*KERALA STATE ELECTRICITY REGULATORY COMMISSION (CONDITIONS OF LICENCE FOR EXISTING DISTRIBUTION LICENSEES) REGULATIONS, 2006

Section 16 of the Act empowers the Commission to specify any general or specific conditions which shall apply to either a licensee or class of licensees referred to in the provisos to Section 14 of the Act and such conditions shall be deemed to be conditions of such licence. In exercise of the powers conferred on it by proviso to Section 16 of the Act, Kerala State Electricity Regulatory Commission hereby makes the following regulations, namely:-

CHAPTER I

GENERAL

1. Short title and commencement.- (1) These Regulations may be called the Kerala State Electricity Regulatory Commission (Conditions of Licence for Existing Distribution Licensees) Regulations, 2006.

(2)They shall come into force from the date of publication in the official gazette.

(3)They shall apply to the State of Kerala.

2. Definitions.- (1) In these Regulations,-

(a) 'Act' means the Electricity Act, 2003 (Central Act No. 36 of 2003);

(b) 'Commission' means the Kerala State Electricity Regulatory Commission.

(2) Words or expressions occurring in these Regulations and not defined herein,but defined in the Act shall bear the same meaning as in the Act.

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*Published under Notification No. 1/1/KERC-2006/XI dated 23/02/2006 in Kerala Gazette Extraordinary No. 471 dated 28/02/2006, with the following statement of objects and reasons, namely:-

Statement of Objects and Reasons

Section 14 of the Electricity Act, 2003 provides for grant of licence to any person by the Appropriate Commission to transmit, distribute and undertake trading in electricity in any area specified in the licence. First proviso to Section 14 provides that any person engaged in the business of transmission or supply of electricity under the repealed laws or any Act specified in the schedule on or before the appointed date shall be deemed to be a licensee under the Act for such period as may be stipulated in the licence or approval granted under the repealed laws. But the provisions of such repealed laws in respect of such licensee shall apply for a period of one year from the date of commencement of the Electricity Act, 2003 or such earlier periods as may be specified by the Commission at the request of the Licensee. It further provides that the Central Transmission Utility, State Transmission Utility as well as Government company or a company referred in sub-section (2) of Section 131 and company or companies created in pursuance of the Act specified in the schedule shall be deemed to be a licensee under the Electricity Act, 2003.

3. Conditions of Licence.-The General and Special Conditions of Licence applicable to existing Distribution Licensees in Kerala State shall be as set in Form -1 appended to these regulations.

4. Amendment of Licence.- (1) Where in its opinion the public interest so permits, the Commission may, on the application of the licensee or otherwise, make such alterations and amendments in the terms and conditions of licence as given in Form-I; provided that no such alterations or amendments shall be made except with the consent of the licensee unless such consent has, in the opinion of the Commission, been unreasonably withheld.

(2) Where a licensee has made an application proposing any alteration or modifications in his licence under Section 18 of the Act, the licensee shall, within seven days of making such application, publish a notice of such application in two English dailies and two Malayalam dailies circulating in the territory where the licence sought to be amended operates, giving the following particulars:

a) Brief details of existing licence;

b) Proposed amendments for existing licence and brief reasons for seeking the amendment.

(3) All objections to an application for amendment pursuant to publication of notice as above, received within 30 days of the date of publication of the notice, shall be considered by the Commission.

(4) Where an amendment to a licence is proposed by the Commission *suo motu*, the Commission shall publish a notice of the same in two English dailies and two Malayalam dailies circulating in the area in which the licence proposed to be amended operates, giving such particulars as the Commission deems necessary. All objections to the proposed amendment shall be considered by the Commission if received within 30 days of the publication of the notice.

(5) Provisions relating to grant of licence shall, as far as may be practicable and necessary apply to consideration and disposal of application for amendment of licence.

(6) In the case of an application proposing alterations or modifications in the area of supply comprising the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Central Government for Defence purposes, the Commission shall not make any alterations or modifications except with the consent of the Central Government.

5. Power to remove difficulties.- If any difficulty arises in giving effect to any of the provisions of these Regulations, the Commission may, by general or special order, do anything, not being inconsistent with the provisions of the Act, which appears to it to be necessary or expedient for the purpose of removing the difficulties.

