

Statements of Reasons for Maharashtra Electricity Regulatory Commission (Terms and Conditions of Appointment of Consultants) (First Amendment) Regulations, 2018

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai – 400 005

Tel. : 022-22163964/65/69 Fax : 022-22163976

Email: mercindia@merc.gov.in / mercindia@mercindia.org.in

Website: www.merc.gov.in / www.mercindia.org.in

Maharashtra Electricity Regulatory Commission (Terms and Conditions of Appointment of Consultants) (First Amendment) Regulations, 2018

STATEMENT OF REASONS

Dated: 17th May, 2018

Background

The Commission is mandated under the Electricity Act (EA), 2003 to regulate various aspects of the electricity sector in the State of Maharashtra. In exercise of powers of Section 91 (4) of the EA, 2003, the Commission had notified the Maharashtra Electricity Regulatory Commission (Terms and Conditions of Appointment of Consultants) Regulations, 2004 on 10 June, 2004. These Regulations specify the modes, methods, terms and conditions of appointment of consultants for providing assistance to the Commission in the discharge of its functions under the EA, 2003.

Public Undertakings Committee of the Maharashtra Legislative, in its Reports dated 22.07.2015, has recommended a transparent process of appointment of consultants through a bidding process, and that the relevant provisions of the MERC (Terms and Conditions of Appointment of Consultants) Regulations, 2004 may be amended accordingly.

2. Accordingly, the Commission made available the draft MERC (Terms & Conditions of Appointment of Consultants) (First Amendment) Regulations, 2015, on 2 November, 2015, on which it invited suggestions and objections through a Public Notice published in two English and two Marathi daily newspapers on 6 November, 2015. The last date for receipt of suggestions and objections was 7 December, 2015. The draft notification was also uploaded on

the Commission's website. The following proviso was proposed to be added to Regulation 3 (1) (ii) :-

“Provided that single source selection shall be used only in exceptional cases where it is appropriate and represents a clear advantage because the tasks represent a natural continuation of previous work carried out by the Consultants, or where immediate appointment is essential because of the time limit involved, or for small assignments where the fee payable does not exceed Rs five lakh for each assignment or Rs one lakh for a retainer for an individual on a monthly basis, or where only one firm or person is qualified or has experience for the work, subject to the condition that the reasons for such appointment are recorded in writing.”

3. The Commission received one response from Shri Saurabh Gupta to the proposed amendment which is summarised below :

- The Commission will lose its freedom to appoint single source consultants on annual basis.
- One more proviso may be added for transparency in the fixation of the fee considering the experience equivalent to a regular employee. There are similar provisions in the MERC (Recruitment and Conditions of Service of Employees) Regulations, 2007 for appointment of officers and staff on contract basis.
- A premium of 15% on the fee for single source consultants compared to the monetary benefits, allowances, other benefits and salary to regular employees with similar experience was suggested. The reason for this premium was stated to be the uncertain or non-firm nature of employment compared to a regular employee of the Commission.
- The Commission should have the choice of appointing a consultant on a retainership basis and may discontinue it in case there is no work requirement any longer for such individual consultant.
- The Central Electricity Regulatory Commission (CERC) (Appointment of Consultants) Regulations, 2008 provides for the remuneration/fee limit of Rs 1,50,000/- per month for Advisor and Rs. 2,25,000/- per month for Senior Advisor. Similarly, the MERC Regulations may fix the limit at Rs 18,00,000/- per annum for Advisor and Rs 27,00,000/- per annum for Senior Advisor, in line with the CERC Regulations. Further, the higher cost of living in Mumbai compared to New Delhi may be considered while fixing the fee cap.

4. The nature of the Commission's work is diverse, requiring technical, legal, administrative and other support in addition to the regular staff of the Commission and requires technically qualified and skilled personnel. Hence, the appointment of consultants is often essential for enabling the Commission to discharge its functions. The Commission has also referred the CERC (Appointment of Consultants) (Second Amendment) Regulations, 2014, which also provides for appointing individual consultants in the category of Advisor with a remuneration of Rs. 1,50,000/- per month (i.e., Rs.18 lakh per annum) and of Senior Advisor at Rs.2,25,000 per month (i.e., Rs.27 lakh per annum). CERC has also provided for appointment

of Advisors on a retainer basis with a higher monthly fee. Further, the cost of living has also gone up considerably since 2008.

5. Considering the recommendations of the Public Undertakings Committee of the Maharashtra Legislature, and the suggestions and objections received, the Commission has notified the MERC (Terms & Conditions of Appointment of Consultants) (First Amendment) Regulations, 2018 to add the following proviso in Regulation 3 (1) (ii) of the principal Regulations:

“Provided that single source selection resorted to only in exceptional cases where it is appropriate and represents a clear advantage because the tasks represent a natural continuation of previous work carried out by the Consultants, or where immediate appointment is essential because of the time limit involved, or for assignments where tasks are assigned to an individual consultant on a continual basis (monthly retainer basis), provided that the fee payable to such individual consultant does not exceed Rs. 1.5 lakh per month, or where one person or one company is renowned and has proven expertise for the task, subject to the condition that the reasons for such appointment are recorded in writing.”

**Sd/-
(Deepak Lad)
Member**

**Sd/-
(Anand B. Kulkarni)
Chairperson**