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NOTIFICATIONS BY HEADS OF DEPARTMENTS, Etc.,

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**PUBLIC WORKS NOTIFICATIONS
TELANGANA STATE ELECTRICITY REGULATORY COMMISSION**

No. TSERC / 3 / 2016

Dated 08.06.2016

**TERMS & CONDITIONS OF APPOINTMENT AND PAYMENT OF REMUNERATION TO
STANDING COUNSEL / ADVOCATE ON RECORD AND COUNSEL**

Regulation No. 3 of 2016

Introduction.

1. The AP Reorganisation Act 2014 (Central Act) 6 of 2014 has been enacted and came in to force on 02.06.2014. It provided for establishment of a separate Regulatory Commission for the State of Telangana. Accordingly, by G.O.Ms. 3 dated 26.07.2014, the Government of Telangana issued the notification constituting the Telangana State Electricity Regulatory Commission (TSERC).
2. By G. O. Ms. No. 13 dated 22.10.2014, the government has appointed the Chairman and Members for the TSERC. The Chairman and Members of TSERC assumed office on 03.11.2014. The Commission in order to start functioning has at first instance adopted all the regulations, orders and directions given by the erstwhile APERC in the combined state of Andhra Pradesh and being a joint body after the formation of the state of Telangana.
3. The Electricity Act, 2003 and The Andhra Pradesh Electricity Reform Act, 1998 as saved being applicable in the state of Telangana provide that the Commission can be sued or sue by its name. In this regard Sec 3 of the Reform Act, 1998 and Sec 82 of Act, 2003 are relevant. The Commission accordingly,

is required to defend / prosecute the cases filed by or against in various fora. More particularly, the present regulation now deals with matters relating to appointment and payment of fee to Advocates engaged in the fora of The Supreme Court and The Appellate Tribunal for Electricity. To give clarity to these aspects, the erstwhile APERC had framed the following regulations, namely

- a) The Advocate on Record for the Andhra Pradesh Electricity Regulatory Commission in Supreme Court (Appointment, conditions of appointment and remuneration) Regulation, 1999.(Regulation No. 5 of 1999)
- b) Andhra Pradesh electricity Regulatory Commission (Terms and conditions of appointment and payment of remuneration to the Standing Counsel / Counsel Regulation, 2013 (Regulation No. 8 of 2013)

Now that commission is in the process of defending the litigation either filed earlier in the combined state or after the formation of the state of Telangana, therefore, felt the need to have a consolidated regulation on payment of fee to the Advocates engaged by the commission.

4. A draft regulation has been framed and the same is put up on the website of the Commission 21.03.2016. The comments and suggestions have been invited to be filed by 04.04.2016. No comments and suggestions have been received by the Commission. The Commission proceeded to make the final regulation

5. In exercise of the power conferred by sub-section (1) and clause (l) of sub-section (2) of section 54 of the Andhra Pradesh Electricity Reform Act, 1998 (Act No.30 of 1998) read with sub-section (1) and clause (zo) of sub-section (2) of Section 181 of the Electricity Act, 2003 (Act No.36 of 2003), the Telangana State Electricity Regulatory Commission hereby makes the following Regulation relating to the terms & conditions of appointment of and payment of remuneration to the Standing Counsel / Advocate on Record and Counsel appearing on behalf of the Telangana State Electricity Regulatory Commission

1. Short title and Commencement:

- (i) This Regulation may be called the 'Telangana State Electricity Regulatory Commission (Terms & Conditions of Appointment and Payment of Remuneration to Standing Counsel / Advocate on Record and Counsel) Regulation, 2016'.
- (ii) This Regulation shall come into force on the date of its publication in the gazette of Government of Telangana.

2. Definitions:

- (i) "ATE" means The Appellate Tribunal for Electricity as established under section 111 of the Electricity Act, 2003 by the Government of India.
- (ii) 'Advocate on Record' means an Advocate who is practicing in the Supreme Court of India and has been so declared by the said court upon passing of a test conducted by it. He may be an Advocate appointed by the Telangana State Electricity Regulatory Commission in a specific case or as a counsel representing the Commission in all cases before the Hon'ble Supreme Court.
- (iii) "Commission" means Telangana State Electricity Regulatory Commission and includes any officer authorized by the Telangana State Electricity Regulatory Commission to institute or defend cases on its behalf.
- (iv) "Standing Counsel" means an Advocate appointed by the Commission for conducting cases in the High Court or ATE, as the case may be.
- (v) "Counsel" means an Advocate engaged by the Commission for conducting cases in any other Court or Forum, other than in the High Court or ATE.

