to ensure just and fair decision-making. Given that a multi-disciplinary approach needs to be adopted while arriving at an order, it is best if all three members of the Commission are present, given their varied individual expertise. **Thus, we propose the following replacement in Regulation 12a:**

*12. a. “For all initial procedural issues and also adjudicatory Proceedings of the Commission, generally the quorum of the Commission shall be **full strength of the Commission**. All questions which come up before any meeting/proceeding of the 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 shall have a second or casting vote. Save as otherwise provided herein above, every Member shall have one vote.*

We suggest that the proposed **Regulation 12.b. be removed** as it essentially describes creation of a bench, which has been adequately discussed in Regulation 12.c.

Further, as discussed in the beginning of this section 2.2, to ensure balanced representation for hearing and disposing cases, we suggest that when the Commission is in full strength, i.e., there is no vacancy, a bench should have at least two members. One member benches should only be allowed when there is vacancy and one member is on leave for more than seven days. In this regard, we suggest that the **present regulation 12.c. be modified as:**

*12.c. “The Commission may, direct that specific matters or issues be heard and decided by a bench constituted by less than the full strength of the Commission. **When the Commission is in full strength, a bench that is constituted must not have less than two members present.** However, in the event that the posts of Chairperson and/or any one of the Members are vacant and one Member has to proceed on leave for a period of more than 7 working days, then the two Members i.e. the Member staying back in the Commission and the Member proceeding on leave may direct that the specific matters or issues be heard by one Member i.e. the Member staying back in the Commission. These matters shall be including but not limited to the Proceedings under Section 142 of the Act.”*

## 2.3. Filing petitions and matters before the Commission

**Regulation 16** provides details for filing petitions. Progressive steps have been incorporated in this regulation by including provisions for e-filing of petitions and other submissions. It should be ensured further that this provision is brought into effect within six months of notification of these regulations. To enable this the Commission can also launch an e-filing portal which would also enable accessibility of petitions to all stakeholders in a text-searchable manner. All replies, comments and suggestions in the matter can also be uploaded on the portal to provide those party to the case with a comprehensive picture. Such a measure will also ensure there are not too many issues due to delays in sharing of information between parties.

Along with this, to ensure accessibility to the petitions filed before the Commission, we suggest the following addition to Regulation 16:

*16.c. The Commission shall ensure that the petitions filed, and the comments received are electronically accessible. This will include ensuring:*

- i. all petitions are uploaded on the Commission's website*
- ii. all such petitions are uploaded in text searchable formats*
- iii. all replies, comments, and suggestions are uploaded on the Commission's website*
- iv. all new regulations are uploaded with statement of reasons*

## 2.4. Maintaining a register for petitions and other submissions

**Regulation 19.d** mentions the process for acknowledging the receipt of a petition. It further mentions that a register must be maintained for the said purpose. There is no other detail given regarding the manner in which this register is to be maintained. Since it is an important source of documentation, we suggest the following addition:

*"19.d. The presentation and the receipt of the Petition shall be duly entered in the register maintained for the purpose by the office of the Commission. Such register shall be maintained in the form and manner as may be determined by the Commission, from time to time, showing serial no. of Petition, date of its receipt, names and addresses of the parties, brief subject matter of the Petition, etc., claim/relief sought, interim relief sought, if any, approximate number of pages and date of disposal with final result thereof."*

## 2.5. Orders of the Commission

- a) In **Regulation 26**, it should clearly mention that all orders that the Commission issues, need to be based on **reasoning**, to avoid ambiguity or arbitrariness in an order. Between regulation 26 b, and before regulation 26 c, the following should be added:

*"Every order should be a reasoned order"*

- b) In **Regulation 26**, presently there are no provisions for the Commission to ask for additional submissions, which might be crucial to arrive at an order for certain cases. Hence, we suggest the following inclusion between Regulation 26b and 26c:

*“The Member or Members deciding the reference may, at his/their discretion, require the parties to the matter to make additional submissions before him/them before arriving at a decision.”*

## 2.6. Appeal on Commission’s order

It should not be the case that a matter decided by any member of the Commission is taken by the petitioner to another member to question the order. Once an order is issued by any present member/s of the Commission, it is deemed to have been the decision of the Commission as a collective. To ensure this, we suggest that the following should be **added to Regulation 52**:

*“No appeal shall lie from an order referring a matter to the Chairperson or for reference to another/other Member or Members.”*

## 2.7. Inspection of records and supply of certified copies:

Regulation 27 describes the procedures for inspection of records and obtaining certified copies from the Commission’s office. The process will be more efficient, punctual, and accountable if there is an identified designated officer from the Commission handling such queries for inspection and supply of certified copies. So, we suggest the following insertion:

27.e. *“The Commission shall designate an Officer for ensuring timely response to requests received for supply of certified copies of documents. Such Officer shall maintain a register of such requests made and shall endeavour to dispatch the certified copies of documents requested for within a period of fourteen (14) working days from the date of receipt of request.”*

## 2.8. Ensuring participatory decision making for making amendments

**Regulation 59** provides for amendments to processes of the Commission. It must be taken into account that amendments made in the processes of the Commission affect various stakeholders and thus a participatory decision-making process needs to be ensured for making such changes. Hence, we suggest that the following is added to Regulation 59:

*“59. The Commission may, at any time and on such terms as to costs or otherwise wise, as it may think fit, amend any defect or error in any Proceeding before it, and all necessary amendments shall be made for the purpose of determining the real question or issue arising in the Proceedings. **Provided that** if the Commission desires to make amendments or rectifications in order to determine the real question or issue arising the Commission shall provide an opportunity to the parties affected by such amendment or rectification touching the real question or issue to make representations and submissions with respect to the proposed amendment or rectification.”*