FORM I

CONDITIONS OF LICENCE

PART I
DEFINITIONS

1. Definitions.- (1) In this Licence, unless the context otherwise requires:

(a) 'Accounting Statement' means, for each financial year, the statements for the licensed business comprising a profit and loss account, a balance sheet and a statement of sources and application of funds, together with notes thereto and such other details in the manner as the Commission may direct from time to time and showing the amounts of any revenue, cost, asset, liability, reserve or provision, which has been either:

(i) charged from or to any other business together with a description of the basis of that charge; or

(ii) determined by apportionment or allocation between the Distribution Business and any other business of the Licensee or together with a description of the basis of the apportionment or allocation;

(b) 'Act' means the Electricity Act, 2003 ;

(c) 'Annual Accounts' means the accounts of the distribution licensee prepared in accordance with the provisions of the Companies Act, 1956 (1 of 1956) and/or other relevant acts or the manner as may be directed by the Commission in terms of the provisions of the Act;

(d) 'Area of Distribution' or 'area of supply' means the area of distribution stated in the distribution licence within which the distribution licensee is authorized to establish, operate and maintain the distribution system and supply electricity;

(e) 'Auditors' means the distribution licensee's auditors holding office;

(f) 'Authorized', in relation to any person, business or activity, means authorized by licence granted under section 14 of the Act or deemed to be granted under the first, second, third and fifth provisos to section 14 of the Act or exemption granted under section 13 of the Act and the regulations of the Commission;

(g) 'Commission' means the Kerala State Electricity Regulatory Commission;

(h) 'Consumer' means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under the Electricity Act, 2003 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, the Government or such other person, as the case may be;

(i) 'Distribution Business' means any Authorised business of the Licensee in or ancillaryto Distribution, whether on its own account or that of third parties, through any system owned and/or operated by the Licensee;

(j) 'Distribution licensee' means a licensee authorized to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;

(k)'Distribution system operating standards' means the standards related to the distribution licensee's operation of the distribution system as approved by the Commission;

(l) 'Distribution System Planning and Security Standards' means the standards related to the adequacy of the Licensee's planning methods and process for its Distribution System, approved by the Commission;

(m) 'Force Majeure' means events beyond the reasonable control of the licensee, including, but not limited to earthquakes, cyclones, floods, storms, adverse weather conditions, war, terrorist attacks, civil commotion or other similar occurrences that leads to any act that would involve a breach of relevant laws or regulations concerned with electrical safety;

(n)‘Generating Company’ means any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person, which owns or operates or maintains a generating station;

(o) ‘Grid Code’ means the grid code specified by the Central Commission under clause (h) of sub-section (1) of section 79 of the Act and includes the State grid code specified by the State Commission under clause (h) of sub-section (1) of section 86 of the Act;

(p)‘Holding Company’ shall have the same meaning as in section 4 of the Companies Act 1956;

(q)‘Licensed Business’ means the business of distribution and supply of electricity as authorized under the distribution licence;

(r) ‘Licensee’ means distribution licensee;

(s) ‘Major Incident’ means an incident associated with the distribution of electricity, which results in a significant interruption of service or substantial damage to equipment, or loss of life or significant injury to human beings, or as otherwise directed by the Commission and shall also include any other incident which the Commission expressly declares to be a major incident;

(t) ‘Operational Control’ means possessing the authority to operate and/or make operational decisions;

(u)‘Other Business’ means a business, which is not essential to, but part of, related to or reasonably incidental to the Distribution Business;

(v) ‘Performance Standards’ means the standards as may be specified by the Commission pursuant to section 57 of the Act;

(w) ‘Specific Conditions’ means the conditions in addition or in variation to the general conditions which the Commission may lay down specifically for a distribution licensee;

(x) ‘State’ means the State of Kerala;

(y) ‘State Government’ means the Government of Kerala;

(z) ‘Subsidiary’ shall have the same meaning as in section 4 of the Companies Act 1956 (1 of 1956);

(aa) 'Trading Licensee' means an electricity trader having trading licence under section 14 of the Act;

(bb) 'Transfer' shall include the sale, exchange, gift, lease, license, loan, securitisation, mortgage, charge, pledge or grant of any other encumbrance or otherwise permitting of any encumbrance to subsist or parting with physical possession or any other disposition or dealing;

(cc) 'Use of System' means use of the distribution system for the transportation or wheeling of electricity.

(2) Words or expressions occurring in this license and not defined herein, but definedin the Act, shall bear the same meaning as in the Act.

PART II
GENERAL CONDITIONS

2. Compliance with laws, rules and regulations. - (1) The distribution licensee shall comply with the provisions of the Act, rules and regulations, orders and directions issued by the Commission from time to time and the provisions of all other applicable laws, for the time being, in force.

(2) The distribution licensee shall comply with the orders or directions of the National Load Despatch Centre, the Regional Load Despatch Centre and the State Load Despatch Centre and other statutory authorities, issued in the discharge of their functions under the Act.

(3) The distribution licensee shall act in accordance with conditions specified herein except where the distribution licensee is exempted from any of these conditions at the time of the grant of licence or otherwise specifically by an approval of the Commission for deviation.

(4) The Licensee shall monitor its compliance with this licence and any order, code or guideline it is required to comply with under clause 4 and if the Licensee becomes aware of a material breach of this licence or any order, code or guideline by the Licensee, the Licensee must notify the Commission of the material breach, as soon as possible.

3. Duty of the Licensee .- The Licensee shall have the duty to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply for the purpose of supplying electricity.

