

## **Orissa Electricity Reform Act, 1995**

**2 of 1996**

**[10 January 1996]**

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#### **SCHEDULE 1 :- SCHEDULE I**

### **Orissa Electricity Reform Act, 1995**

**2 of 1996**

**[10 January 1996]**

AN ACT TO PROVIDE FOR THE RESTRICTING OF THE ELECTRICITY INDUSTRY FOR THE RATIONALISATION OF THE GENERATION, TRANSMISSION, DISTRIBUTION AND SUPPLY OF ELECTRICITY FOR AVENUES FOR PARTICIPATION OF PRIVATE SECTOR ENTREPRENEURS IN THE ELECTRICITY INDUSTRY AND GENERALLY FOR TAKING MEASURES CONDUCTIVE TO THE DEVELOPMENT AND MANAGEMENT, OF THE ELECTRICITY INDUSTRY IN THE STATE IN AN EFFICIENT ECONOMIC AND COMPETITIVE MANNER INCLUDING THE CONSTITUTION OF AN ELECTRICITY REGULATORY COMMISSION FOR THE STATE AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO. Be it enacted by the legislature of the State of Orissa in the Forty Sixth Year of the Republic of India as follows:-

#### CHAPTER 1 PRELIMINARY

#### **1. Short Title, Extent And Commencement :-**

- (1) This Act may be called the Orissa State Electricity Reform Act, 1995.
- (2) It extends to the whole of the State of Orissa.
- (3) It shall come into force on such date as the State Government may by notification, appoint. [Came into force w.e.f. 1st April, 1996]

vide Energy Deptt. No. 4554, Dt. 21.3.1996.]

## **2. Definitions :-**

In this Act, unless the context otherwise requires,

- (a) "area of transmission" means the area within which the holder of a transmission licence is for the time being authorised by licence to transmit energy;
- (b) "Commission" means the Orissa Electricity Regulatory Commission constituted under Sub-section (1) of Section 3;
- (c) "Gridco" means Grid Corporation of Orissa Limited as referred to in Section 13;
- (d) "Hydro Power Corporation" hereinafter referred to as the OHPC means the Orissa Hydro Power Corporation Limited incorporated under the Companies Act, 1956 (I of 1956) with effect from the twenty-first day of April. 1995;
- (e) "licence" means a licence granted under Chapter VI;
- (f) "Licensee" or "licence holder" means a person licensed under Chapter VI to transmit or supply energy including Gridco.
- (g) "prescribed" means prescribed by the rules or regulations.
- (h) "Public Service Commission" means the Public Service Commission for the State of Orissa established pursuant to Article 315 of the Constitution of India;
- (i) "regulations" means regulations made by the Commission under this Act.
- (j) "relative" means the relative as defined under Section 6 of the Companies Act, 1956;
- (k) "Rules" means rules made by the State Government under this Act;
- (l) "selection committee" means the selection committee constituted under Section 4;
- (m) "State" means State of Orissa;
- (n) "State Government" means the Government of the State;
- (o) "supply licence" means a licence under Clause (b) of Subsection (1) of Section 15;
- (p) "transmission licence" means a licence under Clause (a) of Subsection (1) of Section 15;
- (q) "transmit" in relation to electricity, means transportation or transmission of electricity by means of a system operated and controlled by a licensee which consists, wholly or mainly, of extra high voltage and extra high tension lines and electrical plant and is used for transforming and for conveying or transferring electricity

from a generating station to a sub-station, from one generating station to another or from one sub-station to another or otherwise from one place to another;

REFERRED TO: 2006 (Supp.-II) OLR 470.

(r) words and expressions used but not defined in this Act and defined in the Electricity (Supply) Act, 1948 shall have the meanings respectively assigned to them in that Act;

(s) words and expressions used but not defined either in this Act or in the Electricity (Supply) Act, 1948 (54 of 1948) and defined in the Indian Electricity Act, 1910 (9 of 1910) shall have the meanings respectively assigned to them in that Act.

## CHAPTER 2

### ORISSA ELECTRICITY REGULATORY COMMISSION

### **3. Establishment And Constitution Of The Commission :-**

(1) For the purposes of this Act, the State Government shall, within 3 months of the commencement of this Act, establish, by notification, a Commission to be known as the Orissa Electricity Regulatory Commission, which shall be a body corporate with perpetual succession and a common seal with power to acquire and hold property, movable and immovable, and shall by the said name be entitled to sue and be sued.

(2) The Commission shall consist of three members to be appointed by the State Government from persons selected by the selection committee constituted for the purpose.

(3) The State Government shall, as per the recommendation of the selection committee, designate one of the members as the Chairman of the Commission but, until such designation, the most senior member of the Commission shall act as Chairman, such seniority being reckoned from the date of joining of the Commission by the members.

(4) When the Chairman of the Commission is unable to discharge the functions owing to absence, illness or any other cause, the senior most member of the Commission shall discharge the functions of the, Chairman, until the day on which the Chairman assumes the charge of his functions.

(5) No act or proceedings of the Commission shall be invalid by reason why of the existence of any vacancy among its members or any defect in the constitution thereof.

(6) The method and manner of selection and appointment of members of the Commission and designation of one of the

members as Chairman shall be such as may be prescribed by rules.

#### **4. Constitution Of The Selection Committee :-**

(1) The State Government shall expeditiously constitute a selection committee, as often as may be required to select persons for appointment as members of the Commission.

(2) The selection committee shall consist of three members, namely:

(a) the Chairman of the Public Service Commission, who shall be the Chairman of the selection committee;

(b) the Secretary in charge of the Department of Energy, State Government, who shall be the Convener of the selection committee; and

(c) the Chairman or any member of the Central Electricity Authority designated for the purpose from time to time.

(3) The selection committee shall act expeditiously and shall generally finalise the selection within a period of two months to enable the State Government to make the final selection and appointment in time for the new member to take effective charge at the expiry of the term of the retiring member.

(4) The selection committee shall select two suitable persons for each vacancy in the Commission who have such qualification and experience as provided in this Act and notify to the State Government of the persons short listed by the selection committee.

(5) The decisions of the selection committee shall be by majority.

(6) The State Government shall appoint one of the two candidates shortlisted by the selection committee as a member of the Commission.

#### **5. Conditions For Appointment As Member Of The Commission :-**

(1) The members of the Commission shall be persons of ability, integrity and standing who have adequate knowledge or experience of, or have shown capacity in dealing with problems relating to engineering, economics, commerce, accountancy, law or administration and further that, at all times,

(a) at least one member of the Commission shall be an electrical engineer with experience of generation, transmission, distribution or supply of electricity; and

(b) at least one member of the Commission shall have qualification in, and experience of, any of the disciplines of economics,

commerce, accountancy, law or administration.

(2) The selection and appointment of the members of the Commission shall at all times be made strictly in accordance with the qualification and experience mentioned in this Section.

(3) A person shall be disqualified from being appointed as a member of the Commission if, he is a Member of Parliament or of any State Legislature or any local authority or holds any post in a political party, or if he has any financial or other interest, directly or indirectly, in any private company or undertaking dealing with any of the business referred to in Clause (a) of Sub-section (4).

(4) The persons who are considered for appointment as members of the Commission shall notify the Governor of the selection committee,

(a) of any office, employment or consultancy agreement or arrangement which he has in his own name or in any, firm, association or persons or body corporate or in the names or in any firm, association of persons or body corporate or in the names of any relative carrying on any of the following businesses.

(i) generation, transaction, distribution of supply of electricity; (ii) manufacture, sale, or supply of any fuel for generation of electricity;

(iii) manufacture, sale, lease, hire or otherwise supply of or dealing in machinery, plant, equipment, apparatus or fittings for the generation, transmission, distribution, supply or use of electricity; and

(iv) any entity providing professional services to any of the business referred to in Sub-clauses (i), (ii) and (iii) above.

(b) of such other details and information as may be prescribed in the rules.

(5) All details received from the persons referred to in Sub-section (4) shall be placed for consideration of the selection committee at the time of selection and recommendation of the person for appointment as member of the Commission.

(6) Each member of the Commission shall, before taking charge of the office as member divest, himself from the interest in all or any of the business mentioned in Subsection (4) as a condition of his appointment:

(7) If a person to be appointed as a member of the Commission holds any office under the State Government or Central Government or in any public sector corporation or Government body he shall submit his resignation or take voluntary retirement from that service and shall not seek re-appointment in the service

of the State Government, the Central Government, any public sector corporation or Government body at any time after he ceases to be a member of the Commission.

(8) So long as the person holds the office of a member of the Commission and after he ceases to be a member of the Commission for any reason whatsoever, he shall not acquire, hold or maintain, directly or indirectly any office, employment or consultancy arrangement or business mentioned in Sub-section (4) and if he acquire any such interest involuntarily or by way of succession or testamentary disposition he will divest himself from such interest within a period of two months of such interest being acquired.