- (vi) "Senior Advocate" means any advocate so designated by the High Court or the Supreme Court, by a notification issued in that regard exercising powers under sub sec (2) of sec 16 of the Advocates Act, 1961.
- (vii) "Acting" means filing an appearance or any pleadings of applications in any court or tribunal in India, or any Act (other than pleading) required or authorized by law to be done by a party in such Court or Tribunal either in person or by his recognized agent or by an advocate or attorney on his behalf.

3. Appointment:

- (i) The Commission may appoint one or more Advocate(s) as Advocate-on-Record for representing the Commission in the Supreme Court and for the conduct of cases in the Supreme Court on behalf of the Commission.
- (ii) An advocate with not less than ten years standing in the Supreme Court shall be appointed as an Advocate on Record.
- (iii) The Standing Counsel shall be appointed by the Commission. The number of the standing counsel to be appointed shall be determined by the Commission depending upon volume of work, number of cases and importance of the case(s).
- (iv) (a) An advocate with not less than 15 years of practice in the legal profession in the High Court shall only be appointed as Standing Counsel in the High Court and / or ATE.
Provided that if the work of conducting cases before the ATE is to be entrusted to the Advocate on Record appointed as per clause (i), then the stipulation of 15 years practice at the High Court is not relevant for the purpose of appointment of an Advocate on Record.
- (b) An advocate with 10 years standing in the High Court or any of the subordinate courts in the state of Telangana shall be engaged as a Counsel for conducting cases on behalf of the Commission in any other Court or Forum, other than High Court or ATE as and when necessary.
- (v) The appointment of Advocate on Record or the Standing Counsel as the case may be, shall be for a period of two years in the first instance and may be continued for such further period from time to time as the Commission may by order direct.
- (vi) The engagement of Counsel to any other Court or Forum, other than the Supreme Court, the High Court or ATE, shall be on a case to case basis depending on the exigencies of prosecuting / defending a specific case filed by or against the Commission.
- (vii) The services of Advocate on Record or the Standing Counsel shall be terminable with Two months notice in writing on either side. Decision of termination of services of the Advocate on Record or Standing Counsel by the Commission shall be final.
Provided the engagement of the counsel other than the Advocate on Record or Standing Counsel shall stand terminated upon disposal of the specific case(s) for which such counsel has been engaged.
- (viii) The Commission reserves its right to engage any other Advocate in any specific case either before the Supreme Court, the High Court or ATE depending on the nature and importance of case and the specialisation possessed / required by such Advocate in the subject relating to such case. The decision of the Commission in this regard is final and the Advocate on Record or Standing Counsel shall abide by it.
- (ix) The Commission can, if need arises, engage any other advocate for consultation in a specific case. The decision of the Commission in this regard is final and the Advocate on Record or the Standing Counsel shall abide by it.

4. Appointment of a Senior Advocate:

The Commission, may if it so desires or on the advice of the Advocate on Record or Standing Counsel, engage a Senior Advocate in any case in the Supreme Court, High Court or ATE. The fee to be paid to the Senior Advocate shall be decided by the Commission from time to time depending on the importance of the issue involved in the case being entrusted and taking into consideration the standing of such Senior Advocate before the Supreme Court, High Court or ATE and commensurate with the nature of work entrusted. Such decision will be taken after obtaining the necessary terms of engagement from the Senior Advocate.