4. Obligations of the Licensee.- (1) The Licensee has the obligation to supply power to any person requiring supply of electricity within the area of supply subject to technical feasibility and fulfillment of terms and conditions of supply by the person requiring supply.

(2) The Licensee shall always endeavor, subject to applicable regulations or directives or Force Majeure, to provide quality supply to its consumers.

(3) The Licensee shall arrange for non-discriminatory open access to its Distribution System to any person as specified by the Commission. On application made by any such person, subject to the condition of availability, the Licensee shall offer to enter into an agreement with that person for the use of the Distribution System :

(a) to accept into the Distribution System electricity provided by that person;

(b) to deliver such electricity, adjusted for losses of electricity at a designated exit point as per agreed terms and conditions;

(c) receive payment for the Use of System charges / wheeling charges and/or a surcharge as specified by the Commission:

Provided that, after a period which appears to the Commission to be reasonable for the purpose, the Licensee has failed to enter into an agreement with any applicant pursuant to a request, the Commission may at the request of any party settle such issues of dispute between the Licensee and that person and the Licensee forthwith enter into and implement such agreement in accordance with the terms as settled by the Commission, which shall be binding on the Licensee.

(4) The Licensee shall not deny the default supply service to any consumer availing open access if demanded by such consumer, on payment of charges in accordance with the Act and as specified by the Commission.

(5) The distribution licensee shall take all reasonable steps to ensure that all consumers connected to the distribution licensee's distribution system receive a safe,

economical and quality supply of electricity as provided in the performance standards, and other guidelines issued by the Commission in accordance with the provisions of the Act, rules and regulations framed thereunder.

(6) The licensee shall take all reasonable steps to detect and prevent:

(a) the theft or abstraction of electricity at premises which are supplied by it;

(b) damage to any electrical plant, electric line or metering equipment through which such premises are supplied; and

(c) interference with any metering equipment through which such premises are supplied.

5. Acts Requiring Prior Consent.-(1)The Licensee shall not do the following acts without the prior written approval of the Commission -

(a) undertake any transaction to acquire by purchase or takeover or otherwise the utility of any other Licensee;

(b) merge his utility with the utility of other Licensee;

(c) assign the licence or transfer the utility or any part thereof, by sale, lease, exchange or otherwise;

(d) undertake any act for sale of electricity outside the State or to any other licnesee within the State:

Provided that approval shall not be required if the utility referred to in clause (a) or clause (b) is situated in a State other than Kerala.

(2) Any agreement relating to any transaction specified under 5(1) unless made with the prior approval of the Commission shall be void.

(3) Licensee shall before obtaining such approval under 5(1) from the Commission, give not less than one month's notice to every other Licensee who transmits or distributes electricity in its area of operation.

(4) Where such prior approval is required, the Licensee shall file a suitable application with the Commission disclosing relevant facts in that behalf. The Commission may within 3 months of the application being filed, approve the arrangement subject to such terms and conditions or modifications as may be considered appropriate or reject the same, for reasons to be recorded in writing in support of the order passed.

6. Other Activities of the Licensee.-(1) The Licensee with prior intimation to the Commission may engage in any other business, only so long as such activity is likely to result in the optimum utilization of the assets and infrastructure comprising the distribution system and subject to the following conditions:

(a) provided the distribution business and the conduct thereof by the Licensee is not prejudiced and / or adversely affected in any manner;

(b) provided that a proportion of the revenues derived from such business shall, as may be specified by the Commission, be utilized for reducing the wheeling charges of the Licensee;

(c) provided further that the Licensee shall maintain separate accounts for each such business to ensure that distribution business neither subsidizes in any way such business undertaking nor encumbers its distribution assets in any way to support such business;

(d) the Licensee shall always comply with such guidelines that the Commission may specify in this regard.

(2) The Licensee shall seek the approval of the Commission before contracting any loans to, or issuing any guarantee for any obligation of any person, where the same is either beyond the permissible limits imposed by the statutes, or cannot be construed as being an exception and/or exemption under the statutes. Loans to employees pursuant to their terms of service and advances to suppliers in the ordinary course of business are excluded from the requirement to seek such approval.

(3) The Licensee may authorize any person to carry out any of the functions that the Licensee is authorized to conduct or carry out under the Act and this licence. Provided always that:

(a) any such person shall operate under the overall supervision and control of the Licensee and upon the terms and conditions of this licence; and

(b) the Licensee shall have, prior to delegating any function inform the Commission of such action;

(c) the Licensee shall also be responsible for all actions of such person.

7. Conditions of Supply of electricity.- (1)The Licensee shall as required by the Commission submit a draft 'Terms and Conditions of Supply' describing the operating practices and connection procedure of the Licensee along with draft 'Agreements for supply of electricity' and manual for operation and maintenance of systems and electric supply lines consistent with Act and Kerala Electricity Supply Code, 2005, for the approval for the Commission.