(9) Before appointing any person as a member of the Commission, the State Government shall satisfy itself that the person does not have any financial or other interest as referred to in Sub-section (3).

## **6. Term Of Office And Conditions Of Service Of Members Of The Commission :-**

Every member of the Commission shall hold office for a period of five years from the date he assumes office and he shall not be eligible for re-appointment at any time after, the expiry of his term of appointment.

Provided that the first three members of the Commission shall be appointed for varying period of three years, four years and five years respectively so as to avoid the retirement of all the members of the Commission at the same time and ensure continuity in the functioning of the Commission:

Provided further that no member of the Commission shall be appointed or shall hold office after he has attained the age of sixty two years.

(2) Subject to the provisions in the Schedule, the Chairman of the Commission and other members of the Commission shall receive such remuneration and other allowances and shall be governed by such conditions of service as may be prescribed under the rules.

(3) The Chairman of the Commission and every other member of the Commission shall, before entering upon his office, make and subscribe an oath of office and of secrecy in such form, in such manner and before such authority as may be prescribed by rules.

## **7. Removal Of Members :-**

(1) The State Government may, after giving an opportunity of



- being heard, remove from office any member of the Commission, subject to the provisions of Sub-section (2), who
- (a) has been adjudged insolvent, or
  - (b) has been convicted of an offence involving moral turpitude, or
  - (c) has become physically or mentally incapable of acting as such member, or
  - (d) has without reasonable cause refused or failed to act continuously for a period of three months or more, or
  - (e) ceases to fulfil any of the conditions of his appointment as member or
  - (f) has acquired such financial or other interest that can affect prejudicially his functions as a member, or
  - (g) has conducted himself in a manner or has so abused his position as to render his continuance in office prejudicial to the public interest or to the objects, and purposes of the Act.
- (2) Except where a member admits the charge, in writing, no member of the Commission shall be removed from his office on the grounds specified in Clauses (c), (d), (f) and (g) of Sub-section (1), until a sitting Judge of the High Court of judicature of Orissa, as recommended by the Chief justice of the High Court at relevant time, has carried out an investigation and submitted a report.
- (3) The State Government shall communicate its decision to the member concerned within a period of two months of the receipt of the report.
- (4) A member who has been removed shall not be eligible for reappointment as a member or in any other capacity in the Commission.
- (5) If the member removed under this Section is the Chairman of the Commission, he shall also cease to be the Chairman of the Commission.
- (6) The vacancy caused by the removal of the member shall be filled in the same manner as provided for the appointment of a member or designation of the Chairman of the Commission.

## **8. Appointment Of The Secretary, Staff And Consultants Of The Commission :-**

- (1) The Commission shall appoint a person as Secretary of the Commission to assist the Commission to discharge its functions.
- (2) The Commission shall, with the approval of the State Government, determine the number, nature and categories of other officers and employees required to assist the Commission in the

discharge of its functions.

(3) The salaries and allowances payable to members of the Commission and the administrative expenses, including salaries, allowances and pensions payable to or in respect of the Secretary, officers and other employees of the Commission, shall be charged to the consolidated fund of the State.

(4) The method and manner of selection of the Secretary, officers and other employees of the Commission and the terms and conditions of their service may be prescribed by the Commission by regulations with the previous approval of the State Government.

(5) The Commission shall be entitled to appoint, from time to time, consultants required to assist the Commission in the discharge of its functions on terms and conditions to be decided by the Commission.

### CHAPTER 3

#### PROCEEDINGS, POWERS AND FUNCTIONS OF THE COMMISSION

### **9. Proceedings Of The Commission :-**

(1) The headquarters of the Commission shall be at Bhubaneswar, but the Commission shall be entitled to conduct its proceedings, consultations and hearings in other places in the State.

(2) The Commission shall have the power under Sub-section (1) of Section 54 to frame regulations for the conduct of its proceedings and discharge of its functions.

(3) In case of a difference of opinion among the members of the Commission, the opinion of the majority shall prevail and the opinion of the Commission shall be expressed in terms of the views of the majority and, for this purpose, each member of the Commission shall have one vote only and the Chairman shall have no casting or second vote.

(4) The quorum for the meeting of the Commission shall be two, but in the case of a meeting of the Commission to review any previous decision taken by the Commission or for consideration of any issue which could not be decided on account of equality of votes in favour of or against the resolutions proposed or where the issue considered at a meeting in which only two members of the Commission were present, the quorum for the meeting shall be all the three:

Provided that, in case of emergency, the Commission may decide any matter by circulation to member or members.

(5) The Chairman of the Commission may instruct the Secretary to

call a meeting of the Commission to be held at such time at such place as the Chairman may direct and also any member of the Commission may request a meeting of the Commission at any time by sending a notice in writing to the other members and with a copy to the Secretary.

(6) All decisions, directions and orders of the Commission shall be in writing and shall be supported by reasons and the decisions, directions and orders of the Commission shall be available for inspection by any person and copies of the same shall also be made available to such person in the manner prescribed by regulations.

#### **10. Powers Of The Commission :-**

(1) The Commission shall, for the purposes of any inquiry or proceedings under this Act, have the powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:

(a) the summoning and enforcing the attendance of any witness and examining him on oath;

(b) the discovery and production of any document or other material object producible as evidence;

(c) the reception of evidence on affidavits;

(d) the requisition of any public record from any office;

(e) the issuing of any commission for examination of witnesses; and

(f) the review of its decisions, directions and orders.

(2) The Commission shall have the power to require any person

(a) to produce before, and allow to be examined and kept by an officer of the Commission specified in this behalf, such books, accounts, or other documents in the custody or under the control of the person so required as may be specified or described in the requisition, being documents relating to any matter concerning the generation, transmission, distribution and supply or use of electricity, the functioning of any undertaking involved in the above areas and other matters, the examination of which may be required by the Commission for the purpose of this Act; and

(b) to furnish to an officer so specified such information as may be required for the purposes of this Act or such other information as maybe in his possession in relation to any activity carried on by any other person.

(3) Where, during any inquiry or proceedings under this Act, the Commission has any grounds to believe that any books or papers or

documents of, or relating to any unit or person in relation to which such inquiry is being made or which the owner of such unit may be required to produce in such inquiry, are being, or may be, destroyed, mutilated, altered, falsified or secreted, it may, by a written order, authorise any officer of the Commission to exercise the same powers of entry, search and seizure as may be exercised by an Inspector under Sections 240 and 240-A of the Companies Act, 1956.

(4) Notwithstanding anything contained in any other law for the time being in force, the Commission may, by a general or special order, call upon any person including the generating companies or the licencees to furnish to the Commission periodically, or as and when required, any information concerning the activities carried on by such person related to generation, transmission, distribution and supply or use of electricity; the connection between such person and any other person or undertaking including such other information relating to the Organisation, business and cost of production to enable the Commission to carry out its functions under this Act.

(5) In the discharge of its functions the Commission shall be entitled to, and may consult to the extent the Commission considers appropriate from time to time such persons or group of persons who may be affected or likely to be affected by the decisions of the Commission.

(6) The Commission may call for information, details, accounts and other documents from any person or licensee and make inquiry for the purposes of providing the same to the Central Electricity Authority, the Central Government and the State Government when so required by them.

(7) All persons to whom notices may be issued pursuant to this Act shall duly, faithfully and effectively furnish the information, details, books, accounts and other documents, which the Commission considers relevant in connection with its functions under this Act or which may be required to be obtained at the directions of the Central Electricity Authority, the Central Government or the State Government and shall be proceeded with and punishable under Section 41 for any failure to comply with such requirement.

(8) Notwithstanding anything contained in Sections 12, 13, 14, 15, 16, 18 and 19 of the Indian Electricity Act, 1910 (9 of 1910) the Commission may by order in writing confer upon licenses or any other person engaged in the business or transmission, distribution or supply of energy under this Act, subject to such conditions and

restrictions as the Commission may think fit to impose, any of the powers which the telegraph authority possesses under the Indian Telegraph Act, 1885 with respect of placing of telegraph lines and posts for the purposes of a telegraph established or maintained by the Government or to be so established or maintained.

### **11. Functions Of The Commission :-**

(1) Subject to provisions of this Act, the Commission shall be responsible to discharge, amongst others, the following functions, namely:

- (a) to aid and advise, in matters concerning generation, transmission, distribution and supply of electricity in the State;
- (b) to regulate the working of licensees and to promote their working in an efficient, economical and equitable manner;
- (c) to issue licenses in accordance with the provisions of this Act and determine the conditions to be included in the licenses;
- (d) to promote efficiency, economy and safety in the transmission, distribution and use of the electricity in the State including and in particular in regard to quality, continuity and reliability of service, so as to enable all reasonable demands for electricity to be met;
- (e) to regulate the purchase, distribution, supply, and utilisation of electricity, the quality of service, the tariff and charges payable keeping in view both the interest of the consumer as well as the consideration that the supply and distribution cannot be maintained unless the charges for the electricity supplied are reasonably levied and duly collected;
- (f) to promote competitiveness and progressively involve the participation of the private sector, while ensuring a fair deal for the customers;
- (g) to collect data and forecast on the demand for and use of electricity and to require the licensees to collect such data and make such forecasts.
- (h) to require licenses to formulate perspective plans and schemes in coordination with others for the promotion of generation, transmission, distribution and supply of electricity; and
- (i) to undertake all incidental or ancillary things.

