

Uttar Pradesh Electricity Reforms Act, 1999

24 of 1999

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An Act to provide for the restructuring of the electricity industry in the State of Uttar Pradesh, the rationalisation of generation, transmission, distribution and supply of electricity in the State, regulation by an independent electricity regulatory Commission of the electricity industry in the State including the purchase, distribution, supply and utilization of electricity, the quality of service, tariff and other charges keeping in view the interest of the consumers and utilities, creation of an environment which will attract participation of private sector entrepreneurs in the electricity industry in the State and generally for taking measures conducive to the development and management of the electricity industry in the State in an efficient, economical and competitive manner and for matters connected therewith or incidental thereto. IT IS HEREBY enacted in the Fiftieth Year of the Republic of India as follows:-

CHAPTER 1 PRELIMINARY

1. Short Title :-

- (1) This Act may be called the Uttar Pradesh Electricity Reform Act, 1999.
- (2) It extends to the whole of the State of Uttar Pradesh.
- (3) It shall come into force on such date as the State Government may, by notification, appoint in this behalf.

2. Definitions :-

In this Act,-

- (a) "area of supply" means the area within which a licensee is authorised to supply electricity;
- (b) "area of transmission" means the area within which a licensee is authorised to transmit electricity;
- (c) "Board" means the Uttar Pradesh State Electricity Board constituted under section 5 of the Electricity (Supply) Act, 1948;
- (d) "Central Act" means "The Electricity Regulatory Commissions Act, 1998 (Act 14 of 1998);
- (e) "Chairperson" means the Chairperson of the Commission;
- (f) "Commission" means the Uttar Pradesh Electricity Regulatory Commission referred to in section 3;
- (g) "licence" means a licence granted under Chapter V;
- (h) "licensee" means a person who holds a licence and includes the provisional licensee referred to in clause (a) of sub-section (3) of section 13;
- (i) "Member" means a Member of the Commission and includes the Chairperson;
- (j) "regulations" means regulations made under this Act;
- (k) "relative" means relative as defined in section 6 of the Companies Act, 1956;
- (l) "supply licence" means a licence for supply of electricity granted under sub-section (1) of section 15;
- (m) "transmission" in relation to electricity, means the transportation or transmission of electricity by means of a system 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 and or transferring electricity from a generating station to a sub-station or from one generating station to another generating station or from one sub-station to another sub-station or otherwise from one place to another;
- (n) "transmission licence" means a licence for transmission granted

under sub-section (1) of section 15;

(o) "Power Corporation" means the Uttar Pradesh Power Corporation Limited referred to in section 13;

(p) "utility" means a person engaged in the generation, transmission, sale, distribution or supply of electricity;

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

(r) words and expressions used but not defined in this Act or in the Electricity (Supply) Act, 1948, shall have the meanings assigned to them in the Indian Electricity Act, 1910.

CHAPTER 2 ESTABLISHMENT OF COMMISSION, ITS FUNCTIONS AND

3. Powers Constitution Of The Commission :-

(1) (a) There shall be a Commission in the State to be known as the Uttar Pradesh Electricity Regulatory Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(b) The Uttar Pradesh Electricity Regulatory Commission established and constituted under section 17 of the Central Act shall be the Commission under this Act and the Chairperson and Members thereof shall be deemed to have been appointed as such under this Act.

(2) The Commission shall be a body corporate and its headquarters shall be at Lucknow.