(2) The terms and Conditions of Supply and Agreement for supply of electricity shall be fair and reasonable to the consumers and shall be in accordance with the Act, other Regulations and Codes in force.

(3) The Commission shall direct the Licensee to amend the drafts specified above before the approval if it is found to be unfair and unreasonable. Upon approval of the Terms and Conditions of Supply along with Agreement for supply of electricity, the Licensee shall notify the approved documents for use.

(4) The licensee shall always keep in its office an adequate number of printed copies of the approved conditions of supply of power in English and Malayalam and shall provide to any person seeking a copy of the same, at cost price. New consumers shall be provided with the copy of the same along with agreement on payment of cost.

8. Provision of subsidies to certain consumers. - The Licensee shall not, without prior permission of the Commission, give any subsidy or subvention to, or receive any subsidy or subvention from any person or any other business of the Licensee (whether or not authorized by the Commission), except a subsidy granted by the State Government pursuant to Section 65 of the Act.

9. Accounts. - (1) Unless otherwise permitted by the Commission the financial year of the distribution licensee for the purposes of this licence shall run from the first of April to the following thirty-first of March.

(2) The distribution licensee shall, in respect of the licensed business and any other business,-

(a) keep such accounting records as would be required to be kept in respect of each such business so that the revenues, costs, assets, liabilities, reserves and provisions of,

or reasonably attributable to the licensed business are separately identifiable in the books of the distribution licensee, from those of other business in which the distribution licensee may be engaged;

(b) prepare on a consistent basis from such accounting records and deliver to the Commission,-

(i) the accounting statements;

(ii) half yearly profit and loss account, cash flow statement and balance sheet together with such supporting documents and information as the Commission may direct from time to time;

(iii) in respect of the accounting statements prepared, an auditor's report for each financial year, stating whether in their opinion the statements have been properly prepared and give a true and fair view of the revenues, costs, assets, liabilities, reserves and provisions of, or reasonably attributable to such business to which the statements relate.

(3) The distribution licensee shall not normally change the basis of charge or apportionment or allocation of revenues or expenses in relation to the preparation of the accounting statements in respect of a financial year from those applied in respect of the previous financial year, without prior intimation to the Commission.

(4) Where, in relation to the accounting statements in respect of a financial year, the distribution licensee has changed the basis of charge or apportionment or allocation from those adopted for the immediately preceding financial year, the distribution licensee shall, if directed by the Commission, prepare and deliver to the Commission such accounting statements on the basis of those which were applied in respect of the immediately preceding financial year.

(5) The accounting statements shall, unless otherwise directed by the Commission, -

(a) be prepared and published with the annual accounts of the distribution licensee;

(b) state the accounting policies adopted;

(c) be prepared in accordance with the generally accepted Indian accounting standards; and

(d) be prepared in the form as the Commission may stipulate from time to time.

(6) The references to costs or liabilities of, or reasonably attributable to the licensed business or other business shall be construed as excluding taxation, and capital liabilities which do not relate principally to such business and interest thereon.

(7) The distribution licensee shall ensure that the accounting statements in respect of each financial year prepared and the auditor's report in respect of each financial year are publicised in such manner as the Commission may direct and are made available to any person requesting them at a price not exceeding the reasonable cost of duplicating them.

10. Utilisation of Surcharge.- The Licensee shall keep separate accounts of the surcharge collected under Section 39(2)(d)(ii), 40(c)(ii) and second proviso to Section 42(2) of the Act, and utilize the same in the manner specified by the Commission.

11. Prohibition of undue preference.- The distribution licensee shall not show undue preference to any person in the distribution and supply of electricity or rendering of services in the area of supply:

Provided that any question as to the meaning of undue preference or unreasonable discrimination shall be decided by the Commission:

Provided that the distribution licensee shall not be deemed to have shown any such undue preference if any differentiation of the consumer occurs as a result of the implementation of any order of the Commission or of the order of the State Government in regard to subsidy payment under section 65 of the Act.

12. Provision of information to the Commission.- (1) The distribution licensee shall furnish to the Commission without delay such information, documents and details related to the licensed business or any other business of the distribution licensee, as the Commission may require from time to time.

(2) The distribution licensee shall duly make available all books, registers and documents as required under sub-section (3) of section 128 of the Act.

(3) The distribution licensee shall notify the Commission as soon as possible the occurrence of any major incident affecting any part of its distribution system and, in any event, by not later than two weeks from the date of such occurrence, -

(a) submit a report to the Commission giving full details of the facts within the knowledge of the distribution licensee regarding the incident and its cause;

(b) in the event the report under clause (a) is likely to take more than two weeks from the date of such incident, the distribution licensee shall, within one week from such date of the incident, submit a preliminary report with such details which the distribution licensee can reasonably furnish and state reasons as to why the distribution licensee requires more than two weeks for giving full report of such incident; and

(c) give copies of the report to all parties concerned with the major incident and to such other persons as the Commission may direct.