(2) Notwithstanding the provisions of Section 52 of the Indian Electricity Act, 1910 or the provisions of Clause,(ii) of Sub-section (1) of Section 3 and Section 76 of the Electricity (Supply) Act, 1948, the Commission shall have the power to act as arbitrator or to nominate arbitrator or arbitrators to adjudicate and settle the

disputes arising between the licensees in accordance with the provisions of this Act and the regulations to be prescribed and this shall be a condition of the grant of licences.

#### CHAPTER 4

#### POWERS OF THE STATE GOVERNMENT

### **12. General Powers Of The State Government :-**

(1) The State Government shall have the power to issue policy directives on matters concerning electricity in the State including the overall planning and coordination and all such policy directives shall be consistent with the objects sought to be achieved by this Act.

(2) If any dispute arises between the Commission and the State Government as to whether a question is or is not a question of policy, it shall be referred to the Central Electricity Authority whose decision thereon shall be final and binding and for this purpose the Central Electricity Authority may appoint one or more of its members to act on behalf of the said authority.

(3) The State Government shall be entitled to issue policy directives, concerning the subsidies to be allowed for supply of electricity to any class or classes or persons or in respect of any area in addition to the subsidies permitted by the Commission while regulating and approving the tariff structure Provided that the State Government shall pay the amount to compensate any concerned body or unit affected by the grant of subsidies by the State Government to the extent the subsidies granted.

#### CHAPTER 5

#### GRIDCO

### **13. Constitution And Functions Of The Gridco :-**

(1) The Grid Corporation of Orissa Limited incorporated under the provisions of the Companies Act, 1956 with effect from the 20th day of April, 1995 with the main objects of engaging in the business of procurement, transmission and bulk supply of electric energy, shall subject to the powers of the State Government under Section 12, be the principal company to undertake planning and coordination in regard to transmission and to determine the electricity requirements in the State in coordination with the Generating Companies, State-Government, contiguous States, the Commission, the Regional Electricity Board and the Central

Electricity Authority.

(2) Gridco shall own the extra high voltage transmission system, shall be responsible for transmission system operations and shall operate the power system in an efficient manner.

(3) Gridco shall undertake the functions specified in this Section and such other functions as may be required under the licence to be granted to it by the Commission under this Act.

(4) Upon the grant of licence to Gridco under Section 15, Gridco shall discharge such powers, duties and functions of the Board including those under the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 or the rules framed thereunder as the Commission may specify in the licence and it shall undertake and duly discharge the powers, duties and functions so assigned.

(5) Subject to Sub-section (1) and the overall supervision and control of Gridco, subsidiary or associated Grid companies may be established in the State and the Commission may grant licenses under the terms of this Act to such grid companies, in consultation with Gridco.

#### CHAPTER 6

#### LICENSING OF TRANSMISSION AND SUPPLY

### **14. Licensing :-**

(1) No person, other than those authorised to do so by licence or by virtue of exemption under this Act or authorised or exempted by any other authority under the Electricity (Supply) Act, 1948 shall engage in the State in the business of

(a) transmitting; or

(b) supplying electricity.

(2) Where any differences or dispute arises as to whether any person is or is not engaged or about to engage in the business or transmitting or supplying electricity as mentioned in Sub-section (1), the matter shall be referred to the Commission for decision which shall be final.

(3) The Commission shall have the power to order any unlicensed person to cease operating and disconnect its apparatus.

(4) Notwithstanding anything contained in the other provisions of this Act, until the establishment of the Commission in terms of Section 3, the State Government shall, for a period of six months from the date this Act comes into force, have the power to grant provisional licences under this Section having a duration not exceeding twelve months to any person or persons to engage in the

State in the business or transmission or supply of electricity, on such terms and conditions as the State Government may determine consistent with the provisions of this Act, subject however to the following conditions, namely:

(a) upon the establishment of the Commission, each of the provisional licences so granted shall be placed before the Commission and shall be deemed to constitute an application for grant of a licence by the Commission under the provisions of this Act; and

(b) each provisional licence granted under this Section shall cease to be valid and effective on the date on which the decision of the Commission on the application is communicated.

### **15. Grant Of Licences By The Commission :-**

(1) The Commission may on an application made in such form and on payment of such fee as may be prescribed by regulations, grant a licence authorising any person to

(a) transmit electricity in a specified area of transmission; and/or

(b) supply electricity in a specified area of supply.

(2) In respect of the grant of licence under Sub-section (1), the following provisions shall apply, -

(a) any person applying for a licence shall publish a notice of his application in such manner; and with such particulars as may be prescribed by the Commission within 14 days after making the application;

(b) the Commission shall not grant a licence until,

(i) all objections received within three months from the date of publication relating to the application for the licence have been considered by the Commission;

(ii) no objection has been obtained from the Central Government in the case of an application for a licence to supply or transmit in an area which includes the whole or any part of a cantonment, aerodrome, fortress, arsenal, dockyard or camp of any building or place in the occupation of the Central Government for defence purposes.

(c) where an objection is received from any local authority concerned, the Commission shall, if in its opinion the objection is insufficient, record in writing and communicate to such local authority its reasons for such opinion; and

(d) no application for a licence shall be made by any local authority except pursuant to a resolution passed at a meeting of such



authority held after one month's previous notice of the same specifying the purpose thereof has been given in the manner in which notices of meetings of such local authority are usually given.

(3) A licence may prescribe the extent to which, and the terms and conditions under which the transmission or supply of energy is to be made and contain such other conditions as the Commission may consider appropriate for achieving the purposes of the Act.

(4) Without prejudice to the generality of Sub-section (3), conditions included in a licence may require the licensee to,

(a) enter into agreements on specified terms with other persons for the use of any electric lines, electrical plant and associated, equipment operated by the licensee;

(b) comply with any direction given by the Commission;

(c) refer all disputes arising under the licence for determination by the Commission;

(d) furnish information, documents and details which the Commission may require for its own purpose or for the purposes of the Central Government or the State Government or the Central Electricity Authority.

(e) comply with the requirements of the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 and rules framed thereunder in so far as they are applicable;

(f) undertake such functions and obligations of the Board under the Indian Electricity Act, 1910 and Electricity (Supply) Act, 1948.

(g) obtain the approval of the Commission of such things that are required under the licence conditions or for deviation from the same;

(h) rectify the Commission of any scheme that it is proposing to undertake including the schemes in terms of the provisions of the Electricity (Supply) Act, 1948;

(i) purchase power in an economical manner and under a transparent power purchase procurement process;

(j) supply in bulk to other licensees or to customers; and

(k) establish a tariff or to calculate its charges from time to time; in accordance with the requirements prescribed by the Commission.

(5) The provisions contained in the Schedule to the Indian Electricity Act, 1910, shall be deemed to be incorporated with and to form part of, every licence granted under this Chapter, save in so far as they are expressly varied or excepted by the licence and shall, subject to any such additions, variations or exceptions which the Commission is empowered to make having regard to the purposes of the Act, apply to the undertaking authorised by the

licence in relation to its activities in the State:

Provided that where a supply licence is granted by the Commission for the supply of energy to other licences for distribution by them, then in so far as such licence relates to such supply, the provisions of Clauses IV, V, VI, VII, VIII and XII of the said Schedule shall not be deemed to be incorporated within the supply licence.

(6) The conditions included in a licence may contain provision for the conditions to cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified therein.

(7) Any provisions included by virtue of Sub-section (6) in a licence shall have effect in addition to the provision made under Sub-section (5) of Section 18 and Section 19.

(8) The grant of a licence under this Section to a person shall not in any way hinder or restrict the grant of a licence to another person within the same area of supply or transmission for a like purpose and accordingly, the licensee shall not claim any exclusivity.

(9) Any licence granted by the Commission under this Act may provide that the licensee shall have the powers and authorities to take appropriate actions for revenue realisation, prosecution for theft, meter tampering, diversion of electricity and all such similar matters affecting the distribution and supply of electricity to the consumer.

(10) The Commission may authorise licensees and other persons to exercise such power and authority as the licensees and other persons could be given under the provisions of the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948.

## **16. Exemption From The Requirement To Have A Licence :-**

(1) The Commission may make regulations to grant exemption from the requirement to have a licence, but subject to compliance with such conditions, if any, as may be specified in the regulations:

Provided that the Commission shall not, under any such regulations, grant any exemption with the consent.

