



## **Bhutan Electricity Authority**



## **Dispute Resolution Procedure, 2009**

*Approved during the 12<sup>th</sup> Commission Meeting held  
on December 7, 2008*

**February 2009**



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In exercise of the powers conferred by Section 11.1 of the Electricity Act of Bhutan, 2001 and all powers enabling it in that behalf, Bhutan Electricity Authority hereby makes the following Procedure. This Procedure was approved during the 12<sup>th</sup> Commission Meeting of the Authority held on December 7, 2008.

## **1. Title and Commencement**

- (i) This Procedure shall be cited as the Dispute Resolution Procedure, 2009.
- (ii) This Procedure shall come into force from the date of its notification in the National Newspaper i.e. February 4, 2009.

## **2. Scope and Coverage**

- (i) This procedure shall apply to settle disputes between Licensees and between Licensees and Customers relating to the enforcement of the Electricity Act of Bhutan, 2001 and Regulations, Codes, Standards and Licences thereof.
- (ii) Nothing in this procedure shall prejudice any right of the parties to have recourse to dispute settlement procedures available under any other Laws of the Kingdom of Bhutan.
- (iii) Once dispute settlement proceedings have been initiated under this procedure or under any other Laws concerning a particular right or obligation of such parties arising under the Electricity Act of Bhutan, 2001, the forum selected by the complaining party shall be used to the exclusion of any other forum for such disputes.

### **3. Manner in which the Complaint shall be made**

A complaint shall be lodged with the Bhutan Electricity Authority Secretariat containing the following particulars and it shall be presented by complainant in person or by his authorized representative or be sent through registered post addressed to the Bhutan Electricity Authority Secretariat or by any other electronic means followed by hard copy:

- (i) The name, description and address of the complainant;
- (ii) The name, description and address of the party complained against or the parties as the case may be;
- (iii) Facts of the complaint;
- (iv) Document in support of the allegation contained in the complaint;
- (v) The relief which complainant claims; and
- (vi) Provisions of the Laws that it considers relevant.

### **4. Admission or Rejection of Complaints**

- (i) Unless otherwise accepted, on receipt of complaint, the Bhutan Electricity Authority Secretariat may by order, allow the complaint to be proceeded with or rejected, provided that a complaint shall not be rejected under this provision unless an opportunity of being heard has been given to the complainant.
- (ii) The admissibility of the complaint shall ordinarily be decided within seven (7) working days from the date on which the complaint was received.

## **5. Procedure on Admission of Complaint**

- (i) The Bhutan Electricity Authority Secretariat on admission of complaint shall send a copy of the complaint within seven (7) working days from the date of its admission to the party complained against directing him to give his response of the case within a period of seven (7) working days or such other period not exceeding another seven (7) days as may be granted by the Bhutan Electricity Authority Secretariat.
- (ii) Where the party complained against, on receipt of complaint, denies or disputes the allegations contained in the complaint or omits or fails to take any action to represent his case within the time given, the Bhutan Electricity Authority Secretariat shall proceed to settle the disputes:
  - (a) On the basis of evidence brought to its notice by the complainant where party complained against denies or disputes the allegation contained in the complaint.
  - (b) Ex-parte on the basis of evidence brought to its notice by the complainant where the party complained against omits or fails to take any action to represent his case within the time given by the Bhutan Electricity Authority Secretariat.
- (iii) The written submissions by a party to the dispute shall be made available to the other parties and each party to the dispute shall have the right to be present when any of the other parties to the same dispute presents its views to the Bhutan Electricity Authority Secretariat.

## **6. Dismissal of Complaint**

- (i) Where the complainant fails to appear on the date of hearing, the Bhutan Electricity Authority Secretariat shall have the right to dismiss the complaint on default.
- (ii) Where during the pendency of any proceeding before the Bhutan Electricity Authority Secretariat, it appears to be necessary, it may pass such interim orders as is just and proper in the facts and circumstances of the case.

## **7. Hearing of Complaint**

- (i) Every complaint shall be heard as expeditiously as possible and Bhutan Electricity Authority Secretariat shall endeavour to give its decision within a period of thirty (30) days from the date of response received from the party complained against when the complaint does not require witness and expert opinion on the case.
- (ii) In the event of complaint being disposed of after the period so specified, the Bhutan Electricity Authority Secretariat shall record in writing, the reason for the same at the time of disposing of the said complaint.