(4) The Commission at its discretion may require the submission of a report on the major incident to be prepared by an independent person to be appointed by the Commission at the expense of the distribution licensee.

(5) The distribution licensee shall also undertake such studies as the Commission may direct from time to time to avoid the occurrence of any major incident.

(6) The distribution licensee shall duly inform the Commission about any incident restricting it from meeting obligations under the licence granted including any act of omission or commission by others and steps taken by the distribution licensee to mitigate the effect of such incident.

(7) The Commission may by order, fine the Licensee if the Licensee fails to pay amount of compensation to such person who suffer substantial injury or to the heirs of those who lose their lives where a Major Incident has been caused by any act of commission, omission or negligence on the part of any of the employees or agents of the Licensee.

(8) The decision of the Commission as to what is a Major Incident shall be final.

(9) The Commission may at any time require the distribution licensee to comply with the provisions of sub-clause (3) to (6) relating to the incidents which the Commission may specifically direct and the distribution licensee shall be obliged to comply with the same notwithstanding that such incidents are not major incidents; provided that the time limits specified in sub-clause (3) shall commence from the date on which the Commission notifies the distribution licensee of such requirement.

(10) The distribution licensee shall submit a business plan within three months of the distribution licence coming in force for such period as the Commission may direct and shall update such plan annually. The business plan shall contain year wise load growth, year wise distribution loss reduction proposal along with specific action plan, metering plan for metering interface points, investment plan, treatment of previous losses, debt restructuring plan, cost reduction plan, projected profit and loss account, projected balance sheets, projected cash flow statements and projected important financial parameters.

(11) The Commission may require the distribution licensee to intimate by the end of the first quarter of each financial year the progress made in implementing the business plan of the previous financial year with the comparison of actual achievement vis-à-vis the plan as approved by the Commission.

(12) The licensee shall at all times maintain and provide to the Commission all relevant data regarding its compliance to standards of performance specified by the Commission.

13. Transfer or disposal of assets.- (1) The distribution licensee shall give to the Commission prior notice of its intention to transfer or relinquish operational control over any asset whose value exceeds the amount specified by the Commission under the special conditions in Part V and the distribution licensee shall disclose all relevant facts in the communication to the Commission. The Licensee shall not divide or partition or split the assets or costs thereof, which would result in circumventing this condition. The Commission may, within 30 days of the receipt of the notice, seek further information in support of the transaction and shall, generally within 30 days of such further information being submitted by the distribution licensee, and where no such further information is sought by the Commission as aforesaid, within 60 days of prior notice, approve the transfer arrangement subject to such terms and conditions or modifications as is considered appropriate or reject the same, for reasons to be contained in the order issued by the Commission.

(2) The distribution licensee may transfer or relinquish operational control over any asset as is detailed in any notice given under sub-clause (1) where, –

(a) the Commission confirms in writing that it consents to such transfer or relinquishment of operational control subject to such conditions as the Commission may impose; or

(b) the Commission does not inform the distribution licensee in writing of any objection to such transfer or relinquishment of operational control within the notice period referred to in sub-clause (1) and the transfer is effected by transparent and competitive bidding procedures.

(3) The distribution licensee may also transfer or relinquish operational control over any asset where,-

(a) the Commission has issued directions for the purposes of this clause containing a general consent (whether or not subject to conditions) to,-

(i) the transactions of a specified description, and/or

(ii) the transfer or relinquishment of operational control over assets of a specified description, and/or

(iii) the transfer or relinquishment of operational control in accordance with any conditions to which the consent is subjected to;

(b) the transfer or relinquishment of operational control in question is mandated under any other law; or

(c) the asset in question was acquired and used by the distribution licensee exclusively or primarily in connection with any other business and does not constitute a legal or beneficial interest in land, or otherwise form part of the distribution system or is not otherwise an asset required for the licensed business.

(4) The distribution licensee shall be entitled to utilise the assets as a means of facilitating financing its investment requirement including collateral for debt financing, securitisation of receivables, etc, for the licensed business subject to the conditions, -

(a) that the distribution licensee will inform the Commission about such arrangements at least 15 days prior to the effective date of the relevant agreements;

(b) the distribution licensee acts in a prudent and reasonable manner in such utilisation of assets; and

(c) the distribution licensee retains the operational control over assets in the distribution system.

(5) Notwithstanding anything contained in this licence, in case of any emergency condition, the distribution licensee may transfer the assets subject to the condition that the distribution licensee shall, immediately after such a transaction, seek post-facto approval of the Commission giving the detailed facts about the emergency and the details of the transaction entered into. It shall be the obligation of the distribution licensee to establish to the satisfaction of the Commission of the presence of emergency condition necessitating the transfer of the assets.