(i) in any case where electricity is to be supplied in any area for which a local authority is constituted, of that local authority;

(ii) in any case where electricity, is to be supplied in any area forming part of any cantonment, aerodrome fortress, arsenal, dockyard or camp or any building or place in the occupation of the Central Government for defence purposes, of the Central Government;

(iii) in any area falling within the area of supply of a licence of that licensee; Provided further that, except in a case falling under Sub-clause (ii) no such consent shall be necessary if the Commission is satisfied that such consent has been unreasonably withheld.

(2) An exemption may be granted to a particular person or to a particular category of persons and for a definite period and every such exemption shall be published in such manner as the Commission considers appropriate for bringing it to the attention of that person or persons of that category of the public in general.

(3) The exemption granted may be revoked, by the Commission at any time for reasons to be recorded in writing.

(4) All exemption, unless previously revoked, shall continue in force for such period as maybe specified in or determined by or under the exemption.

### **17. General Duties And Powers Of The Licensees :-**

(1) It shall be the duty of the holder of a supply license or a transmission licence in respect of a particular area of supply or transmission, as the case may be, to develop and maintain an efficient, coordinated and economical system of electricity or transmission in the area of supply or area of transmission, as the case may be.

(2) Each licensee and Generating Company in discharge of its duties shall comply with the provisions of the regulations framed from time to time governing the terms and conditions for the operation and maintenance of the power system and electric supply lines.

(3) Subject to Sub-section (4) Sections 12, 13, 14, 15, 16, 17, 18 and 19 of the Indian Electricity Act, 1910 shall have effect in relation to a person authorised by a licence to transmit or supply electricity, as if it were a licensee under the said Act.

(4) Where any of the Sections mentioned in Sub-section (3) is applied to a licence holder by its licence, it shall have effect subject to such restrictions, exceptions and conditions as may be included in the licence.

### **18. Revocation Of Licence :-**

(1) The Commission may enquire into the conduct of functioning of any licensee in carrying out the obligations under this Act, rules and regulations framed thereunder and the terms and conditions of its licence in the following circumstances:

- (a) upon receiving a complaint from any consumer or consumer association or any trade association; or
- (b) upon a reference made to it by the State Government, the Central Government or Central Electricity Authority; or
- (c) upon receiving a complaint from any company or person involved in the generation, transmission, distribution or supply of electricity; or
- (d) upon its own knowledge or information derived from any source.

(2) Upon making such inquiry the Commission may, if in its opinion the public interest so requires, revoke a licence in any of the following cases, namely:

- (a) where the licensee, in the opinion of the Commission, has committed a wilful or unreasonable default in doing anything required of him by or under this Act, or the Indian Electricity Act, 1910 or the Electricity (Supply) Act, 1948 the rules or regulations made thereunder
- (b) where the licensee commits a breach of any of the terms and conditions of his licence, the breach of which is expressly declared by such licence to render it liable to revocation;
- (c) where the licensee fails within the period specified in his licence or any longer period which the Commission may allow by order
  - (i) 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; and
  - (ii) to make the deposit or furnish the security required by his licence; and
- (d) where in the opinion of the Commission the financial position of the licensee is such that he is unable to fully and efficiently discharge the duties and obligations imposed on him by his licence.

(3) Notwithstanding the provisions of Sub-sections (1) and (2) the Commission may, where in its opinion the public interest so requires, on the application or with the consent of the licensee, and if the licensee is not a local authority, after consulting the local authority concerned, if any, revoke a transmission or supply licence as to the whole or any part of the area of transmission or supply upon such terms and conditions as it thinks fit.

(4) No licence shall be revoked under Sub-section (2) or (3) unless the Commission has given to the licensee not less than three months, notice in writing stating the grounds on which it is proposed to revoke the licence and has considered revocation.

(5) The Commission may, instead of revoking a licence, permit it to

remain in force subject to such further terms and conditions so as it thinks fit to impose and any further terms or conditions imposed shall be binding upon, and be observed by, the licensee, and be of like force and effect as if they were contained in the licence.

### **19. Amendment Of Licence :-**

(1) The Commission may, where in its opinion the public interest so permits or requires, on the application of the licensee, and if the licensee is not a local authority, on the application of the local authority concerned or otherwise on its own, make such alterations and amendments to the terms and conditions of a licence as it thinks fit taking into account the object and purposes of this Act:

Provided that no such alterations or amendments, other than an alteration or amendment pursuant to a licence condition referred to in Sub-section (6) of Section 15 or Sub-section (5) of Section 18 shall be made except with the consent of the licensee.

(2) Where the licensee has made an application under Sub-section (1) proposing any alterations or amendments to its license, the following provisions shall apply

(a) the licensee shall publish a notice of the application in the manner and with the particulars as may be prescribed by regulations.

(b) the Commission shall not make any alterations or amendments until all objections received by it with reference to the application within three months from the date of first publication of the notice have been considered; and

(c) in the case of an application proposing alterations or amendments in an area of transmission or supply comprising the whole or any part of the 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 amendments except with the consent of the Central Government.

(3) Before making any alterations or amendments in a licence otherwise than on the application of the licensee, the Commission shall publish the proposed alterations or amendments and consider all objections received by it with reference to the proposed alterations or amendments within three months from the date of the first publication of the notice.

### **20. Provisions Where Licence Is Revoked :-**

(1) Notwithstanding the provisions of Sections 6 and 7 of the Indian Electricity Act, 1910 where the Commission revokes a licence, under Section 18 the following provisions shall apply

(a) the Commission shall serve a notice of revocation upon the licensee and shall fix a date on which the revocation shall take effect;

(b) the Commission shall invite applications for acquiring the undertaking of the licensee whose licence has been revoked and determine the terms and conditions of the sale of the undertaking;

(c) the Commission may by notice in writing require the licensee to sell, and thereupon the licensee shall sell the undertaking to the person whose application has been accepted by the Commission hereinafter referred to in this Section as the "Purchaser";

(d) on and with effect from the date of revocation, or, where the undertaking of the licensee is sold to a purchaser earlier in pursuance of any of the provisions of this Act, on and with effect from the date, all the rights, duties, obligations and liabilities of the licensee under this Act shall absolutely cease and determine except for any liabilities that have accrued prior to that date; and

(e) the Commission may make such interim arrangement in regard to the undertaking of the licensee for maintaining the electricity transmission and supply as may be considered appropriate including the appointment of administrators and special directors for the undertaking.

(2) Where an undertaking is Sold under Sub-section (1), the purchaser shall pay to licensee the purchase price of the undertaking determined in accordance with the application submitted by the purchaser.

(3) Where the Commission issues any notice under Sub-section (1) requiring the license to sell the undertaking, it may by such notice require the licensee to deliver, and thereupon the licensee shall deliver on a date specified in the notice, the undertaking to the designated purchaser pending the payment of the purchase price of the undertaking:

Provided that in any such case, the purchaser shall pay to the licensee interest at such rate not less than the Reserve Bank lending rate ruling at the time of delivery of the undertaking as the Commission may decide, on the purchase price of the undertaking for

## **21. Restrictions On Licensees And Generating Companies :-**

(1) No licensee or Generating Company shall, at any time, without the previous consent in writing of the Commission, acquire by purchase or otherwise the licence or the undertaking of, or associate himself with, so far as the business of generating, transmitting, distribution or supply of energy is concerned, any other licensee or person generating, transmitting, supplying or intending to generate, transmit or supply electricity:

Provided that before applying for such consent, the licensee shall give not less than one month notice of the application

(a) to the Commission; and

(b) if the licensee holds a supply licence, to every local authority both in the licensee's area of supply and also in the area, if any, in which such other person supplies, or intends to supply energy:

(2) The licensee shall not, at any time, assign his licence or transfer his undertaking, or any part thereof, by sale, mortgage, lease exchange or otherwise without the previous consent in writing of the Commission.

(3) Any person to whom the provisions of Section 44 of the Electricity (Supply) Act, 1948 applies shall be required to obtain consent from the Commission instead of from the Board as provided under that Section.

(4) A holder of a supply or transmission licence may, unless expressly prohibited by the terms of its licence, enter into arrangements for the purchase of electricity from (a) the holder of a supply licence which permits the holder of such licence to supply energy to other licensees for distribution by them; and (c) any person or Generating Company with the consent of the Commission.

(5) Any agreement relating to any transaction of the nature described in Subsections (1), (2), (3) or (4) unless made with, or subject to such consent as aforesaid, shall be void.

## **22. Annual Accounts Of Licensee :-**

(1) Every licensee shall, unless expressly exempted by its licence, prepare and render to the Commission, on or before the date in each year specified in its licence, an annual statement of accounts of its undertaking and of each separate business unit as specified in its licence made up to such date, in such form and containing such particulars, as may be set in its licence. It shall be a term of its licence that such statements shall be published in the manner prescribed in the regulations.

**23. Transfer Of Boards Properties, Powers, Functions And Duties :-**

(1) On and with effect from the date on which a transfer scheme, it may be prepared by the State Government to give effect the objects and purposes of this Act, is published (hereinafter referred to as the effective date) any property, interest in property, rights and liabilities which immediately before the effective date belong to the Board, shall vest in the State Government on such terms as may be agreed between the State Government and the Board.