## **8. Decision by the Bhutan Electricity Authority Secretariat**

- (i) Following the consideration of rebuttals, submissions, arguments and inspection, the Bhutan Electricity Authority Secretariat shall provide a reasoned decision to the Parties within ten (10) working days after the conclusion of the substantive hearing.
- (ii) If a party(s) is not satisfied with the decision of the Secretariat, he/she may appeal to the Authority within ten (10) working days.

## **9. Dispute Resolution Panel (DRP)**

- (i) If the Bhutan Electricity Authority Secretariat is not able to resolve the case due to its complex nature, the Bhutan Electricity Authority Secretariat shall forward the dispute to the Dispute Resolution Panel established under this procedure.
- (ii) The Bhutan Electricity Authority Secretariat shall notify the parties stating that the case has been referred to the Dispute Resolution Panel for settlement.

## **10. Establishment of a Panel**

- (i) If the case could not be settled due to the complex nature of the case or on appeal to the decision of the Bhutan Electricity Authority Secretariat, the Authority shall establish a Dispute Resolution Panel within ten (10) days after the receipt of appeal or referral of case by the Bhutan Electricity Authority Secretariat on the ground of complexity.
- (ii) The Panel shall perform its functions in a manner consistent with the provisions of this Procedure and Electricity Act of Bhutan, 2001.
- (iii) From the date of adoption of this Procedure, the Bhutan Electricity Authority Secretariat shall establish and maintain a roster of up to twenty (20) individuals to serve as a member of the Panel under this procedure.
- (iv) The Authority shall select and appoint Panelist from the roster as and when required depending on the nature of the case/dispute.
- (v) A member of the Panel shall:



- (a) have expertise and/or experience in the resolution of disputes arising under that particular law and shall be chosen on the basis of his/her integrity;
  - (b) be selected with a view to ensuring the independence of the panel member, and not be affiliated with or take instructions from any party; and
  - (c) Comply with this procedure.
- (vi) A member of the Panel shall make all disclosures that might be perceived as potential conflict of interest or might be perceived to prejudice the proceedings of the case.
- (vii) Panelist shall be paid an appropriate amount of fee as determined by the Authority from time to time.

## **11. Panel Selection**

- (i) The Dispute Resolution Panel shall be selected by the Secretariat on approval of the Authority.
- (ii) The Dispute Resolution Panel shall comprise of three members.
- (iii) Within seven (7) working days of the delivery of the complaint to the Dispute Resolution Panel, the Authority shall select and appoint Panelist including a chairperson from the Panel.
- (iv) A person who has conflict of interest shall not be selected as member to the Dispute Resolution Panel concerned with that case.

- (v) In the event of withdrawal of any members, a substitute member shall be nominated by the Bhutan Electricity Authority Secretariat on approval of the Authority.
- (vi) If a party believes that a Panelist is in violation of this procedure, the Parties shall consult the Authority and if they agree, the Panelist shall be removed and a new Panelist shall be selected in accordance with this Procedure.
- (vii) Panelist expenses including travel and subsistence allowance shall be met from the Authority's budget upon approval of the Minister based on the recommendation of the Authority.

## **12. Rules of Procedure**

- (i) Unless the parties otherwise agree, the Panel shall conduct its proceedings in accordance with this Rules of Procedure.
- (ii) The Rules of Procedure shall assure a right to at least one hearing before the Panel and the opportunity to provide written submissions, exhibits and evidence.
- (iii) The parties shall have the right to nominate their representative(s) to attend the case on their behalf.
- (iv) The Panel's hearings, deliberations and decision, and all written submissions to and communications with the Panel shall be confidential to those who are not party to the case.
- (v) The Panel shall study the case and conduct necessary hearings as and when required.