14. Payment of licence fees.- (1) [1] [During the tenure of licence, the distribution licensee shall pay to the Commission the licence fee, mentioned in the special conditions in Part V before 30th April of every financial year based on provisional calculation of revenue from sale of power for the previous year. On finalization of accounts, balance fee if any due shall also be paid and if fee paid is excess, it shall be adjusted in future payments.]

(2) Where the distribution licensee fails to pay to the Commission any of the fees due under sub-clause (1) by the due dates,-

(a) without prejudice to other obligations, the distribution licensee shall be liable to pay interest on the outstanding amount at simple interest at twice the ruling bank rate payable for the period beginning on the day after 14 days from the date on which the amount became due, and ending on the day on which the payment is made to the Commission; and

(b) in the event of continued default by the distribution licensee, the Commission shall initiate action for revocation of licence.

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1. *Substituted by clause 2(i) of the Kerala State Electricity Regulatory Commission (Conditions of Licence for Existing Distribution Licensees) First Amendment Regulations, 2009 published under Notification No. KSERC/II/Regulation/2009 dated 16/12/2009 in the Kerala Gazette Extraordinary No. 2429 dated 23/12/2009 with the commencement clause, "They shall come into force at once".*

   Prior to substitution it read as:

   "(1) During the tenure of Licence, the distribution licensee shall pay to the Commission the licence fees, mentioned in the special conditions in Part V by 1st April of the financial year."

(3) The distribution licensee shall be entitled to take into account any fee paid by it under this licence excluding however the interest for delayed payment as an expense in the determination of aggregate revenues to be charged to the tariffs.

15. Dispute Resolution.- The Licensee, at any time, shall refer any or all disputes arising under the licence for determination by the Commission or such other person as the Commission may decide in this behalf.

16. Standards and procedures.-At the request of the Commission,the Licensee is required to participate and assist the Commission to the extent required by the Commission in the development, issue and review of any standards, codes, procedures proposed or notified by the Commission.

17. Compliance Examiner.- The Commission shall appoint an independent examiner to conduct audit and report the results to the Commission on :-

a. Licensee's compliance with obligations/duties under this licence including obligations to comply with codes and guidelines; and

b. The reliability and quality of information reported by the Licensee to the Commission and the consistency of that information with the Commission's specifications.

18. Default by the Licensee.- Any default to exercise authority as is granted to the Licensee by the Act, Regulations, and this licence, in a situation where itis necessary to do so, will be construed to be a breach of the conditions of licence.

PART III

TECHNICAL

19. Annual Revenue Requirements and Expected revenue from charges.-(1) The distribution licensee shall -

(a) forecast annually the demand for power within the area of supply in each of the succeeding 10 years;

(b) prepare and submit such forecasts to the Commission in accordance with the guidelines issued by the Commission from time to time;

(c) co-operate with the transmission licensees, the State Transmission Utility and the State Load Despatch Centre and other licensees in the preparation of power demand forecasts for the State; and

(d) undertake load research and prepare maximum and minimum load growth scenarios for the licensee's area of supply, taking into account economic growth rates, tariff levels and price elasticity of demand for electricity.

(2)The distribution licensee shall calculate the Annual Revenue requirements and expected revenue from charges in accordance with the provisions of the Act, the regulations, guidelines, orders and directions issued by the Commission from time to time.

(3)The Licensee shall recover charges only in accordance with the tariffs and charges approved by the Commission.

20. Power Procurement Procedure.- (1) The Licensee shall prepare and submit to the Commission its power purchase plan consisting of plans for own generation and power purchase consistent with load forecast. The licensee while preparing the plan shall:

(i) state planning margin or margins adopted by the licensee for the purpose of preparing the power purchase plan and set out the methodology and calculations used in arriving at such margin or margins;

(ii) refer to data and assumptions for demand forecasts (including insofar as relevant to those relating to diversity of demand, own generation, arrangement for trading, demand of all consumers including open access consumers, load management, if any).

(2) The Licensee shall not purchase electrical power and/or energy without an authorization granted by the Commission except for emergent short duration purchases for less than 1 month.

(3) The Licensee shall in all circumstances purchase electrical power and/or energy in an economical and efficient manner under a transparent procurement process as approved by the Commission and following the guidelines issued by the Commission from time to time relating to preparation of load forecasts, power procurement plan and power procurement procedure. However purchase of power from Non Conventional energy sources shall be made within the percentage fixed by the Commission from time to time.

(4) An authorization required under this condition shall be granted when the Licensee has demonstrated to the Commission's satisfaction that:

(a) electrical power and/or energy is necessary to meet the Licensee's service obligations and is consistent with the approved load forecast and power purchase plan;

(b) the Licensee has examined the economic, technical, system and environmental aspects of commercially viable alternatives to the proposals for purchasing electrical power and/or energy (including arrangements for reducing the level of demand) and such examination has been carried out in a manner approved by the Commission;

(c) The Commission may within 90 days grant authorization or may reject the application of the Licensee recording its reasons in writing. If the Commission does not grant or reject the application in writing within 90 days, then such permission shall be deemed to have been granted.