5. Duties:

- (1) The Advocate-on-Record for the Commission in the Supreme Court shall be as follows:
 - a) Settle all affidavits, petitions, special leave petitions and statements of cases relating to the Commission and file in the Supreme Court.
 - b) To appear on behalf of the Commission in all cases or a class of cases assigned to the Advocate on Record, where the Commission is a party or its interests are involved before the Supreme Court or ATE (in case he has been instructed to appear before the ATE also) and when so required, before any other Court or Forum.
 - c) In appropriate cases and in the interest of the Commission there being a necessary reason, the Advocate on Record shall engage a Senior Counsel with the prior approval of the Commission.
 - d) Appear before any tribunal, any statutory authority or any person legally authorized to take evidence in cases relating to the Commission whenever required, as directed by the Commission.
 - e) Appear before any authority either statutory or legal, a person statutorily or legally authorized, before whom he is by or under any law for the time being in force entitled to practice in all cases relating to the Commission, whenever required, as directed by the Commission.
 - f) To appraise the status of various cases entrusted to the Advocate on Record depending upon any importance attached to any issue by the Commission or as and when called for by the Commission.
2. The duties of the Standing Counsel / Counsel shall be as follows:
 - (i) To tender advice and opinion to the Commission and its functional heads in all matters involving legal implications as and when required.
 - (ii) To prepare, settle and scrutinize agreements, deeds and other documents of legal nature as may be referred to the standing counsel by the Commission or any of its officers authorized by the Commission.
 - (iii) To prepare affidavits, counter affidavits, petitions, statement of cases and all other connected documentation in which the standing counsel has been instructed to appear on behalf of the Commission.
 - (iv) To appear on behalf of the Commission in all cases or classes of cases assigned to the standing counsel, where the Commission is a party or its interests are involved before the High Court or ATE and when so required, before any other Court or Forum.
 - (v) To perform such other work of legal nature as may be entrusted to the Standing Counsel by the Commission from time to time.

- (vi) Endeavour to attend to the work entrusted, promptly and not to seek adjournments on frivolous grounds without deviating from normal professional practices.
- (vii) To appraise the status of various cases entrusted to the Standing Counsel depending upon any importance attached to any issue by the Commission or as and when called for by the Commission.

6. Advocate on Record / Standing Counsel / Counsel not to represent interests adverse to the Commission:

The Advocate on Record / Standing Counsel / Counsel shall not appear against the Commission in any case or represent or give opinion or advice to others in any matter adverse to the interests and objectives of the Commission as envisaged under the Andhra Pradesh Electricity Reform Act, 1998 and the Electricity Act, 2003, either directly or indirectly.

7. Honorarium / Retainer:

- a) The Advocate on Record shall be entitled to a retainer of Rs. 75,000/- per month payable for each quarter towards Advocate on Record's duties as mentioned in Clause No. 5 (1) above.
- b) The Standing Counsel for the Commission in the High Court shall be paid a retainer fee of Rs. 50,000/- per month towards Standing Counsel duties as mentioned in Clause No. 5 (2) above.

8. Fee:

- (i) Besides the honorarium payable under clause No. 7 above, the Advocate on Record for the Commission in the Supreme Court, shall be paid fee as specified in Part – I of the Schedule appended to this regulation.
- (ii) Besides the honorarium payable under clause No. 7 above, the Standing Counsel for the Commission in the High Court, shall be paid fee as specified in Part – II of the Schedule appended to this regulation.
- (iii) The Advocate on Record or the Standing Counsel for the Commission who is entrusted with the work of appearance before ATE shall be paid fee as specified in Part – III of the Schedule appended to this regulation.
- (iv) A Counsel engaged for conducting case(s) on behalf of the Commission in any other Court or Forum, other than the High Court or ATE, will be paid remuneration as decided by the Commission from time to time depending on the volume of work involved and as per the norms of payment as applicable before such Court or Forum.
- (v) The Commission shall decide the fee or reimbursement of expenses in cases that are not covered in the Schedule and / or fee to be paid for consultation.
- (vi) The Commission shall have power to amend the schedule from time to time, without reference to the Advocate on Record, Standing Counsel / Counsel.

Provided that the schedule may not be amended to the disadvantage of the incumbent counsel till the term of engagement expires.

- (vii) Fee shall not be paid in advance to the Advocate on Record, Standing Counsel or the Counsel engaged specifically for any other forum. Whenever the Advocate on Record, Standing Counsel or counsel engaged specifically for any case, requires payment of fee in advance, the fee as shown in the schedule will be paid to the extent of 1/3rd of the scale given therein applicable to the respective forum / counsel.