(2) Any property, interest in property, rights and liabilities vested in the State Government under Sub-section (1) shall be reverted by the State Government in the Gridco and OHPC in accordance with the transfer scheme so published along with such other property, interest in property, rights and liabilities of the State Government as may be specified in such scheme, on such terms and conditions as may be agreed between the State Government and the Gridco or OHPC, as the case may be.

(3) Such of the rights and powers exercisable by the Board under

**24. Provisions Relating To Personnel :-**

(1) The State Government may by a transfer scheme provide for the transfer of the personnel to Gridco and OHPC, on the vesting of the properties, rights and liabilities in the Gridco or OHPC under Section 23.

(2) Upon such transfer under the transfer scheme the personnel shall hold office or service under Gridco or OHPC, as the case may be, on terms and conditions that may be determined in accordance with the transfer scheme;

Provided that such terms and conditions on the transfer shall not in any way be less favourable than those which would have been applicable to them if there had been no such vesting,

(3) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947) or any other law as is applicable, and except for the provisions made in this Act, the transfer of the employment of the personnel referred to in Sub-section (1) shall not entitle such employees to any compensation or damages under this Act, or any other Central or State law or under the general law, save as provided in the transfer scheme.



Explanation - For the purpose of this Section as well as the transfer scheme the term "personnel" shall mean all persons who on the effective date are the employees of the Board or the employees of the State Government on deputation or assignment to the Board and other persons assigned for the electricity generation, transmission, distribution and supply related work as may be notified by the State Government as forming part of the personnel under this Section notwithstanding that they have been employed by other departments and organisations.

## **25. Variation Of Transfer :-**

(1) The State Government may provide that the transfer in terms of Sections 23 and 24 shall be provisional for a period of twelve months from the effective date and reserve the right to alter, vary, modify, add or otherwise change the terms in such manner as the State Government may consider appropriate.

(2) At any time before the end of the period of twelve months commencing on the effective date, the Gridco or OHPC, to whom property, interest on property, rights, liabilities and personnel have been transferred, may with the consent of the State Government, draw up a transfer scheme to vest some or all the property, rights, liabilities and personnel in another licensee, or generating companies subject to the consent of such other licensee or generating company to such vesting and any such transfer scheme shall take effect as if it were a transfer scheme under Sections 23 and 24:

Provided that if such other licensee is a person or an undertaking not wholly owned by the State Government, the Commission shall give effect to the transfer only for fair value to be paid by the transferee to the State Government.

## **CHAPTER 8** **TARIFFS**

## **26. Licensees Revenues And Tariffs :-**

(1) The holder of each licence granted under this Act shall observe the methodologies and procedures specified by the Commission from time to time in calculating the expected revenue from charges which it is permitted to recover pursuant to the terms of its license and in determining tariffs to collect those revenues.

(2) The Commission shall, save as provided in Sub-section (3), be entitled to prescribe the terms and conditions for the determination

of the licensees revenue and tariffs by regulations duly published in the Gazette and in such other manner as the Commission considers appropriate and, for doing so, the Commission shall be bound by the following parameters, namely:

(a) the financial principles and their applications provided in Sections 57 and 57-A of the Electricity (Supply) Act, 1948 and in the Sixth Schedule thereto;

(b) the factors which would encourage efficiency, economic use the resources, good performance, optimum investments, performance of licence conditions and other matters which the Commission considers appropriate for the purpose of this Act; and

(c) the interest of the consumers.

(3) Where the Commission departs from the factors specified in the Sixth Schedule to the Electricity (Supply) Act, 1948 while determining the licensees revenues and tariffs, it shall record the reasons therefore in writing;

(4) Every licensees shall provide to the Commission at such time and in such manner as may be prescribed in the regulations, full details of its calculation for the ensuing financial year of the expected aggregate revenue from charges which it believe to have been permitted to recover in accordance with the terms of its license and thereafter it shall furnish such further information as the Commission may reasonably require to assess the licensees calculation. Within ninety days of the date on which the licensee has furnished all the" information that the Commission requires, the Commission shall notify the licensee either:

(a) that it accepts the licensees calculation; or

(c) that it does not consider the licensees calculation to be in accordance with the methodology or procedure in its licence and such notice to the licensee shall

(i) specify fully the reasons why the Commission considers that the licensees calculation does not comply with the methodology or procedures specified in its license or is in any way incorrect; and

(ii) propose a modification or an alternative calculation of the expected revenue from charges, which the licensee shall accept.

(4) Each holder of supply licence shall publish in the daily newspaper having circulation in the area of supply and make available to the public on request the tariff or tariffs for the supply of electricity within its licensed area of supply and such tariff or tariffs shall take effect only after seven days from the date of such publication. Any tariff implemented under this Section;

(a) shall not show undue preference to any consumer of electricity,

but may differentiate according to the consumers load factor or power factor, the consumers total consumption of energy during any specified period, or the time at which supply is required;

(b) shall be just and reasonable and be such as to promote economic efficiency in the supply and consumption of electricity; and

(c) shall satisfy all other relevant provisions of this Act and the conditions of licence.

(6) No tariff or part of any tariff implemented under Sub-section (5) may be amended more than once in any financial year except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be prescribed by regulations. At least three months before the proposed date for implementation of any tariff or an amendment to a tariff the licensee shall provide details of the proposed tariff or amendment to a tariff to the Commission, together with such further information as the Commission may require to determine whether the tariff or amended tariff would satisfy the provisions of Subsection (5). If the Commission considers that the proposed tariff or amended tariff of a licensee does not satisfy any of the provisions of Sub-section (5), it shall, within ninety-days of the receipt of all the information which it required, and after consultation with the Commission Advisory Committee constituted under Section 32 and the licensee, notify the licensee that the proposed tariff or amended tariff is unaccepted to the Commission and it shall provide to the licensee an alternative tariff or amended tariff which shall be implemented by the licensee. The licensee shall not amend any tariff unless the amendment has been approved by the Commission.

(7) Notwithstanding anything contained in Sections 57-A and 57-8 of the Electricity (Supply) Act, 1948, no Rating Committee shall be constituted after the date of commencement of this Act and the Commission shall secure that licensees comply with the provisions of their licences regarding their charges for the sale of electricity, both wholesale and retail, and for the connection to and use of their assets or systems in accordance with the provisions of this Act.

Explanations - In this Section

(a) the expected revenue from charges means the total revenue which a licensee is expected to recover from charges for the level of forecast supply used in the determination under Subsection (4) in any financial year in respect of goods or services supplied to customers pursuant to a licensed activity; and

(b) tariff means a schedule of standard prices or charges for specified services which are applicable to all such specified services provided to the type or types of customers specified in tariff.

REFERRED TO: 2006 (Supp. -II) OLR 470.

Read with Sec. 41 of Electricity Regulatory Commissions Act, 1998 - Fixation of tariff for retail supply of electricity to different categories of consumers-Held, Central Act does not apply - Reasons indicated: Orissa Consumers Association and others v. Southern Electricity Supply Company of Orissa Ltd.: AIR 2001 Ori. 135.

## **27. Finances Of Licensees :-**

(1) The State Government may, from time to time, make subventions to any licensee for the purpose of Subsection (3) of Section 12 for such amounts as may be recommended by the Commission and on such terms and conditions as the State Government may determine.

(2) The State Government may, from time to time, advance loans to any licensee or generating company which for the time being is wholly or substantially owned by the State Government, on such terms and conditions, not inconsistent with the provisions of this Act or the Electricity (Supply) Act, 1948, as the State Government may determine.

(3) The State Government may guarantee in such manner as it thinks fit the repayment of the principal or the payment of interest; or both, of any loan proposed to be raised by any licensee or generating company which is for the time being wholly or substantially owned by the State Government, or the discharge of any other financial obligation of any such licensee or generating company:

Provided that the State Government shall, so long as such guarantee is in force, lay before the State legislature during the budget session in every year a statement of the guarantees, if any, given during the current financial year of the State and an up-to-date account of the total sums, if any, which have been paid out of the State revenues in each case by reason of any such guarantees or paid into State revenues towards repayment of any money so paid out.

(4) The State Government shall be entitled to inspect and verify the accounts of every licensee and generating company.

## **CHAPTER 9**

### **COMMISSION'S POWER TO PASS ORDERS AND ENFORCE DECISIONS**

## **28. Interim Orders :-**

(1) Where the Commission is satisfied that a licensee is contravening, or is likely to contravene any relevant conditions or requirement of its licence, it shall be final order under Section 29 and, if it thinks it appropriate in accordance with Subsection (2) by interim order under this Section issue such directions as it deems proper for securing compliance.

(2) In determining whether it is appropriate that an interim order be made, the Commission shall have regard in particular to

(a) the extent to which the contravention or likely contravention by the licensee will affect the achievement of the objects and purposes of this Act;

(b) the extent to which any person is likely to sustain loss or damage in consequence of anything is likely to be done or omitted to be done in contravention of the relevant condition or requirement, before a final order can be made; and

(c) the extent to which there is any other available remedy in respect of the alleged contravention of a relevant condition or requirement.

