

Water Tariff Fixation Commission Act, 2063 (2006)

Date of Authentication and Publication

2063.8.8 (24 Nov. 2006)

Act number 29 of the year 2063 (2006)

An Act made to provide for Water Tariff Fixation Commission

Preamble: Whereas, it is expedient to make legal provisions on the establishment of the Water Tariff Fixation Commission for the protection of the interests of consumers by providing qualitative and reliable water supply and sanitation service to the consumers at a reasonable price, by fixing the tariff of water supply and sanitation service;

Now, therefore, be it enacted by the House of Representatives in the First year of the issuance of the Declaration of the House of Representatives, 2063 (2006).

1. **Short title and commencement:** (1) This Act may be called as the “Water Tariff Fixation Commission Act, 2063 (2006)”.
(2) It shall come into force immediately.
2. **Definitions:** Unless the subject or the context otherwise requires, in this Act,
 - (a) "Commission" means the Water Tariff Fixation Commission formed under Section 3.
 - (b) "Chairperson" means the chairperson of the Commission.
 - (c) "Member" means the member of the Commission, and this term also includes the chairperson of the Commission.

- (d) "Natural water" means the water coming out from stone sprouts, wells, rivers, streams, ponds, lakes or surface natural resources or water extracted from ground water resources, since ancient times.
- (e) "Water supply service" means the provision of water to the users upon processing and purifying the natural water.
- (f) "Sanitation service" means an act of destroying, discharging, processing or purifying dirty water discharged from human beings or from domestic, trade or industrial use and all kinds of dirty (filthy) substances mixed with such water.
- (g) "Service" means the water supply or sanitation service.
- (h) "Service system" means pipes, water reservoirs built or installed with objective to provide the water supply or sanitation service or plants processing or purifying drinking water, dirty water or sewer mixed water or similar other equipment or structures.
- (i) "Service provider" means any person, user groups or body corporate that provides the service by collecting tariff.
- (j) "Tariff" means such tariff as the service provider may collect from the users in consideration for the service provided.
- (k) "Prescribed" or "as prescribed" means prescribed or as prescribed in the Rules framed under this Act.

Chapter -2

Formation, functions, duties and powers of the Commission

- 3. Formation of Commission:** (1) A Water Tariff Fixation Commission is, hereby, formed for the protection of the interests of consumers by providing qualitative and reliable water supply and sanitation service to the consumers at a reasonable price, by fixing the tariff of water supply and sanitation service.

(2) The Commission referred to in Sub-section (1) shall consist of the following members:

(a) A person appointed by the Government of Nepal from amongst the persons who have obtained at least bachelor's degree in engineering, management, economics or financial management from a recognized educational institute and gained at least Twelve years of experience in managerial responsibility in a public body -Chairperson

(b) A person appointed by the Government of Nepal from amongst the persons who have obtained at least bachelor's degree in economics, financial management or analysis, chartered accountancy or commerce from a recognized educational institute and gained at least Ten years of experience in economic evaluation, accounts or financial analysis related work -Member

(c) A person appointed by the Government of Nepal from amongst the Women, *Dalit* and *Janjati* (nationalities) who have obtained at least bachelor's degree in engineering,

sociology or law from a recognized educational institute and gained at least Seven years of experience in the related field -Member

(3) The term of office of the chairperson and the member shall be Four years, and they may be reappointed for another one term.

(4) The member shall take an oath in the format as set forth in the Schedule, prior to assuming his or her office.

(5) The chairperson may designate any officer employee of the Commission to act as the secretary of the Commission.

(6) The chairperson or member shall not be removed from his or her office prior to the expiration of his or her term of office.

(7) Notwithstanding anything contained elsewhere in this Section, if the chairperson or member does not fulfill the duties of his or her office or does not act honestly or if it is proved that he or she is indulged in bad conduct, is incompetent physically or mentally or has financial interest (conflict of interest) with the service provider or he or she is sentenced by the court on a criminal offence, he or she may, at any time, be removed from the office of the chairperson or member.