- viii) The Advocate on Record / Standing Counsel / Counsel shall keep separate books of account in respect of the Supreme Court, the High Court and ATE or any other forum where such counsel had appeared and claim fee duly indicating the amount due to him by deducting any amount of advance paid as per clause vi above. The details of moneys received by the Advocate on Record, Standing Counsel and Counsel, the moneys due thereof in each case shall be furnished in a quarterly statement of account to be sent to the Commission.
- ix) The Commission may reimburse certain expenses incurred by the Advocate on Record, Standing Counsel and Counsel depending on the appearance and the nature of case including filing done on behalf of the Commission.
- x) Subject to the list of items mentioned in part iv of the schedule all expenses are to be reimbursed by the Commission which are incurred in connection with prosecuting / defending the Commission in appropriate forum. The Commission may at its discretion may allow expenses incurred without reference to the list shown in part iv of the schedule.

9. Payment of Fee in certain cases:

- a) The Commission may ordinarily pay the fee as per the rates indicated in the schedule as may be amended from time to time.
- b) The Commission may choose to deviate from the scheduled fee and pay higher fee or fixed lump sum amount apart from the scheduled fee structure or may pay consolidated fee de hors the scheduled fee structure.
- c) The Commission may in certain cases, where it is of the opinion that the fee payable to the counsel under the schedule is excessive, may choose to pay a reduced fee than the rates specified by it.
- d) If the fee fixed by the Court is lesser than the scheduled rates of fee, in such cases the Commission can at its discretion pay the applicable rate of fee or comply with the order of the court and pay the amount to that extent. The Commission shall have the discretion to reduce such fee irrespective of whether or not costs awarded by the court are recoverable by the Commission. Paying such smaller amount of fee as may be determined in each case on the basis of work done and the time taken by the Advocate on Record, Standing Counsel / Counsel. Such fixation may be in accordance with the principles given hereunder, purely as a working guide:-
- (i) The fee fixed by the Court as recoverable by the Commission from the other party will ordinarily be allowed:
- (ii) A reasonable fee will be allowed when the Court awards only proportionate costs recoverable by the Commission from the other party or when a case is decided against the Commission or decided in favour of the Commission but without costs.

10. Payment of reasonable fee in pending cases when engagement becomes terminated:

In case the engagement of the Advocate on Record, Standing Counsel / Counsel in any case or cases or generally on behalf of the Commission becomes terminated either by reason of resignation or giving up of the case by the Commission or by the expiry of the term or by the Commission terminating the services of the Advocate on Record, Standing Counsel / Counsel for any reason and the case is still pending for disposal, the Commission shall have the full discretion to fix such fee irrespective of the case or cases as it considers reasonable having regard to the work done in the case or cases till the date of such termination of service.

11. T.A. and D.A. on Tour:

The Advocate on Record, Standing Counsel and Counsel specifically engaged in any case shall be paid on production of supporting vouchers actual expenses incurred by Advocate on Record, Standing Counsel and Counsel to attend / appear on behalf of the Commission in a place other than New Delhi or Hyderabad as the case may be. However, such reimbursement shall not be higher than that amount that is paid to the Director of the Commission if they are in official tour.

12. Interpretation:

If any question arises relating to the interpretation of the clauses in this regulation, the decision of the Commission shall be final.

13. Power to remove difficulties

If any difficulty arises in giving effect to any of the provisions of this Regulation, the Commission may, by general or special order, pass appropriate orders, not being inconsistent with the provisions of the Act, which appear to it to be necessary or expedient for the purpose of removing the difficulty noticed in implementing the regulation.

14. Power to amend

The fee structure payable to the Advocate on Record, Standing Counsel and Counsel as specified in the schedule of this Regulation can be reviewed, cancelled, modified or enhanced by the Commission at its discretion at any appropriate time by a general or specific order notified in the official gazette of Telangana State.