(5) In all circumstances the Licensee shall purchase electrical power and/or energy in a manner,-

(a) which is in compliance with the State Grid Code;

(b) the details of contracts entered into for power/energy purchases are furnished to the Commission within one month from the conclusion of such contracts.

21. Investments.- (1) The distribution licensee shall duly comply with the regulations, guidelines, directions and orders the Commission may issue from time to time in regard to the investments to be made in the distribution business.

(2) Licensee shall within one year of grant of licence, prepare a perspective plan for 5 years anticipating growth in load in the area of supply for upgrading the distribution system and submit the same to the Commission.

(3) Based on the perspective plan , the licensee shall prepare an annual plan for executing works to meet the requirement of growth in load and for upgrading distribution system.

(4) The licensee shall submit its annual plan for executing works giving sources of its funding to the Commission every year along with ARR & ERC filing for the following finanical year.

(5) The distribution licensee shall make the investments in a prudent manner being guided by the duty to build, maintain and operate an efficient, co-ordinated and economical distribution system.

(6) The distribution licensee shall submit to the Commission investment plans as a part of the business plan giving details of investment schemes to be undertaken during the concerned period for the approval of the Commission. The distribution licensee shall demonstrate to the satisfaction of the Commission that:

(a) there is a need for such investments in the distribution system contained in the investment plan;

(b) the distribution licensee has examined the economic, technical, system and environmental aspects of all viable alternatives to the proposal for investing in or acquiring new distribution system assets to meet such need.

(7) The distribution licensee shall intimate, by the end of the first quarter of each financial year -

(a) the annual investment plan with details of investment schemes to be carried out during the financial year; and

(b) the progress made in implementing the annual investment plan of the previous financial year with the comparison of actual achievement vis-à-vis the plan as approved by the Commission for the concerned period.

(8) The distribution licensee shall not undertake schemes involving major investments, not covered under the investment plan approved by the Commission without the prior approval of the Commission, and for such approval the distribution licensee shall demonstrate to the satisfaction of the Commission the necessity and prudence of such investment.

(9) The distribution licensee shall invite and finalise tenders for procurement of equipment, material and/or services relating to major investment, in accordance with a transparent tendering procedure as may be directed by the Commission. The distribution licensee shall, in consultation with the Commission,-

(a) ensure that material management policy and practices including calendar of various actions, approvals, tendering, purchase order,delivery schedule and payments, *etc*.,

are streamlined so as to provide necessary inputs of right quality at the right time to facilitate faithful implementation and compliance of the approved standards and benchmarks;

(b) lay down bench-mark prices and conclude rate contracts for decentralised purchases so as to bring about financial discipline and inventory control for achieving optimal financial rates in respect of such decentralised purchases.

22. Compliance with the Grid Code.- (1) The distribution licensee shall comply with the provisions of the Grid Code in so far as it is applicable to the operation of the distribution system or otherwise to any of the activities of the distribution licensee.

(2) The Commission may, after consultation with any affected generating companies, the transmission licensee, the State Transmission Utility, the State Load Despatch Centre and the electricity traders, issue directions relieving the distribution licensee of obligation under sub-regulation (1) in respect of such parts of the Grid Code and to such extent as may be ordered by the Commission.

23. Electricity Supply Code.- (1) The distribution licensee shall abide by the electricity supply code as may be specified by the Commission from time to time.

(2) The Commission may, at the instance of the licensee, issue directions relieving the licensee of its obligations under the electricity supply code in respect of such parts of the licensee's distribution system and to such extent as may be directed by the Commission.

(3) The licensee shall make available to any person requesting for it, copies of the electricity supply code and conditions of supply and practices thereto in force from time to time, at a price not exceeding the reasonable cost of duplicating it.

24. Distribution system planning and security standards, distribution system operating standards, performance standards.- (1) The distribution licensee shall plan, develop and operate its distribution system in accordance with the distribution system planning and security standards as approved by the Commission.

(2) The distribution licensee shall not be in breach of its obligations if the failure to meet the distribution planning and security standards or the distribution

operating standards is due to force majeure, provided that, the distribution licensee has made reasonable efforts, to comply with the distribution planning and security standards or the distribution operating standards, as the case may be.

(3) The Licensee shall comply with the Standards of Performance as approved by the Commission from time to time. If the Licensee fail to comply with any or all of the standards of performance, the Licensee shall pay a standard compensation specified by the Commission to the affected consumer on an application received from such consumer.

(4) The Licensee shall not include any compensation /penalty/fine paid due to deficient service in the ARR / cost to be recovered from the consumers.

(5) The distribution licensee shall provide annually, information to the Commission as to the means by which it proposes to achieve the performance standards and other standards applicable to the distribution licensee.