(8) Any of the following persons shall not be eligible to be appointed to, or continue to hold, the office of the chairperson or member:

- (a) An incumbent employee of the Government of Nepal,
- (b) An office-bearer of a political party,
- (c) A person who is engaged with the service provider or any body related with the service provider or who has investment in such a body or any kind of personal interest therein,

- (d) A person who has no qualification and experience as referred to in Sub-section (2), and
- (e) A person who has completed the age of Sixty Five years.

4. **Recommendation committee:** (1) There shall be one recommendation committee as follows to make recommendation to the Government of Nepal for the appointment of the chairperson and the member:

- (a) The Member of the National Planning Commission (responsible for the concerned sector) -Coordinator
- (b) A person designated by the Government of Nepal from amongst the persons who have obtained at least bachelor's degree in any subject and gained at least Fifteen years of experience in water supply and sanitation -Member
- (c) Gazetted First Class Officer at the Ministry of Physical Planning and Works -Member

(2) The committee as referred to in Sub-section (1) shall, in making recommendation for appointment to the office of the chairperson or member, recommend at least Two persons for each office, and the Government of Nepal shall make appointment to the office of the chairperson or member from the persons so recommended.

(3) The other Rules of procedures on the meeting of the recommendation committee as referred to in Sub-section (1) shall be as determined by the committee itself.

5. Commission to be an autonomous body: (1) The Commission shall be an autonomous and corporate body with perpetual succession.

(2) The Commission shall have a separate seal of its own for all of its functions.

(3) The Commission may, like an individual, acquire, use, sell, dispose of or otherwise manage any movable, immovable property.

(4) The Commission may, like an individual, sue and be also sued by its name.

6. Functions, duties and powers of the Commission: The functions, duties and powers of the Commission shall be as follows:

(a) To fix the tariff for the service, as the service provider may collect from the users,

(b) To approve such policies and procedures as to be followed by the service provider in making an application to the Commission for the fixation of tariff,

(c) To maintain, or cause to be maintained the quality of service by monitoring the service to be provided by the service provider,

(d) To resolve, or cause to be resolved, disputes arising between the service provider and the users,

(e) To obtain statements related with the service provided by the service provider and publish, or caused to be published, the same,

(f) To determine criteria on the fixation of tariff and cause such criteria to be implemented,

(g) To give necessary advice and suggestion to the Government of Nepal in relation to the water supply or sanitation service, and

(h) To perform such other functions as prescribed.

7. Meetings and decisions of the Commission: (1) The meeting of the Commission shall be held as required.

(2) The meeting of the Commission shall be held at such date, time and venue as specified by the chairperson.

(3) Notwithstanding anything contained in Sub-section (2), if Two members of the Commission make a written request to the chairperson for calling a meeting of the Commission, the chairperson shall call a meeting of the Commission within Seven days.

(4) The presence of more than Fifty percent of the total number of members of the Commission shall be deemed to constitute a quorum for the meeting of the Commission.

(5) The meeting of the Commission shall be presided over by the chairperson, and, in his or her absence, the meeting shall be presided over by a member chosen by the members from amongst themselves.

(6) Majority opinion shall prevail in the meeting of the Commission, and in the case of a tie, the person presiding over the meeting shall exercise the casting vote.

(7) If the Commission considers it necessary, it may invite a representative of any body of the Government of Nepal or any native or foreign expert to take part in the meeting of the Commission.

(8) The decisions of the Commission shall be authenticated by the chairperson.

(9) Other provisions relating to the meeting of the Commission shall be as determined by the Commission itself.

8. Remuneration and facilities of chairperson and member: (1)

The chairperson of the Commission shall be the chief administrative office-bearer, working for full time at the Commission.

(2) The remuneration, facilities and terms and conditions of service and functions, duties and powers of the chairperson shall be as prescribed.

(3) The members of the Commission shall be entitled to such meeting allowance as prescribed for taking part in the meeting of the Commission.

(4) If it is necessary to engage any member of the Commission in the business of the Commission with specification of any certain period, the Commission may engage the member in the business on the basis of remuneration as prescribed for a period not exceeding Three months at a time.