(3) The Commission shall consist of a Chairperson and two Members to be appointed by the State Government from amongst the persons possessing the following qualifications:-

(a) one person having Bachelors Degree in Engineering with experience of not less than twenty-five years in the field of generation, transmission or supply of electricity and having worked for at least two years on the post of a Chief Engineer or on any other post equivalent thereto in a State Electricity Board or any other utility;

(b) one person having Bachelors Degree with experience of not less than twenty-five years in the field of administration and having held a post of Additional Secretary to the Government of India or a post equivalent thereto under the Central or the State Government and having at least five years experience in one or more departments of finance, power, industry and commerce of

Government;

(c) one person having Bachelors Degree in any disciplines of Economics, Commerce, Accountancy, Law or Management with experience of not less than twenty-five years and having worked as a Professor in an Indian Institute of Management or as a whole-time Director in a Public Financial Institution specified under section 4-A of the Companies Act, 1956 or as a whole-time Director in a Scheduled Bank within the meaning of the Reserve Bank of India Act, 1934 or as a Joint Secretary to the Government of India or as a District judge or has held any other post equivalent thereto.

(4) Every appointment under sub-section (3) shall be made on the recommendation of the Selection Committee constituted under section

(5) Notwithstanding anything contained in sub-section (3) or subsection (4), the State Government may appoint any person as the Chairperson from amongst the persons who is or has been a judge of a High Court:

Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of the concerned High Court.

(6) The Chairperson shall be the Chief Executive of the Commission.

(7) The Chairperson and Members of the Commission shall be appointed whole time to exclusively discharge the functions of the Commission and they shall not hold any other post or undertake any other work.

(8) Where the Chairperson is unable to discharge his functions owing to absence, illness or any other cause or where any vacancy occurs in the office of the Chairperson by reason of his death, resignation or otherwise, the senior most Member shall discharge the functions of the Chairperson, until the Chairperson resumes his duties, or, as the case may be, a Chairperson appointed in accordance with the provisions of this Act assumes charge of his office.

Explanation: The seniority of a Member shall be determined from the date of his appointment as Member. If two Members are appointed on the same date, the Member older in age shall be senior.

(9) No act or proceedings of the Commission shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Commission.

4. Constitution Of The Selection Committee :-

(1) For the purposes of making appointment of the Chairperson and Members, the State Government shall constitute a Selection Committee which shall consist of-

- (a) A person who has been a Judge of the High Court
- (b) The Chief Secretary to the State Government
- (c) The Chairman, Central Electricity Authority or his nominee not below the rank of Member of the Central Electricity Authority

(2) The State Government shall within one month from the date of occurrence of any vacancy by reason of death, resignation or removal and six months before the superannuation or end of tenure of the Chairperson or other Member, make a reference to the Selection Committee for filling up of the vacancy.

(3) The Selection Committee while making selection of the Chairperson and other Members, shall have due regard to performance record, ability, integrity, character, qualifications and experience of the person proposed to be selected as Chairperson or other Member, as the case may be.

(4) The Selection Committee shall finalise the selection of the Members within two months from the date on which the reference is made to it.

(5) The Selection Committee shall recommend a panel of two names for every vacancy referred to it.

(6) A person who is considered for selection as Chairperson or Member of the Commission, shall notify to the Selection Committee,

(a) of any office, employment or consultancy agreement or arrangement which the person or his relative has in his own name or in any firm, association of persons or body corporate, owned or otherwise controlled by any of them carrying on any of the following businesses:

- i. generation, transmission, distribution or 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 any professional services to any of the businesses referred to in clause (i), (ii) and (iii) above.

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

rules or by the Selection Committee.

(7) The details received from the persons referred to in sub-section (6) shall be placed for consideration of the Selection Committee at the time of selection and recommendation of the person for appointment as Member.

(8) Each Member of the Commission shall before taking charge of the office divest himself or herself from the interest in the businesses mentioned in sub-section (6) as a condition of his or her appointment.

(9) If a person to be appointed as a Member of the Commission holds any office under the State or Central Government or any public sector corporation or any Government body or is gainfully employed or engaged in service by any other person, Government authorities, public or private sector or otherwise, he shall submit his resignation or take voluntary retirement from that service before joining the Commission.

(10) So long as a person holds the office of the Member and for a period of two years after he ceases to be a Member for any reason whatsoever, he shall not acquire, hold or maintain, directly or indirectly any office, employment or consultancy arrangement or any financial interest in any of the businesses mentioned in sub-section (6) and if he acquires any such interest involuntarily or by way of succession or testamentary disposition he will divest himself of the interest within a period of three months of such interest being acquired.