PART IV

OTHER CONDITIONS

25. Complaint Handling Procedure.- (1) The distribution licensee shall prepare and submit before the Commission for approval its procedure to deal with the complaints of the consumers.

(2) The Licensee shall make a copy of the approved Complaints handling Procedure, revised from time to time, available for inspection by members of the public.

(3) The Licensee shall provide free of charge a copy of the Procedure revised from time to time to each new consumer, and to any other person who requests for it at a price not exceeding the cost of duplicating it.

(4) The Licensee shall comply with the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005.

26. Consumer Rights Statement.-(1)The distribution licensee shall, within a reasonable period of time as may be directed by the Commission after the licence become

effective or such other time as the Commission may allow, prepare and submit to the Commission for approval, a consumer rights statement, explaining to the consumers their rights as consumers serviced by the licensee.

(2) The Commission may require the distribution licensee to review or amend the consumer rights statement prepared and the manner in which it has been implemented with a view to determining whether any modification should be made to it or to the manner of its implementation.

(3) The distribution licensee shall:-

(a) draw the attention of consumers, to the existence of its consumer rights statement and each substantive revision of it and how they may inspect or obtain a copy of such consumer rights statement in its latest form;

(b) make a copy of its consumer rights statement, revised from time to time, available for inspection by members of the public, at its offices during normal working hours; and

(c) provide a copy of the consumer rights statement, revised from time to time, to all new consumers to be served by it, and to any other person who requests for it at a price not exceeding the reasonable cost of duplicating it.

27. Consumer's Right to Information.-(1) A Licensee on request of the consumer, to the extent that is reasonably available to the Licensee provide with:

(a) The information on all services provided by the Licensee including the information on the charges or alternative tariff schemes which may be available to the consumers;

(b) information on meter readings for the electricity services provided at the consumer premises by the Licensee ; and

(c) information on the status of the consumer's ledger account with the Licensee.

(2) A Licensee may charge reasonable costs for providing such information unless the information requested is of general nature.

28. Connection and use of system.- The distribution licensee shall make such arrangements for open access to the use of his distribution system by the users subject, however, to the availability of the adequate distribution capacity. The distribution licensee shall always endeavor to provide sufficient capacity in the system.

29. Abuse of powers.- The Licensee in any circumstances shall not enter into any agreement or abuse its dominant position or enter into a combination, which is likely to cause or causes an adverse effect on competition in the electricity industry.

30. Penalty for Contravention of Conditions of the Licence.-The Licensee shall be liable for action under Sections 142 and 146 of the Act in appropriate cases for contravening any one or more of the provisions of this licence.

31. Terms of Revocation.- The Commission may, at any time after complying with the requirements of Section 19 of the Act, revoke this licence by 3 months notice in writing to the Licensee. For the purpose of clause (b) of sub section (i)of Section 19 of the Act, the breach of any of the Conditions 4 to 32 of this licence are hereby declared to render the licence liable to revocation.

32. Miscellaneous.- All issues arising in relation to interpretation of this license and as to the terms and conditions thereof shall be a matter for determination of the Commission and the decision of the Commission on such issues shall be final, subject only to the right of appeal under section 111 of the Act.

PART V
SPECIAL CONDITIONS

33. Relinquishment of Operational Control.- Value of Asset which requires prior notice for relinquishment of operational control as per clause 13 in respect of the Licensee shall not be less than Rs.25 Lakh.

34. Licence Fee.- [2][The Licensee shall pay every year Licence fee to the Commission at the rate of 0.03% (subject to revision) of the revenue from sale of power for the previous financial year]:

[3][Provided that, KSEB Ltd, shall be permitted to remit licence fee for the next three financial years i.e, 2022-23, 2023-24 and 2024-25 to the Commission at the rate of 0.015% of the revenue from sale of power for the previous financial year.]

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2. *Substituted by clasue 2(ii) of the Kerala State Electricity Regulatory Commission (Conditions of Licence for Existing Distribution Licensees) First Amendment Regulations, 2009 published under Notification No. KSERC/II/Regulation/2009 dated, 16.12.2009 in the Kerala Gazette Extraordinary No. 2429 dated 23.12.2009 with the commencement clause, "They shall come into force at once."*

   Prior to the substitutions it read as:

   " The Licensee shall pay every year Licence fee to the Commission at the rate of 0.03% (subject to revision) of the revenue from sale of power stated in the certified financial statement of the previous year."

3. *Added by clause 2(1) of the Kerala State Electricity Regulatory Commission (Conditions of Licence for Existing Distribution Licensees) (Amendment) Regulations,2022, published under Notification No. 1252/D(T)/KSERC/2022 dated 30.06.2022 in the Kerala Gazette Extraordinary No. 2215 dated 04.07.2022 with the Commencement clause. "It shall come into force with effect from 01.04.2022 of the financial year 2022-23."*