

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION

SHIMLA

F.No.HPERC/381

Dated:Shimla,the 10th June, 2004

NOTIFICATION

The Himachal Pradesh Electricity Regulatory Commission in exercise of the powers conferred by section 16 read with clause (d) of sub-section (2) of section 181 of the Electricity Act, 2003 (36 of 2003) and all other powers enabling it in this behalf, after previous publication, hereby makes the following regulations, namely: -

REGULATIONS

1.Short title and commencement. - (1) These regulations may be called the Himachal Pradesh Electricity Regulatory Commission (General Conditions of Trading Licence) Regulations, 2004.

(2) These regulations shall come into force on the 10th June,2004.

2.Definitions.- (1) In these regulations, unless the context otherwise requires, -

(1)“Act” means the Electricity Act, 2003 (Act No. 36 of 2003);

(2)“accounting statement” means for each financial year, accounting 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 as detailed under the Companies Act, 1956 (1 of 1956) and such other particulars and details in the manner as the Commission may direct from time to time. If the trading licensee engages in any business or activity in addition to the licensed business, the accounting statements shall comply with the regulations of the Commission dealing with the treatment of other business of the trading licensee and show separately the amounts of any revenue, cost, asset, liability, reserve or provision, which has been either, -

(a) charged from the licensed business to any other business or vice-versa together with a description of the basis of that charge; or

(b) determined by apportionment or allocation between the licensed business and any other business of the distribution licensee together with a description of the basis of the apportionment or allocation;

(3)“annual accounts” means the accounts of the trading licensee prepared in accordance with the provisions of the Companies Act, 1956 (1 of 1956) and/or

in such other manner as may be directed by the Commission in terms of the provisions of the Act;

(4)“area of activity” means the area of activity stated in the trading licence within which the trading licensee is authorised to trade;

(5)“auditors” means the trading licensee’s auditors holding office in accordance with the requirements of sections 224 to 234A or section 619 as appropriate, of the Companies Act 1956 (1 of 1956);

(6)“authorised”, in relation to any person, business or activity, means authorised 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;

(7)“Commission” means the Himachal Pradesh Electricity Regulatory Commission;

(8)“deemed licensee” means a person authorised under the first, second, third, and fifth provisos to section 14 of the Act;

(9)“distribution” means the conveyance or wheeling of electricity by means of a distribution system;

(10)“distribution code” means the code governing all material technical aspects relating to connections to and the operation and use of the distribution system as specified by the Commission;

(11)“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;

(12)“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;

(13) “interim grid code” means the existing practices and procedures implemented by the State Transmission Utility pending the grid code is specified by the Commission.

(14) “licence” means the licence under section 14 of the Act under which the licensee is authorised to conduct the licensed business;

(15)“Licensed business” means the business of trading in electricity as authorised under the licence;

(16) “Other business” means business of the trading licensee other than the licensed business;

(17) “specific conditions” means the conditions in addition to or in variation of the general conditions which the Commission may lay down specifically for a trading licensee;

(18) “State” means the State of Himachal Pradesh;

(19) “State Government” means the Government of the State of Himachal Pradesh;

(20) “trading business” means the authorised business of a trading licensee to transmit electricity, whether for its own account or for that of any other person, through any system owned and/ or operated by such licensee;

(21) “trading licence” means the licence under section 14 of the Act for undertaking trading and shall include deemed licence for the purpose;

(22)“trading licensee” means the entity, which has been granted a trading licence or is a deemed licensee under the first, second, third or fifth provisos to section 14 of the Act authorised to trade in electricity;

(23) “transfer” shall include the sale, exchange, gift, lease, licence, 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 other disposition or dealing ; and

(24) the other words, terms and expressions used and not defined in these regulations, but defined in the Act shall have the meanings respectively as are assigned to them in the Act.

3. Term. – (1) The trading licence shall come into force on the date to be mentioned by the Commission in the order granting the licence and subject to the terms and conditions of the grant of licence, shall remain in force for the period mentioned in the order.

4. Compliance with laws, rules and regulations. – (1) The trading licensee shall comply with the provisions of the Act, rules, regulations, orders and directions issued by the Commission from time to time and the provisions of all other applicable laws.