9. Provisions relating to employees: (1) The Commission shall have a required number of employees.

(2) The appointment, remuneration, facilities and other terms and conditions of service of the employees of the Commission shall be as prescribed.

Chapter-3

Provisions relating to fixation of tariff and complaints

10. Criteria for the fixation of tariff: (1) In fixing the tariff, the Commission shall fix the tariff on the basis, *inter alia*, of depreciation, appropriate profit, cost of operation of the service, change in consumer price index, royalty, policies of the Government of Nepal in relation to water supply or sanitation service, exchange rate of convertible foreign currency and the matters set forth in Section 11.

(2) In fixing the tariff based on the criteria as referred to in Sub-section(1), the Commission shall also have regard to the overall interest of the users and quality of water, purchasing power of users and standards of service.

11. Application to be made for fixation of tariff: The service provider shall make an application in the prescribed format, accompanied by the following details, to the Commission on having the tariff fixed:

- (a) Criteria on which the proposed tariff has to be fixed,
- (b) If the rate of the tariff has to be changed, grounds thereof,
- (c) A comparative price index so prepared as clearly reflecting the tariff being collected previously and the rate of proposed tariff,
- (d) Reasonable profit that the service provider may earn from the tariff proposed by the service provider, also taking into account of the operational and repair and maintenance expenses of the service, depreciation, repayment of principal and interest of loans borrowed by the service provider for the operation of the service, and expenses that may increase as a result of annual price hike,
- (e) If the proposed tariff does not appear to be adequate to maintain the expenses as referred to in Clause (d) and earn profits or if the tariff cannot be increased for the time being, reasonable grounds of the financial source and long-term planning identified by the service provider,
- (f) A comparative analysis of yearly increase in operational expenses of the service and the proposed tariff,
- (g) Grounds set in relation to providing concession of tariff to the users who cannot afford the proposed tariff and likely additional burden on the other users as a result of such tariff concession,
- (h) Where the service provider has obtained license from or entered agreement with any body established under the prevailing laws to operate the service, a copy of such a license or agreement,
- (i) Such other matters as prescribed.

12. Examination of application: (1) If an application is made pursuant to Section 11, the Commission shall make necessary examination whether the documents and details as required to be submitted with the application have been submitted or not.

(2) If, in examining the application pursuant to Sub-section (1), it appears that the applicant has not submitted any documents or details as required to be submitted, the Commission shall give a notice thereof to the applicant within Fifteen days after the date of registration of the application for the submission of such documents or details within a reasonable period specified by the Commission.

(3) Where the Commission gives a notice, specifying the period, for the submission of any documents or details pursuant to Sub-section (1), the date on which such documents or details are received shall be considered as the date of application.

(4) If, in examining the application pursuant to Sub-section (1), it does not appear necessary to change the tariff as proposed by the applicant or the grounds for changing the tariff are not reasonable, information, accompanied by the reason for the same, shall be given to the concerned applicant within Sixty days after the date of application.

13. Fixation of tariff: (1) After the Commission has examined the application pursuant to Section 12, the Commission shall fix the tariff in accordance with the rate of tariff proposed by the applicant or with amendment, within Sixty days after the date of application.

Provided that, the Commission shall not fix the tariff in a manner that it differs by more than Twenty percent of the rate of tariff proposed by the applicant.

(2) In fixing the tariff pursuant to Sub-section (1), the Commission shall also specify the date of application of the fixed or changed rate.

(3) In fixing the tariff pursuant to Sub-section (1), the Commission may fix the tariff also based on the other terms and conditions specified at the time of entering into the agreement or issuing the license, in the case of a service provider who operates the service

upon obtaining license or entering into agreement pursuant to the prevailing laws, in addition to the criteria as referred to in Sections 10 and 11.

(4) Prior to fixing the tariff pursuant to Sub-section (1), the Commission shall publish a public notice setting out the proposed rate of tariff, in such a manner as prescribed.

(5) If, after the publication of a notice as referred to in Sub-section (4), any suggestion or comment is received from the users about the proposed rate of tariff, the Commission may, in consultation with the representatives of users' associations on that matter, also take such suggestion as a ground for fixing the tariff.