(3) If the Commission proposes to make an interim order, it shall give notice to the licensee.

(a) stating that it proposes to make the order;

(b) setting out;

(i) the relevant conditions or requirement with which the proposed order is intended to secure compliance;

(ii) the acts or omissions which, in its opinion, constitute contravention of that condition or requirement;

(iii) the other facts which in its opinion, justify the making of the proposed order; and

(iv) the effects of the proposed order;

(c) specifying the period not being less than five days from the date of notice within which the licensee may make representations or objections to the proposed order.

(4) Subject to Sub-section (5), having considered any representations or objections from the licensee pursuant to Clause (c) of Sub-section (3), the Commission may make an interim order at any time after expiry of the period referred to in Clause (c) of the said Sub-section, if (a) the Commission has reason to believe that the licensee to whom the order relates has contravened or is contravening or is likely to contravene any relevant condition or requirement; and the provisions made by the order, are requisite

for the purpose of securing compliance with that condition or requirement.

(5) The Commission may not make an interim order if it is satisfied that the licensee has agreed to take and is taking all such steps as the Commission considers that the licensee should take to secure compliance with the condition or requirement in question.

(6) An interim order

(a) shall require the licensee to whom it relates to do, or to abstain from doing such things as are specified in the order;

(b) shall take effect from such time as is specified in the order; and

(c) may be revoked, modified or rescinded at any time by the Commission, but in any event shall cease to have effect at the end of such period as is stated in the order, unless the Commission is at that time following the procedure set out in Section 29 to declare the interim order to be a final order.

(7) As soon as practicable, after making an interim order, the Commission shall

(a) serve a copy of the order on the licensee to whom the order relates.

(b) publish the order in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and

(c) commence proceedings to declare the interim orders to be a final order in accordance with Section 29;

REFERRED TO: 2001 (I) OLR 538.

## **29. Final Orders :-**

(1) If the Commission proposes to make a final order or to declare an interim order to be a final order, the Commission shall give notice;

(a) stating that it proposes to make the final order or to declare the interim order to be a final order;

(b) setting out the information referred to in Clause (b) of Sub-section (3) of Section 28 in respect of the proposed final order; and

(c) specifying the period, not being less than sixty days from the date of publication of the notice, within which representations or objections to the proposed order may be made.

(2) The Commission shall consider any representations or objections that are duly made and not withdrawn and shall publish of such representations or objections specifying a period, not being less than thirty days from the date of publication of the notice

within further representations or objections may be made.

(3) A notice under Sub-section (1) or (2) shall be given

(a) by publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and

(b) by serving a copy of the notice, and a copy of the proposed final order on the licensee to whom the order relates.

(4) The Commission shall not modify the proposed final order as a result of any representations or objections received following publication of the notice referred to in Subsection (1), except.

(a) with the consent to the modification of the licensee to whom the proposed final order relates; or

(b) after complying with the requirements of Sub-section (5).

(5) The Commission shall, for the purpose of Sub-section (4).

(a) serve on the licensee to whom the proposed final order relates such notice as appears to the Commission to be requisite, of its proposal to modify the proposed final order, together with details of such modifications.

(b) specify in that notice the period not being less than thirty days from the date of the service of the notice, within the representations or objections to the proposed modifications can be made; and

(c) consider any representations or objections which are duly made and not withdrawn within ten days of the receipt thereof.

(6) The provisions of Clauses (a) and (b) of Sub-section (6) of Section 28 shall apply to final orders.

(7) As soon as practicable after making a final order, the Commission shall with respect to the final order, follow the procedure set out in Clauses (a) and (b) of Sub-section (7) of Section 28.

(8) The Commission may revoke a final order at any time, but before revoking a final order the Commission shall give notice.

(a) stating that it proposes to revoke the order and setting out its effect; and

(b) specifying the period not being less than thirty days from the date of publication of the notice within which representations or objections to the proposed revocation may be made, and shall consider any representations or objections which are duly made and not withdrawn within ten days of the receipt thereof.

(9) If, after giving a notice under Sub-section (8) above, the Commission decides not to revoke the final order to which the

notice relates, it shall give notice of its decision to the concerned persons.

(11) The procedure provided in Clauses (a) and (b) of Sub-section, (7) of Section 28 shall be followed for giving a notice under Sub-section (8) or (9).

### **30. Effect And Enforcement Of Interim And Final Orders And Emergency Provisions :-**

(1) Without prejudice to Section 46 of this Act, all orders and directions, interim or final, passed by the Commission shall be enforceable in law as it were a decree passed by a Civil Court.

(2) The Commission shall be entitled to take such assistance from the police and other authorities in the State required to effectively enforce the orders and directions given by it.

(3) The commission shall be entitled to give directions for vesting of the management and control of any of the undertaking of the licensee with the assets, interests and rights of the undertaking with any other person or authority pending any enquiry and passing of interim or final orders in the matter, if, the Commission considers, taking into account the object and purposes of this Act and need to maintain continued supply of electricity in an efficient and safe manner to the consumer, it is necessary to pass such directions:

Provided that no direction under this Sub-section shall be issued without giving the licensee a reasonable opportunity of being heard.

### **31. Fines And Charges :-**

(1) The Commission shall be entitled to impose such fines and charges as may be prescribed by the Commission in the regulations for non-compliance or violation on the part of the generating companies, licensees or other persons, of the provisions or requirements of this Act or rules and regulations framed thereunder and directions or orders of the Commission made from time to time. The fines which the Commission shall be entitled to impose may extend up to rupees one lakh for an act of non-compliance or violation and a further amount not exceeding rupees six thousand for every day during which the non-compliance or violation continues.

(2) The Commission shall, while making an interim or final order under this Chapter, be entitled to direct compensation to be paid



by the person guilty of violation or non-compliance as provided in Sub-section (1) to the person or persons affected by such violation or non-compliance.

(3) The fines, charges and compensation which may be imposed by the Commission under this Section shall be in addition to and not in derogation of any other liability, which the person guilty of violation or non-compliance, may have incurred.

Explanation - In this Chapter, the expression "relevant condition or requirement in relation to a licensee, means any condition of the licensee or any duty or other requirement imposed on it by this Act or Rules or regulations made thereunder or the Indian Electricity Act, 1910 or the Electricity (Supply) Act, 1948.

#### CHAPTER 10

#### ADVISORY COMMITTEE CONSUMER CONSULTATION

### **32. Commission Advisory Committee :-**

(1) The Commission shall, in consultation with the State Government, constitute a committee to be known as the Commission Advisory Committee, which shall consist of such member of persons, not being less than fifteen or more than twenty one, as the Commission may appoint after consultation with such representatives or bodies or representative of the following interests as the Commission thinks fit, that is to say, holders of supply licences in the State, holders of transmission licensees in the State, generating companies operating in the State, commerce, industry, transport, agriculture, labour employed in the electricity supply industry and consumers of electricity:

Provided that there shall be at least one member representing each such interest on the Commission Advisory Committee.

(2) The Chairman and members of the Commission shall be ex-officio Chairman and members of the Commission Advisory Committee.

(3) The Commission Advisory Committee shall meet at least once in every three months.

(4) The functions of the Commission Advisory Committee shall be

(a) to advise the Commission on major questions of policy and

(b) to advise the Commission on any matters relating to the quality, continuity and extent of service provided by licensees and compliance by the licensees with the conditions and requirements of their licences.

### **33. Consumer Protection And Standard Of Performances :-**

(1) The Commission may, after consultation with the holders of supply licences, other persons or bodies appearing to the Commission to be representative of persons and categories of persons likely to be affected and the Commission Advisory Committee frame regulations prescribing

(a) the circumstances in which licensees are to inform customers of their rights;

(b) such standards of performance in relation to any duty arising out of the rights referred to in Clause (a) as the Commission considers appropriate; and

(c) the circumstances in which licensees are to be exempted from any requirements of the regulations and may make different provision for different licensees.

(2) Nothing in this Act shall affect the rights and privileges of the consumption under any other law including the Consumer Protection Act, 1986.

#### **34. Electricity Supply And Overall Performance Standards :-**

(1) The Commission may, after consultation with licensees, the Commission Advisory Committee and with the persons or bodies appearing to it to be representative of persons likely to be affected, from time to time

(a) determine such standards of overall performance in connection with the provision of electricity supply services and in connection with the promotion of the efficient use of electricity by consumers as in its opinion, is economic and ought to be achieved by such licensees; and

(b) arrange for the publication, in such form and in such manner as it considers appropriate, of the standards so determined.

(2) Different standards may be determined under this Section for different licensees.