# 3. Consumer participation and awareness

## 3.1. Collective representation of consumer associations

**Regulation 9.b** lays out that the Commission may direct for **grouping of associations** and forums to make collective representations for timely completion of proceedings. While this guarantees efficient use of time of the Commission, care should also be taken to ensure the rights of the individuals or

appearing before the Commission are protected. Particularly, consumers should be allowed to make separate representations if they feel the need to. . Hence, we suggest the following modification:

*“The Commission may, as and when considered appropriate, notify a procedure for recognition of association, groups, forums or bodies corporate as registered consumer association for the purpose of representation before the Commission. It shall be open to the Commission for the sake of timely completion of proceedings to direct groupings, with due consent from all such association, groups, forums or bodies corporates. In the event that such association, groups, forums or bodies corporates want to make separate representations, they should be allowed to do so.*

### 3.2. Specifying timeline for appointing consumer representatives

**Regulation 9.c** mentions **appointment of consumer representatives**. This is a progressive step and it is suggested that this takes place in a time-bound manner. Further, the consumer representatives should be institutionalised in order to ensure public participation and legitimacy of the regulations proceedings. In this context, it is suggested that the Commission appointed consumer representatives under Section 94(3) of the Electricity Act, 2003. Given the size of the state and the diverse number of consumer groups and stakeholders, it is suggested that the Commission appoint multiple consumer representatives some of which can be institutions or associations or groups and the some of which are individuals. Our suggested modification of this section is:

*“The Commission may, appoint any Officer or any other person to represent interest of the consumer in general or any class or classes of consumer as the Commission may consider appropriate, under Section 94(3) of the Act within six months of notification of these regulations. The Commission shall appoint up to five such institutions which engage in the area of consumer welfare and up to ten individual experts from diverse backgrounds. These appointees must represent interests of consumers from all consumer categories.”*

### 3.3. Communication via newspapers

**Regulations 20a, 20e, 25c, and 56a** mention communication of information through local daily newspapers for wider circulation. We suggest that these regulations should also mention that:

- *Such information be published in 2 daily English/Hindi newspapers which have wide circulation.*
- *Such information be published on the Commission’s website as well.*
- *Such information be published on licensees’ websites, where the licensee is a party to the case.*

### 3.4. Regulations to have statements of reason, objections on website

The present draft regulation does not have provisions for notifications or process for drafting new regulations. Since regulations directly or indirectly affect various consumers, it is important that comments and suggestions are sought before such regulations are finalised. We request the Commission to add a clause about it in **Regulation 11**. We suggest inclusion of the following:

*Drafting of new regulations shall entail a public process where stakeholders and interested individuals are involved. The draft regulations shall be made available on the Commission’s website with explanatory memorandum for the same. The stakeholders and interested individuals shall be given time not less than 3 weeks to respond to such drafts. Such comments and suggestions, along with the*

*final notified regulations and an explanatory memorandum for finalised regulations shall be made available on the Commission's website as well.*

### 3.5. Declaration of hearing timings for petitions

**Regulation 56.a** states that hearing timings shall be advertised not less than 5 days. To ensure wide participation, it is imperative that more time is provided to stakeholders. We suggest the following modification:

*"Where any application, Petition, or other matter is required to be published under the Act or these Regulations as per the directions of the Commission, it shall, unless the Commission otherwise orders or directs or the Act or Regulations otherwise provides, be advertised normally **at least three (3) weeks** before the date fixed for hearing in not less than **two (2) daily newspapers** in the English Language and two (2) daily newspapers in the Hindi language having circulation in the area, in such form as directed by the Commission. (b) Except as otherwise provided, such advertisements shall give a heading describing the subject matter in brief."*

## 4. Upholding public interest

### 4.1. Public interest information

**Regulation 27.c.** allows for inspection of records of the Commission by any party. While this ensures access to information, we suggest that the Commission on its own makes information public by uploading public interest. Our suggested addition to this regulation is:

*"The Commission shall endeavour to make information involving public interest accessible and available to the public, including, inter alia, through its website and endeavour to facilitate meaningful public participation in matters involving public interest."*

### 4.2. Filing of objections by persons in public interest

**Regulation 21.d. ii.** mentions that any individual who is interested in intervening in matters pending before the Commission may do so. Additionally, to uphold public interest, we suggest that the Commission on its own invites persons to participate in these processes. We suggest the following addition:

*"In case the Commission is satisfied that any Person is interested in any matter pending before the Commission, it may in public interest allow or permit or invite such Person to present his opinion or views on that matter, and participate in the proceedings before the Commission on such terms as the Commission deems fit."*

## 5. Definitions

Following are some definitions that require modification/clarification/to be added:

Many terms used in the regulations are not defined. Providing a definition would enable clear and unambiguous communication to all stakeholders. Some of these include:

- Regulation
- Forum for Redressal of Grievance



- Petition Officer

In addition, crucial terms like consultant is also not defined. Suggested inclusion:

*“Consultant” includes any person not in the employment of the Commission who may be appointed as such to assist the Commission on any matter required to be dealt with by the Commission under the Act;*

In **Regulation 2.a.iv**: The term “Chairman” can be modified as a good practice to “**Chairperson**” as has been done by several other Commissions.

Many of our comments and suggestions in the submission are with respect to improving the processes of the Commission and increasing the legitimacy of the proceedings before the Commission. With increasing complexity of matters before the Commission, wide range of critical issues need to be addressed while there has been increasing volume of cases before the Commission. The Commission should preserve public interest, encourage public participation while functioning in an efficient manner. It is hoped that the Commission considers these suggestions in this light and incorporates them in the final regulations.

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