(2) The trading licensee shall act in accordance with this general conditions contained in these regulations except where the trading licensee is exempted from any provisions of these general conditions at the time of the grant of licence or otherwise specifically obtains the approval of the Commission for any deviation therefrom.

(3) The trading licensee shall duly comply with and undertake the activities consistent with the grid code, distribution code, supply regulations, conditions of supply and other codes and standards, orders and 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.

5. Activities of the trading licensee. – (1) The trading licensee may engage in the business of trading in electricity in the State:

Provided that in the event of sale or supply of electricity to the consumer besides others, such engagement in business shall be subject to the payment of surcharge to meet the current level of cross subsidy as provided in sub-section (2) of section 42 of the Act.

(2) The trading licensee shall not undertake transmission of electricity to any person in the State.

(3) The trading licensee shall not, without the prior approval of the Commission, -

- (a) undertake any transaction to acquire by purchase or takeover or otherwise, the utility of any other licensee;
- (b) acquire any beneficial interest in any generating company or generating station, or
- (c) engage in the business of electricity distribution.

(4) The trading licensee shall seek approval of the Commission before making any loans to, or issuing any guarantee for any obligation of any person, except when made or issued for the purposes of the licensed business. Loans to employees pursuant to their terms of service and trade advances in the ordinary course of business are excluded from the requirement to seek such approval.

(5) The trading licensee shall not at any time transfer or assign his licence in any manner without the prior approval of the Commission.

6. Accounts. – (1) The trading licensee shall conduct study on its total financial planning, budgeting and restructuring to determine an optimal capital structure, including key financial parameters which the trading licensee shall follow in order to monitor its financial performance.

(2) Unless otherwise permitted by the Commission the financial year of the trading licensee for the purposes of these general conditions, contained in these regulations,

and matters relating to the licensed business shall run from the first of April to the following thirty-first of March.

(3) The trading 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 trading licensee, from those of other business in which the trading licensee may be engaged;

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

(1) in respect of the first six months of each financial year, a half yearly profit and loss account, cash flow statement and balancesheet together with such supporting documents and information, as the Commission may direct from time to time. Such statements and documents shall be published in the manner directed by the Commission;

(2) in respect of the accounting statements prepared, an auditor's report for each financial year, stating whether in their opinion these statements have been properly prepared in accordance with this clause 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; and

(3) a copy of each half yearly profit and loss account not later than three months after the end of the period to which it relates, and copies of the accounting statements and auditor's report not later than six months after the end of the financial year to which they relate.

(4) The trading 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. Any change, if proposed, in the basis of charge or apportionment of revenues or expenses shall be consistent with the provisions of the Companies Act, 1956, (1 of 1956) the accounting standards or regulations and any guidelines issued by the Commission in this regard.

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

(6) The accounting statements under sub-regulation (3) shall, unless or otherwise approved or directed by the Commission, -

- (a) be prepared and published with the annual accounts of the trading licensee, in the manner provided herein;
- (b) state the accounting policies adopted;
- (c) be prepared in accordance with generally accepted Indian accounting standards; and
- (d) be prepared in the form as the Commission may stipulate from time to time.

(7) The references to costs or liabilities of, or reasonably attributable to 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.

(8) The trading licensee shall ensure that the accounting statements in respect of each financial year prepared under sub-regulation (3) 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.

7. Provision of information to the Commission. – (1) The trading licensee shall furnish to the Commission without undue delay such information, documents and details related to the licensed business or any other business of the trading licensee, as the Commission may require for its own purposes or for the purposes of the Government of India, the State Government, the State Transmission Utility, the State Load Despatch Centre, the Central Commission and/or the Central Electricity Authority.

(2) The trading licensee shall duly maintain the information as the Commission may direct under section 128 of the Act.