#### **35. Information With Respect To Levels Of Performances :-**

(1) The Commission shall, from time to time, collect information with respect to

(a) the fines or penalties levied on licensees under this Act;

(b) the levels of overall performance achieved by licensees in connection with the transmission and provision of electricity supply services; and

(c) the levels of performance achieved by licensees in connection

with the promotion of the efficient use of electricity by consumers.

(2) On or before such date in each year as may be specified in a direction given by the Commission, each licensee shall furnish to the Commission the information with respect to each standard determined under Section 34;

(a) the number of cases in which a penalty was levied and the aggregate amount of value of those penalties; and

(b) such information with respect to the level of performance achieved by the licensee as may be so specified;

(3) The Commission shall, at least once in every year, arrange for the publication, in such form and in such manner as it considers appropriate of such of the information collected by, or furnished to, it, under this Section as may appear to the Commission to be so required.

### **36. Restriction On Disclosure Of Information :-**

(1) Save as otherwise provided in this Act, no confidential information with respect to any particular business which

(a) has been obtained by the Commission under or by virtue of any of the provisions of this Act; and

(b) relates to the affairs of any individual or to any particular business shall be disclosed by the Commission, without the consent of that individual or the person for the time being carrying on that business.

(2) The restriction contained in Sub-section (1) shall not apply to any disclosure of information which is made

(a) for the purpose of facilitating the carrying out by the State Government of any of its functions under a Statute;

(b) for the purpose of facilitating the Central Government to carry out any of its duties or functions under this Act or any Central law;

(c) for the purpose of facilitating the Accountant General, Orissa to carry out his duties and functions under this Act;

(d) for the purpose of enabling or assisting any competent person to carry out its functions under the law relating to insolvency;

(e) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings; or

(f) for the purposes of any civil proceedings brought under or by virtue of this Act or any other State or Central law to which the information is directly relevant;

(3) The restrictions contained in Sub-section (1) shall not apply to information relating to tariff.

**37. Arbitration By The Commission :-**

(1) Notwithstanding anything contained in the Arbitration Act, 1940 (10 of 1940) any dispute arising between licensees or in respect of matters provided under Section 33 shall be referred to the Commission. The Commission may proceed to act as arbitrator or nominate arbitrators to adjudicate and settle such dispute. The practice or procedure to be followed in connection with any such adjudication and settlement shall be such as may be prescribed by regulations.

(2) Where the award is made by the arbitrator appointed by the Commission it shall be filed before the Commission and the Commission shall be entitled to pass appropriate orders on the award including, orders to

(a) confirm and enforce the award;.

(b) set aside or modify the award; or

(c) remit the award for reconsideration by the arbitrator.

(3) The order passed by the Commission under Sub-section (2) shall be a decision or order of the Commission and shall be appealable as provided in this Act.

(4) An award made or an order passed by the Commissioner under Sub-section (2) shall be enforceable as if it were a decree of the Civil Court.

**38. Appeals From Decisions Of Electrical Inspectors :-**

Notwithstanding anything contained in the Indian Electricity Act, 1910 or the Electricity (Supply) Act, 1948, or any rules made thereunder, an appeal shall lie from the decision of an Electrical Inspector, other than an Inspector of the Central Government or the Central Electricity Authority, to the Commission.

**39. Appeals Against The Orders Of The Commission :-**

Any person aggrieved by any decision or order of the Commission passed under this Act may file an appeal to the High Court on any question of law arising out of such order within six days from the date of communication to him of the decision or order of the Commission.

REFERRED TO: 2003 (I) OLR 77

**40. Penalty For Contravention Of Section 14 :-**

Whoever in contravention of the provisions of this Act or the regulations framed under this Act or of the provisions of the Indian Electricity Act, 1910 or the Electricity (Supply) Act, 1948 or the rules framed under the said Acts, engages in the business of transmission or supply or use of energy, shall be punishable with imprisonment which may extend to six months or with penalty by way of fine which may extend to rupees one lakh, or both, and a further penalty which may extend to rupees six thousand for each day after the first during which the offence continues.

**41. Penalties For Contravention Of Other Provisions :-**

If any licensee or other person refuses or fails without reasonable excuse to comply with, or give effect to, any direction, order or requirement made under any of the provisions of this Act, he shall be punishable with imprisonment which may extend to three months or with penalty by way of fine which may extend to rupees one lakh, or both and further penalty which may extend to rupees four thousand for each day after the first during which the offence continues.

**42. Offences By Companies :-**

(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this Sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in Sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed

to be guilty of that offence and shall be liable to be proceeded against and punished accordingly

Explanation - For the purposes of this Section

(a) company means a body corporate and includes a firm or other association of individuals;

(b) "director in relation to a firm, means a partner in the firm.

#### **43. Power To Compound Offences :-**

The Commission may, for reasons to be recorded in writing, either before or after the institution of proceedings, compound any offence relating to contravention of any order made by it.

#### **44. Cognizance Of Offences :-**

(1) No Court shall take cognizance of any offence punishable under this Act except upon a complaint in writing made by an officer of the commission generally or speciality authorised in this behalf by the Commission, and no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any such offence.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a Magistrate may, if he sees reason so to do, dispense with the personal attendance of the officer of the Commission filing the complaint.

#### **45. Penalties And Proceedings Not To Prejudice Other Actions :-**

The proceedings and actions under this Act against a person contravening the provisions of this Act or orders passed by the Commission shall be in addition to and without prejudice to actions that may be initiated under other Act including under the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948.

#### **CHAPTER 13**

#### **MISCELLANEOUS**

#### **46. Recovery Of Fees, Fines And Charges :-**

The Commission shall be entitled to recover all sums due to it under this Act whether by way of licence fees, fines or charges, in accordance with the provisions of the Orissa Public Demands Recovery Act, 1962 as if any such sum were a public demand as

defined in that Act and hand over the amount due to the person or authority concerned.

**47. Application Of Fine And Charges :-**

The Commission or Court imposing the fine and charges under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings.

**48. No Part Of The Fines Or Penalties Imposed To Be Passed On :-**

The licensee, generating companies and others on whom the fines, charges or penalties are imposed under this Act shall not directly or indirectly, pass the same to the consumers in the form of tariff or charges payable.

**49. Protection Of Action Taken In Good Faith :-**

No suit or legal proceedings shall lie against the Commission or the Chairman or other members of the Commission or the staff or representatives of the Commission in respect of anything which is in good faith done or intended to be done under this Act or any rule or regulations or order made thereunder.

**50. Bar Of Jurisdiction :-**

No order or proposal made under this Act or rules or regulations framed under this Act shall be appealable except as provided in this Act and no Civil Court including under the Arbitration Act, 1940 shall have jurisdiction in respect of any matter which the Commission or the appellate authority under this Act is empowered by, or under this Act to determine.

**51. Power To Remove Difficulties :-**

(i) If any difficulty arises in giving effect to the provisions of this Act or the rules, regulations, scheme or orders made thereunder, the State Government may by order published in the Gazette, make such provision not inconsistent with the provisions of this Act as appears as to it to be necessary or expedient for removing the difficulty.

(2) Every order made under this Section shall, as soon as possible after it is made, be laid before the State Legislature.

## **52. Proceedings Before The Commission To Be Judicial Proceedings :-**

All proceedings before the Commission shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code and the Commission shall be deemed to be a Civil Court for the purposes of the Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

## **53. Members And Staff Of Commission To Be Public Servants :-**

The Chairman, other members and officers and other employees of the Commission appointed for carrying out the objects and purposes of this shall be deemed to be public servants within the meaning of Section of the Indian Penal Code, 1860 (45 of 1860).

## **54. Power To Make Regulations :-**

(1) The Commission shall have power to frame regulations for the efficient performance of its functions under this Act by notification in the Gazette.

(2) In particular, but without prejudice to the generality of the provisions Subsection (1), such regulations may provide for all or any of the following matters, namely:

(a) the administration of the affairs of the Commission, the exercise of its administrative, quasi-judicial and judicial powers including arbitration and procedure, the summoning and holding of meeting of the Commission, the times and places at which such meetings shall be held and the conduct of the business thereat;

(b) the duties of the Secretary, officers and employees of the Commission; (c) determination of the functions to be assigned to licensees, and others involved in the generation, purchase, transmission, distribution and supply of electricity, the manner in which such functions shall be discharged and the procedures and codes to be adopted and enforced in regard to the operation and maintenance of power system and electric supply lines;

(d) the procedure for licensing of transmission and supply, the conditions for the grant of licences, the particulars, details and documents to be made available by the persons applying for licences, the standards and general conditions subject to which the licence shall be granted the exemptions from grant of licenses, the revocation and amendment of licences and the effect thereof and



all matters related thereto;

(e) the duties, powers, rights and obligations of licenses.