- (vi) If one of the parties, despite having received the notice, fails to appear before the Panel, and the Panel is satisfied that the notice is received and the parties failed to attend without a good cause, it may conduct the hearing, and such hearing shall be deemed to have been conducted in the presence of both the parties.
- (vii) In its proceeding, the Panel shall follow the relevant provision of Electricity Act of Bhutan, 2001 and rules and regulations thereof.
- (viii) The Panel shall meet in a closed door session. The parties to the case shall be present at the meetings/hearings only when invited by the Panel.
- (ix) The deliberation of the Panel and the documents submitted to it shall be kept confidential. A party shall treat as confidential information submitted by another party to the panel which that party has designated as confidential.
- (x) At its first substantive meeting with the parties, the Panel shall ask the party which has brought the complaint to present its case first. Subsequently, the party against whom the complaint has been brought shall be asked to present his point of view.
- (xi) Formal rebuttals shall be made at a second substantive meeting of the Dispute Resolution Panel. The party complained against shall have the right to take the floor first to be followed by the complaining party.
- (xii) The Panel at any time may put question to the parties and ask them for explanation either in the course of meeting/hearing verbally or in writing.

- (xiii) In the interest of full transparency, the presentation, rebuttals and statements referred in this procedure shall be made in the presence of the parties. Moreover, such parties' written submissions shall be made available to the other party.

### **13. Role of Experts**

The Panel may on the request of a party or on its own initiative seek technical advice from any person or body, including qualified independent experts, on any scientific or technical matter raised by a party in a proceeding.

### **14. Decision of the Panel**

- (i) The Panel shall give its decision within ten (10) days after the last hearing.
- (ii) In case the decision of the Panel is not unanimous, then the decision of the majority shall prevail.
- (iii) No member of the Panel shall disclose which Panelists were associated with majority or minority opinions.
- (iv) Unless the Authority decides otherwise, the decision of the Panel shall be made available to the public after it is presented to the parties.

### **15. Execution of Decision**

If in its decision a Panel has determined that a party complained against or the complainant has acted inconsistent with the obligations under the Electricity Act of Bhutan, 2001 and rules and regulations thereof, and has not appealed to the Authority within ten (10) days of the presentation of decision, then the party concerned shall adhere to the decision of the Panel.

## **16. Appeal**

If any of the Parties is not satisfied with the decision of the panel, he or she may appeal to the Authority within ten (10) days of the presentation of decision to the parties.

## **17. Decision of the Authority**

- (i) On appeal, the Authority shall look into the decision of the Panel and a written amendment to the decision may be made within ninety (90) working days after the receipt of decision from the Panel.
- (ii) The Authority shall consider only the points of Law and shall not address the question of facts for making an amendment to the decision of the Panel.

## **18. Cooperation**

The Parties shall at all times endeavor to agree on the interpretation and application of this procedure, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

## **19. Venue of the Dispute Resolution**

The Dispute Resolution proceedings shall be conducted as and when required and in the place designated by the Bhutan Electricity Authority Secretariat.

## **Interpretations and Definitions**

For the purpose of this Regulation, any words or expression used to which a meaning has been assigned in the Electricity Act of Bhutan, 2001, shall have that meaning, unless explicitly indicated in this Regulation.

“**Consumer or Customer**” means any person who is supplied with electricity for his own use by a Licensee or by any other person engaged in the business of supplying electricity to public under the Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a Licensee, or such other person, as case may be.

“**Panelist**” means selected member from the Dispute Resolution Panel.

“**Working day**” means a working day, other than a Saturday or Sunday, or a Public Holiday.

## FORM A

### APPLICATION FOR FILING COMPLAINT WITH THE BHUTAN ELECTRICITY AUTHORITY SECRETARIAT

Name of the complainant:

Full address of the complainant:

Name and full address of the party complained against:

Facts of the complaint/grievance:

The relief which complainant claims:

List of documents enclosed to support the allegation contained in the complaint:

- 1.
- 2.
- 3.

### Declaration

I/We, the complainant(s) herein declare that the information furnished herein above is true to the best of my/our knowledge, information and belief. I/We have not concealed or misrepresented any fact stated in aforesaid columns and the documents submitted herewith. I/We have not brought the subject matter of the present complaint before this Forum earlier. The subject matter of the present complaint has not been decided by any forum/court/arbitrator or any other authority.

Name & Signature of the Complainant (legal stamp)

Place:

Date:

## NOMINATION

(If the complainant wants to nominate his/her representative to appear and make submissions on his/her behalf before the Forum, the following declaration should be submitted)

I / We the above named Consumer hereby nominate Mr. / Mrs. ...  
.....  
.....and whose address is.....  
.....as my/our representative in the proceedings and confirm that any statement, acceptance or rejection made by him/her shall be binding on me/us. He/She has signed below in my presence.

ACCEPTED

(Signature of Representative)

Place:

Date:

Name & Signature of Complainant