(6) If any person purchases from or sells to the service provider the bulk water supply for the water supply or sanitation service, or vice versa, the cost price or selling price of the water to be so purchased or sold shall have to be got prior approved by the Commission.

(7) Notwithstanding anything contained elsewhere in this Section, the Commission may fix different tariffs for the users who purchase the bulk water supply and the ordinary users.

(8) The other procedures relating to the fixation of tariff shall be as prescribed.

14. Notice to be published: The rate of tariff fixed by the Commission pursuant to Section 13 has to be published for the information of the people generally.

15. Tariff may be reviewed: (1) A service provider who is not satisfied with the tariff fixed by the Commission pursuant to Section 13 may make an application, accompanied by proper and adequate reasons for dissatisfaction, to the Ministry of Physical Planning and Works within Thirty days after the date of receipt of the notice of fixation of the tariff.

(2) If an application is received pursuant to Sub-section (1), the Government of Nepal may form a tariff review commission comprising the following chairperson and member:

- (a) A person who is a retired judge of, or has qualification to become a judge of, the Appellate Court -Chairperson
- (b) A person who has obtained at least bachelor's degree in engineering and gained at least Fifteen years of experience in the filed of water supply or sanitation -Member
- (c) A person who has obtained at least bachelor's degree in chartered accountancy or commerce and gained at least Fifteen years of experience in the filed of auditing -Member

(3) The tariff review commission shall make necessary examination of the application received pursuant to Sub-section (1) and review the tariff fixed pursuant to Section 13.

(4) The tariff review commission may, prior to reviewing the tariff pursuant to Sub-section (3), also hold public hearings as prescribed.

(5) Also studying the suggestions received on the public hearings held pursuant to Sub-section (4), the tariff review commission shall review the tariff and publish a public notice thereof within Thirty days after the date of commencement of its business.

(6) The tariff published pursuant to Sub-section (5) shall be final.

(7) The secretariat of the Tariff Review Commission shall be situated in the Ministry of Physical Planning and Works.

(8) An officer designated by the Ministry of Physical Planning and Works shall act as the secretary of the Tariff Review Commission.

(9) The Ministry of Physical Planning and Works shall make available such employees as required for the Tariff Review Commission.

(10) Provisions relating to the meetings and decisions of the Tariff Review Commission and the remuneration and facilities of the chairperson and members of the commission shall be as prescribed.

(11) After the completion of the fixation of the tariff pursuant to Sub-section (5), the Tariff Review Commission shall be deemed to have *ipso facto* dissolved.

16. Power of Commission to levy fee: The Commission may levy fee as prescribed not in excess of Two percent of the tariff to be collected by the service provider from the users and collect the same from the service provider.

17. Power of Commission to hear complaint: (1) Any user who is not satisfied with the service provided by the service provider may make a complaint to the Commission, as prescribed.

(2) Prior to making a complaint to the Commission pursuant to Sub-section (1), the user shall have given information setting out the matter with which he or she is not satisfied in relation to the service and have not got a satisfactory remedy thereon.

(3) If an application is received pursuant to Sub-section (1), the Commission shall make necessary inquiry into the matter any may give direction to the service provider in relation to improvement in the standards of service, and it shall be the duty of the concerned service provider to abide by such a direction.

18. Power of Commission to impose punishment: (1) If any service provider does not apply the tariff fixed by the Commission, collects the tariff in excess of that fixed by the Commission or apply unequal tariff in contravention of the approved criteria, the Commission may fine such a service provider with a sum not exceeding Five Thousand Rupees, in view of the gravity of offence.

(2) If the user proves that the service provider has not taken reasonable action on the complaint made by the user, the Commission may fine such a service provider with a sum not exceeding Ten Thousand Rupees.

(3) If it is proved that any user has made a false complaint against the service provider with ulterior motive to harass the service provider, the Commission may fine such a user with a sum not exceeding Five Thousand Rupees, in view of the nature of complaint.

(4) An appeal may be made to the concerned Court of Appeal against the punishment imposed by the Commission pursuant to this Section.

19. Establishment of special fund: (1) The Commission shall establish a separate fund to which the money received as a fine pursuant to Section 18 shall be credited.