15. Repeal and Savings

- (a) The payment of fee in respect of any pending bills of Advocates before the coming into force of the Telangana State Electricity Regulatory Commission (Terms & Conditions of Appointment and Payment of Remuneration to Standing Counsel / Advocate on Record and Counsel) Regulation, 2016 shall continue to be governed by the provisions of the earlier regulations namely Regulation No. 5 of 1999 and Regulation No. 8 of 2013 along with the amendments as made by the erstwhile APERC from time to time, which is adopted by this Commission in Regulation No. 1 of 2014.
- (b) On and from the date of publication of this Regulation in the Official Gazette of the Government of Telangana, the Regulation No.5 of 1999 and Regulation No. 8 of 2013 along with the amendments as made by the erstwhile APERC from time to time and adopted by the Commission in its Regulation No. 1 of 2014, stand repealed to the extent relating to the payment of the fee by the Commission to Advocate on Record, Standing Counsel / Counsel.
- (c) Notwithstanding such repeal any action taken under the said Regulations shall not become invalid, and deemed to have been taken under the corresponding provision of the present Regulation, or to the extent, if not provided for in this Regulation, such action shall subsist and deemed to have been taken as if such repeal provision is subsisting.

SCHEDULE**PART - I**

The Advocate on Record engaged by the Commission to appear in the Supreme Court shall be paid fee as follows:

- a) A daily fee of Rs. 25,000/- in each appeal during the final hearing. Where 10 or more appeals are there in the final hearing, the following amounts shall be payable for each day of appearance:
 - i) After the first case, from case no. 2 to 50 an amount of Rs. 10,000 per case.
 - ii) Where the number of cases exceeds 50 but does not exceed 100, a fee of Rs. 5,000/- per case no. 51 to 100.
 - iii) Where the number of cases exceeds 100 but does not exceed 200 a fee of Rs. 2,500/- per case no. 101 to 200.
 - iv) Where the number of cases exceeds 200 and above a fee of Rs. 1000/- per case no. 201 onwards.

Provided that the fee is payable for each of day(s) appearance for a maximum of 10 days.

- b) A daily fee of Rs. 10,000/- in each appearance in miscellaneous matters like special leave petition, civil miscellaneous petition for stay etc, in each appeal. In case there being 10 or more appeals coming up for the miscellaneous hearing the following amounts shall be payable:
 - i) After the first case, from case no. 2 to 50 an amount of Rs. 5,000 per case.
 - ii) Where the number of cases exceeds 50 but does not exceed 100 a fee of Rs. 2,500/- from case no. 51 to 100.
 - iii) Where the number of cases exceeds 100 but does not exceed 200 a fee of Rs. 1000/- from case no. 101 to 200.
 - iv) Where the number of cases exceeds 200 and above a fee of Rs. 500/- from case no. 201 onwards
- c) A separate reading fee depending upon the reading material in cases where the record is very bulky.

PART - II

The Standing Counsel engaged by the Commission to appear in the High Court shall be paid fee as follows:

- i) In case of a single writ petition or writ appeal, an amount of Rs. 11,000/- shall be paid; Rs. 6,500/- upon filing of counter and balance amount of Rs. 4,500/- after disposal of the case.
- ii) A separate fee of Rs. 5,500 is payable in case counter affidavit is drafted on the remarks furnished by the Commission. In case, the matter is disposed of based on the remarks available with the counsel eve before a proper counter affidavit is filed, then a short fee of Rs. 1,250 along with the disposal fee shall be paid by the Commission.
- iii) In case of entering only appearance without filing any counter affidavit and when there is no requirement to file counter affidavit, on behalf of the Commission, an amount of Rs. 5,500/- shall be paid.

This applies to cases where no relief is claimed against the Commission or where the Commission is only a proforma party and that no order shall be eventually passed against the Commission.

- iv) In case of more than one writ petition or writ appeal, involving similar issue, an amount of Rs. 11,000/- shall be paid in respect of the first case only.
- v) In case of such batch of cases involving similar issue, for the second and subsequent cases, the following amounts shall be payable.
- | | |
|---------------|----------------------|
| 2 to 50 | Rs. 3,500/- per case |
| 51 to 100 | Rs. 2,000/- per case |
| 101 and above | Rs. 700/- per case |
- vi) Whenever necessary, the Commission may permit the Standing Counsel to engage services of a junior Advocate. The junior Advocate is entitled to a fee of Rs. 5,000/-. If such engagement is in batch of cases, then a fixed sum of Rs. 40,000 or 10% of actual fee paid to the Standing Counsel, whichever is less shall be paid.
Provided that the payment of fee to the junior Advocate shall be made directly by the Commission, for which the Standing Counsel should furnish all the details required by the Commission beforehand.
- vii) No separate amount shall be payable towards any other expenditure and the same has to be met from the fee itself.
Provided that the above condition shall be inapplicable where the Commission initiates the filing of appeal or original proceedings before the High Court and the standing counsel shall be entitled to the expenses as enumerated in the Part IV of the schedule.