(3) The trading licensee shall duly inform the Commission about any incident restricting it from meeting its obligation under the licence granted including any act of omission or commission by others and steps taken by the trading licensee to mitigate the effect of such incident .The trading licensee shall notify the Commission as soon as possible the occurrence of any other incident which materially affects any part of its

trading activities and, in any event by not later than two months from the date of such occurrence, -

- (a) submit a report to the Commission giving full details of the facts within the knowledge of the trading licensee regarding the incident and its cause;
- (b) trading licensee can reasonably furnish and state reasons as to why trading licensee requires more than two months 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 trading licensee shall also undertake such studies as the Commission may direct it to undertake from time to time in regard to the trading activities and any other matter concerning the trading business that the Commission considers necessary in the public interest. Alternatively, the Commission may, on its own, initiate and undertake such studies through consultants at the cost and expense of the transmission licensee which shall be allowed as pass through in its Aggregate Revenue Requirement (ARR).

(5) The Commission may at any time require the trading licensee to comply with the provisions of this regulation in a manner the Commission may direct and the trading licensee shall be obliged to comply with the same.

(6) The trading licensee shall submit a business plan within three months of trading licence coming in force for such period as the Commission may direct and shall update such plan annually. The business plan shall contain yearwise turnover projected profit and loss account, projected balancesheets, projected cash flow statements and projected important financial parameters.

8. Capital adequacy, credit worthiness norms to be maintained.- (1) The trading licensee shall duly comply with the regulations, guidelines, directions and orders the Commission may issue from time to time in regard to the technical and financial parameters and norms to be maintained at all times by the trading licensee. These shall include the technical requirements, capital adequacy and credit worthiness for being a electricity trader, as may be specified by the Commission under section 52 of the Act.

(2) The non-maintenance of the technical and financial parameters as per sub-regulation (1) shall amount to a material breach of the obligations of the trading licensee.

9. Payment of licence fees. – (1) Within such period as the Commission may direct, the trading licensee shall pay to the Commission the licence fees, initial and also

periodic, mentioned in the specific condition in such manner as the Commission may direct in the said specific condition.

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

- (a) without prejudice to other obligations, the trading licensee shall be liable to pay interest on the outstanding amount at a simple interest rate of 1.5 percent per month, the interest being payable for the period beginning on the day after 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 trading licensee, the Commission may revoke the trading licence.

(3) The trading licensee shall be entitled to take into account any fee paid by it under this regulation as an expense in the determination of aggregate revenues to be charged to the tariffs, but shall not take into account any interest paid pursuant to this regulation.

10. Terms of revocation. – (1) Subject to the provisions of section 19 of the Act and the regulations framed thereunder, the Commission may, at any time initiate proceedings against the trading licensee for revocation of the trading licence and if satisfied in such proceedings on the grounds for revocation duly considering the public interest, revoke the trading licence-

- (a) where the trading licensee in the opinion of the Commission, makes material breach or wilful default in doing anything required of him by or under this Act or the rules or regulations made thereunder;
- (b) where the trading licensee violates any of the terms or conditions of his licence the breach of which is expressly declared by such licence to render it liable to revocation;
- (c) where the trading licensee fails, within the period fixed in this behalf by his licence, or any longer period which the Commission may have granted therefor-
 - (1) to show, to the satisfaction of the Commission, that he is in a position to fully and efficiently discharge the duties and obligations imposed on him by his licence, or
 - (2) to make deposits or furnish the security, or pay the fees or other charges required by his licence;

(d) where in the opinion of the Commission the financial position of the trading licensee is such that he is unable to fully and efficiently discharge the duties and obligations imposed on him; and .

(e) where the trading licensee has failed to comply with all the regulations, codes, and standards and also orders and directions of the Commission or otherwise has committed an act which renders trading licence revocable on any other grounds stated in the Act or the rules or regulations framed thereunder.

(2) Where in its opinion the public interest so requires, the Commission may, on application, or with the consent of the trading licensee, revoke his licence as to the whole or any part of his area of trading upon such terms and conditions as it thinks fit.

(3) Before revoking a trading licence the Commission may make such alternate arrangement to be made for discharging the duties of the trading licensee which the Commission considers necessary in public interest and all such arrangement shall be at the cost and risk of the trading licensee.