(2) Expenses shall be made from the fund as referred to in Sub-section (1) to give grants to those users, as prescribed, who are not able to avail of the service provided by the service provider.

(3) Other matters relating to the operation and management of the fund as referred to in Sub-section (1) shall be as prescribed.

Chapter-4

Provisions Relating to Fund and Audit of the Commission

20. Fund of the Commission: (1) The Commission shall have a separate fund of its own, and the following amounts shall be credited to such a fund:

- (a) Amounts received from the Government of Nepal,
- (b) Amounts received in the form of loan or assistance from any foreign government or international organization or body,

Provided that, prior to obtaining any amount in the form of loan or assistance from any foreign government or international organization or body, the Commission shall have to obtain approval of the Government of Nepal.

- (c) Amounts received as fees imposed by the Commission pursuant to Section 16,
- (d) Amounts received from any other source.

(2) All the expenses of the Commission shall be borne out of the fund as referred to in Sub-section (1).

(3) The amounts as referred to in Sub-section (1) shall be deposited in an account to be opened with any bank or financial institution within Nepal.

(4) The operation of the account as referred to in Sub-section (3) shall be as prescribed.

21. Accounts and audit: (1) The accounts of incomes and expenses of the Commission shall be maintained in accordance with the prevailing laws.

(2) The Commission shall carry out, or cause to be carried out, internal audit and internal control as prescribed.

(3) The audit of the accounts of the Commission shall be carried out by the Auditor General.

(4) The Government of Nepal may, if it considers necessary, examine, or cause to be examined, the accounts of the Commission and documents relating thereto, at any time.

Chapter-5

Miscellaneous

- 22. Settlement of disputes:** If there arises any dispute between the service provider and the user or between the body granting permission to provide the service in accordance with the prevailing laws and the service provider in relation to the tariff, the Commission shall settle such a dispute as prescribed.
- 23. Power to form committee or sub-committee:** (1) The Commission may, as required, form a user service suggestion committee to give suggestion to the Commission in relation to the protection of the rights and interests of the users and for the protection of the interests of those users who have no proper access to the service or who are not able to pay the tariff of service, by monitoring the service provided by the service provider to the users.
- (2) The Commission may form a sub-committee, as required, for the smooth operation of the activities to be operated by it pursuant to this Act or the rules framed under this Act.
- (3) The functions, duties and powers, and rules of procedures of the committee or sub-committee formed pursuant to Sub-section (1) or (2) shall be as prescribed.
- 24. Delegation of powers:** The Commission may, as required, delegate any of the powers conferred to it by this Act or the Rules framed under

this Act to the chairperson, member, any committee or sub-committee as referred to in Section 23 or any officer employee of the Commission.

25. Annual report to be submitted: (1) The Commission shall submit a report, containing, *inter alia*, the short description of the activities carried out by it throughout the year, administrative expenses thereof, statements of incomes and expenses and programmes to be launched in the future, to the Government of Nepal within the month of *Ashwin* each year.

(2) The Government of Nepal shall, as required, cause the report as referred to in Sub-section (1) to be published by the Commission.

26. Liaison with the Government of Nepal: In maintaining contact with the Government of Nepal, the Commission shall make so through the Ministry of Physical Planning and Works.

27. Power to frame Rules: In order to implement the objectives of this Act, the Commission may frame necessary Rules, and such Rules shall come into force after being approval by the Government of Nepal.

28. Power to frame and enforce directives: The Commission may, subject to this Act and the Rules framed under this Act, may frame and enforce necessary directives.

Schedule

(Relating to Sub-section (4) of Section 3)

I.....do solemnly swear in the name of God/with truth and honesty that I shall discharge the responsibilities and duties assigned to me as the chairperson/member of the Commission impartially and honestly, without fear, partiality or enmity and being free from greed, avarice and favour, and that I shall not disclose any confidential matter known to me in the course of discharging my duties to any person in any case whether I hold or cease to hold office, except in cases where such disclosure is required by the prevailing laws.

Date.....

Signature.....

NEPAL LAW COMMISSION