(f) the particulars to be furnished, the collection of information, details, particulars, documents, accounts, books from or of the persons involved in the generation, transmission, distribution, supply and use of electricity, the form and manner in which the same are to be furnished and enforcing and compelling the production of the same;

(g) method and manner of determination of licensees revenues, tariff fixation, the matters to be considered in such determination and fixation;

(h) the constitution of the Commission Advisory Committee;

(i) the determination of the standard of performance of the persons involved in the generation, transmission, distribution and supply of electricity in the State;

(j) the amount of fines and penalties to be imposed for violation of provisions of this Act including the method and manner of imposition of fines and penalties and collection of the same;

(k) to prescribe the form and manner in which the accounts of the Commission shall be maintained; and

(l) any other matter which is required to be, or may be, prescribed by regulations.

## **55. Power To Make Rules :-**

(1) The State Government may, by notification, make rules to carry out its functions under the provisions of the Act.

(2) In particular but without prejudice to the generality of the power contained in Sub-section (1) such rules may provide for all or any of the following matters, namely:

(a) the procedure to be adopted by the selection committee for discharge of its functions under the Act;

(b) the preparation and implementation of the transfer schemes, the transfer of assets to generating companies, licensees and others in the State;

(c) the financing, funding and giving of guarantee to persons involved in the generation, transmission, distribution and supply of electricity in the State; and

(d) any other matters which is required to be or may be, prescribed by rules.

## **56. Rules And Regulations To Be Laid :-**

Every rule and regulations made under this Act shall, as soon as may be after it is made, be laid before the State Legislature for a total period of fourteen days which may be comprised in one or more sessions and if during the said period the State legislature makes modifications, if any, therein, the rule or regulations shall, thereafter, have effect only in such modified form, so however, that such modification shall be without prejudice to the validity of anything previously done under that Rule or regulation.

#### CHAPTER 14

#### EFFECT ON EXISTING CENTRAL LAW

### **57. Effect Of The Act On The Indian Electricity Act, 1910 And The Electricity (Supply) Act, 1948 :-**

(1) Except as provided in Section 58, the provisions of this Act, notwithstanding anything that the same are inconsistent with or contrary to the provisions of the Indian Electricity Act, 1910, or the Electricity (Supply) Act, 1948 shall prevail in the manner and to the extent provided in Sub-section (3).

(2) Subject to Sub-section (1), in respect of all matters in the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948, with which the Board has been concerned or dealing with, upon the constitution of the Commission, the functions of the Board shall be discharged by the Commission and Gridco provided however that

(a) the State Government shall be entitled to issue all policy directives and undertake overall planning and coordination as specified in Section 12 and, to this extent, the powers and functions of the Board as set out in the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 or rules made thereunder shall vest in the State Government and the State Government shall coordinate and deal with the Central Government and the Central Electricity Authority;

(b) in respect of such matters which the Commission directs in terms of a general or special order, or in regulations or in a licence or licences, as the case may be, every generating company, or other body corporate as may be designated by the Commission discharge the functions of the Board under the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 to the extent directed by the Commission or specified in licences.

(3) Subject to Sub-section (1) and (2) upon the establishment of the Commission, the provisions of the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 shall in their application to

the State, be subject to the following modifications and reservations:

#### INDIAN ELECTRICITY ACT, 1910

- (i) All references to the State Electricity Board in the Indian Electricity Act, 1910 shall be read as reference to the Commission or Gridco or other licensees or wherever it relates to general policy matters, to the State Government;
- (ii) In respect of matters provided in Sections 3 to 11, 28, 36 (2), 49-A, 50 and 51 of the Indian Electricity Act, 1910, to the extent has made specific provisions, the provisions of the Indian Electricity Act 1910 shall not apply;
- (iii) The provisions of all other sections of the Indian Electricity Act, 1910 shall apply except that;
  - (a) the expression licence, licensee and licence holder shall have the meaning as defined under this Act and the licences shall be construed as having been issued under this Act;
  - (b) the reference to the Sections of the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 in the provisions of the Indian Electricity Act, 1910 shall be taken as references to the corresponding provisions of this Act to the extent modified by this Act;
  - (c) the reference to Arbitration in these provisions, except where it is by the Central Electricity Authority, shall be taken as reference to the proceedings under Section 37 of this Act and the arbitration procedure prescribed under the Indian Electricity Act, 1910 shall not apply.
- (iv) The Schedule to the Indian Electricity Act, 1910 shall be applicable only with reference to the provisions in this Act in which the applications of the Schedule is specified and not otherwise.

#### ELECTRICITY (SUPPLY) ACT, 1948

- (v) All references to the State Electricity Board in the Electricity (Supply) Act, 1948 shall be read as reference to the Commission or Gridco or other licensees or where it relates to general policy matters, the State Government.
- (vi) In respect of matters provided in Sections 5 to 18, 19, 20, 23 to 26, 27, 37, 40 to 43, 44, 45 to 54, 56 to 69, 72 and 75 to 83 of the Electricity (Supply) Act, 1948 to the extent this Act has made specific provisions, the provisions of the Electricity (Supply) Act, 1948 shall not apply.
- (vii) The provisions of all other sections of the Electricity (Supply) Act, 1948 shall apply except that;
  - (a) the expressions "licence", "licensee and "licence holder" shall

have the meaning as defined under this Act and the licences shall be construed as having been issued under this Act;

(b) the reference to the Sections of the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 in the provisions of the Electricity (Supply) Act, 1948 shall be taken as reference to the corresponding provisions of this Act to the extent modified by this Act;

(c) the reference to arbitration in these provisions except where it is by the Central Electricity shall be taken as reference to the proceedings under Section 37 of this Act and the arbitration procedure prescribed under the Electricity (Supply) Act, 1948 shall not apply.

(viii) The provisions of Sections 72 and 73 of the Electricity (Supply) Act, 1948 shall be restricted to generating companies and reference to the State Electricity Board in these Sections shall stand deleted.

(ix) The Schedules to the Electricity (Supply) Act, 1948 shall be applicable only with reference to the provisions in this Act wherein the applications of the Schedules are specified and not otherwise.

## **58. Savings :-**

(1) Notwithstanding anything contained in this Act, the powers, rights and functions of the Regional Electricity Authority, the Central Electricity Authority, the Central Government and authorities, other than the State Electricity Board and the State Government under the Indian Electricity Act, 1910 or the Electricity (Supply) Act, 1948 or rules framed thereunder shall remain unaffected and shall continue to be in force.

(2) Nothing contained in this Act shall apply to the power Grid Corporation of India Limited or other bodies or licensees in relation to the inter-state transmission of electricity.

### **SCHEDULE 1**

#### **SCHEDULE I**

#### **THE ORISSA ELECTRICITY REGULATORY COMMISSION**

##### **PART-I**

##### **The Commissions Finance, Accounts and Audit**

##### **I. Annual Financial Statement**

(1) In December of each year, the Commission shall submit to the State Government a statement of its estimated expenditure for the ensuing financial year.

(2) The State Government shall as soon as possible after the receipt of the said statement cause it to be laid on the table of the State Legislature.

(3) The Commission may at any time during the year in respect of which a

statement under Sub-paragraph (1) has been submitted, submit a supplementary statement to the State Government who shall cause it to be laid on the table of the State Legislature.

## II. Accounts and Audit

(1) The Commission shall cause proper accounts and related records to be kept, including a proper system of internal check and shall prepare an annual statement of accounts in such form as may be prescribed by regulations in consultation with the Comptroller and Auditor General of India or persons designated by him.

(2) The accounts of the Commission shall be audited by the Comptroller and Auditor General of India or by such person as he may authorise on his behalf and any expenditure incurred by him in connection with such audit shall be payable by the State Government.

(3) The Comptroller and Auditor General of India or any person authorised by him in connection with the audit of the accounts of the Commission shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers of the Commission.

(4) The accounts of the Commission as certified by the Comptroller and Auditor General of India or any other person authorised by him on his behalf, together with the audit report thereon shall be forwarded to the State Government within six months of the close of the year to which the accounts and audit report relate and the Commission shall cause the said accounts of the Commission to be published and make available the copies thereof on sale at a reasonable price. The Audit report shall contain full details of any discrepancies or irregularities in the accounts of the Commission. At the same time, the Commission shall publish an annual statement of its activities in relation to the functions carried out by it under this Act during the year to which the said accounts relate and make available the copies thereof on sale at a reasonable price.

(5) The State Government shall cause the accounts of the Commission, together with the audit report thereof forwarded to it under Subparagraph (4), to be laid annually before the State Legislature.

## PART II

### GENERAL

## III. Remuneration etc.

(1) The remuneration of the Chairman and members of the Commission shall at no time be inferior to the remuneration paid to the Chairman and members of Orissa Public Service Commission respectively.

(2) The State Government may cause to be paid, as an expense of the Commission, to or in respect of any person holding the office of Chairman or a member of the Commission such pension, allowance or gratuity or such contributions or payments towards provisions of such a pension, allowance or gratuity.

## IV. Official Seal

Commission shall have the official seal for the authentication of documents required for the purposes of its functions.

V. Performance of Functions Anything authorised or required to be done by the commission by or under this Act or any other enactment may be done by any member of the staff of the Commission who is authorised generally or specially in that behalf by the Commission.