11. Amendment of licence conditions. – (1) These general conditions of the licence may, at any time if it is in public interest, be altered or amended by the Commission in exercise of powers under section 18 of the Act, subject to the condition that -

- (a) where the trading licensee has made an application under subsection (1) of Section 18 of the Act proposing any alteration or amendment in the general conditions of the licence, the trading licensee shall publish a notice of such application with such particulars and in such manner as may be directed by the Commission;
- (b) in the case of an application proposing alterations or modifications in the area of activity comprising the whole or any part of any cantonment, aerodrome, fortress, arsenal, camp or of any building or place in the occupation of the Government for defence purposes, the alterations or modifications shall be made only with the consent of the Central Government;
- (c) where any alterations or amendments in a licence are proposed to be made otherwise than on the application of the trading licensee, the Commission shall publish the proposed alterations or amendments with such particulars and in such manner as the Commission may consider to be appropriate;
- (d) the Commission shall not make any alterations or amendments unless all suggestions or objections received within thirty days

from the date of the first publication of the notice have been considered by the Commission.

12. Dispute resolution. – (1) The Commission shall be entitled to act as arbitrator or nominate person(s) as arbitrator(s) to adjudicate and settle disputes between the trading licensee and any other licensee or between the trading licensee and a generating company in pursuance of clause (f) of sub-section (1) of section 86, read with section 158, of the Act and the regulations of the Commission.

(2) The arbitration proceedings for disputes under sub-regulation (1) may be commenced and conducted by the Commission or the disputes may be referred to the arbitration of others, as the case may be, in accordance with the Conduct of Business Regulations framed by the Commission.

13. Trading margin and expected revenue calculations. – (1) The trading licensee shall calculate the expected revenue from charges, which, it is permitted to recover as a trading margin, in accordance with the provisions of the Act, the regulations of the Commission, the tariff terms and conditions and other guidelines, orders and directions issued by the Commission from time to time.

(2) The trading licensee shall file the expected revenue calculation in the manner provided in and consistent with the regulations framed under section 61 of the Act

(3) Unless otherwise provided in the specific conditions or in any order or direction made by the Commission the trading licensee shall every year, not later than 30th November, submit to the Commission a statement with full details of its expected aggregate revenues and cost of service for the ensuing financial year for its licensed business, based on the trading margin allowed by the Commission, in accordance with the provisions of the Act and the regulations, guidelines and orders issued by the Commission from time to time.

14. Miscellaneous. - (1) All issues arising in relation to interpretation of these regulations and as to the terms and conditions thereof shall be a matter for the 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.

(2) The Commission may, at the time of grant of trading licence, waive or modify the application of any of the provisions of these regulations either in the order granting the licence or by way of specific conditions made applicable to a specific trading licence.

15. Provisions to apply to deemed licensees. - The general conditions contained herein shall apply to all applicants for grant of trading licence after the coming into force of the Act and also to all deemed trading licensees under section 14 proviso first, second, third and fifth of the Act.

16. Removal of difficulties.- (1) Subject to the provisions of the Act, the Commission may, from time to time, issue orders and practice directions in regard to the implementation of these regulations and procedures to be followed on various matters, which the Commission has been empowered by these regulations to direct and matters incidental or ancillary thereto.

(2) If any difficulty arises in giving effect to any of the provisions of these regulations, the Commission may, by general or special order, direct the trading licensee to do or undertake things, which in the opinion of the Commission is necessary or expedient for removing the difficulties.

(3) No order shall be made under this section after the expiry of the period of one year from the date of the commencement of these regulations and every order made under this regulation shall be subject to the conditions of previous publication and shall be laid, as soon as may, after it is made, before the State Legislative Assembly.

17. Repeal and savings. - (1) Save as otherwise provided in these regulations, the general or specific conditions for the grant of the trading licence laid down under the Indian Electricity Act, 1910 or the Electricity Regulatory Commissions Act, 1998 or any other law in force immediately before the commencement of these regulations are hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken or purported to have been done or taken under the repealed general or specific conditions for the grant of a trading licence shall, in so far as it is not inconsistent with the provisions of these regulations, be deemed to have been done or taken under the corresponding provisions of these regulations.

(3) The specific conditions for the grant of trading licence and directions issued before the commencement of these regulations (including those given both at the public hearings and in the Tariff Order as contained in Chapter 7 of the Tariff Order 2001-02 issued under the Electricity Regulatory Commissions Act, 1998), not inconsistent with the provisions of these regulations, shall continue to apply for the period for which such general or specific conditions and directions were issued.

By Order of the Commission

Sd/-
Secretary