PART - III

The Advocate on Record or Standing Counsel engaged by the Commission to appear in the ATE shall be paid fee as follows:

- (i) In case of a single appeal, an amount of Rs. 7,000/- per hearing will be paid.
- (ii) In case of more than one appeal, involving similar issue, an amount of Rs. 3,000/- each per hearing in respect of each appeal shall be paid, for second and subsequent appeals subject to limiting the total of maximum fee of Rs. 35,000/- including the fee for first case where a batch of cases are filed and heard together.
- (iii) No separate amount shall be payable towards any other expenditure and the same has to be met from the fee itself.

Provided that the above condition shall be inapplicable where the Commission initiates the filing of any review petition or miscellaneous application in the appeal or original proceedings before the ATE and the Advocate on Record or Standing Counsel shall be entitled to the expenses as enumerated in the Part IV of the schedule.

PART - IV

The Advocate on Record, Standing Counsel / counsel are entitled to claim the following expenditure which will be reimbursed by the Commission, subject to the provisions in the regulation.

- a) Vakalath expenditure depending on the forum (This includes both the court fee stamp and the welfare stamp expenditure)
- b) Court fee as may be applicable to the forum (the relevant rule should be intimated to the Commission while claiming the same.)
- c) Process Fee (includes batta in case of High Court).

- d) Bank commission in case cheque or demand draft is obtained from any nationalized bank for payment of court fee or process fee.
- e) Typing, photo copying and wherever necessary cyclostyling of necessary papers.
- f) Conveyance charges in case of travel outside the headquarter place (normal place of practice for Advocate at Supreme Court is New Delhi and Standing Counsel is Hyderabad)
- g) Where in some cases large number notices have to be sent by either by registered or speed upon dasti service being permitted either Supreme Court or High Court.
- h) Voluminous records available with the Advocate on Record or Standing Counsel which are to be air lifted and the expenses incurred thereon.
- i) Travel expenses where the Commission required the Advocate on Record to travel to Hyderabad to discuss an important matter to be carried in appeal to the Supreme Court from High Court or ATE.
- j) Travel expenses where the Commission required the Standing Counsel to travel to New Delhi to discuss / assist the Advocate on Record / Senior Advocate in an important matter carried or likely to be carried in appeal to the Supreme Court from High Court or ATE.
- k) The charges for the telephone calls incurred by the Advocate exclusively for Commission work may be reimbursed by the Commission every month along with retainer.
- l) As provided in this part the Advocate shall be paid in advance filing expenses namely court fee, cyclostyling charges etc., on a rough estimate filed with the Commission before filing in the court any petition or appeal.
- m) The Advocate on Record or the Standing Counsel shall however, file with the Commission an account of monies received from the Commission quoting the Commission's communication of sanction of such monies
- n) The Advocate on Record or the Standing Counsel shall, with the prior consultation of the Commission as to the necessity for engaging a Senior Advocate in any case, engage a Senior Advocate on such terms as the Commission may approve on the advice of the Advocate on Record or the Standing Counsel.
- o) The Commission shall endeavor to settle the fee claims of the Advocate on Record or the Standing Counsel at the earliest possibility.

Provided that in the case of items d, e, f, g, h, i, j and k necessary proof in support of the claims made shall filed along with the bills by the Advocate on Record or the Standing counsel as the case may be.

Provided further that in case of release of advance monies for filing petitions, appeals and affidavits and statement of case, all the expenditure incurred to the extent possible shall be supported by vouchers / receipts in original which shall be accompanied with the claim bills for final settlement of such expenditure.

(BY ORDER OF THE COMMISSION)

Place: Hyderabad,
Date: 08.06.2016.

Dr. K. SRINIVAS REDDY, IRS
Commission Secretary,
Telangana State Electricity,
Regulatory Commission.