Explanation: For the purposes of this section a Member shall not be taken as holding financial interest in any business if the Member is a shareholder holding less than two percent of the issued share capital in any public company.

(11) Before recommending any person, the Selection Committee shall satisfy itself that such person does not have any financial or other interest as referred to in sub-section (6) which is likely to affect prejudicially his functions as a Member.

(12) All decisions of the Selection Committee shall be by a majority.

(13) The procedure of selection and appointment of the Chairperson and the other Members shall be such as may be prescribed.

5. Term Of Office And Conditions Of Service Of Members :-

(1) The Chairperson or other Member shall hold office for a term of

five years from the date on which he enters upon his office or till he attains the age of sixty five years whichever is earlier and shall not be eligible for reappointment:

Provided that a Member other than the Chairperson shall be eligible for appointment as Chairperson for the remaining period of his term as Member.

(2) A Member may, at any time by giving in writing to the Governor notice of not less than three months, relinquish his office or may be removed from his office in accordance with the provisions of section 7.

(3) The Chairperson shall, before entering upon his office, make and subscribe an oath of office and secrecy before the Governor and every other member before the Chairperson in such form as may be prescribed.

(4) The salary and allowances payable to, and other terms and conditions of service of the Members shall be such as may be prescribed.

(5) The salary, allowances and other conditions of service of the Members shall not be varied to their disadvantage.

(6) Any member ceasing to hold office as such shall -

(a) be ineligible for further employment under the State Government for a period of two years from the date he ceases to hold such office;

(b) not accept any commercial employment for a period of two years from the date he ceases to hold such office; and

(c) not represent any person before the Commission in any manner.

Explanation: for the purposes of this sub-section -

(i) "employment under the State Government" includes employment under any local or other authority within the territory of India under the control of the State Government or under any corporation or society owned or controlled by the State Government.

(ii) "commercial employment" means employment in any capacity under, or agency of, a person engaged in commercial, industrial or financial business in the electricity industry and includes also a director of a company or partner of a firm and it also includes setting up practice either independently or as partner of a firm or as an advisor or a consultant.

6. Disqualification For Being A Member :-

A person shall be disqualified for appointment as a Member, if he, -

(a) has been adjudged an insolvent; or

- (b) has become physically or mentally incapable of acting; or
- (c) has been convicted and sentenced to imprisonment for any offence involving moral turpitude; or
- (d) has acquired such financial or other interest as is likely to affect his functions as a Member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest; or
- (f) is a Member of Parliament, the State Legislature or any local authority or is a candidate for election thereto; or
- (g) is a member of a political party or holds a post therein.

7. Removal Of Member :-

(1) Subject to the provisions of sub-section (2), any Member shall only be removed from his office by the State Government on the ground of proved misbehaviour after the Chief Justice of the High Court or a sitting judge of the High Court nominated in this behalf by the Chief Justice, on reference being made to him by the State Government, has, on inquiry, held by him in accordance with the procedure specified in this behalf by the Chief Justice or such judge, reported that the Member ought on any such ground to be removed.

(2) Notwithstanding anything contained in sub-section (1), the State Government may, by order, remove a member from his office if he has incurred any of the disqualifications mentioned in section 6.

(3) Notwithstanding anything contained in sub-section (2), no Member shall be removed from his office on the ground specified in clause (b), or clause (d) or clause (e) of section 6 unless the Chief Justice of the High Court or a sitting judge of the High Court nominated in this behalf by the Chief Justice, on a reference being made to him in this behalf by the State Government, has on an inquiry, held by him in accordance with the procedure specified in this behalf by the Chief Justice or such judge, reported that the member ought on such ground or grounds to be removed.

(4) The State Government shall act in accordance with the report referred to in sub-section (1) or sub-section (3), as the case may be, and the final decision of the State Government shall be communicated to the Member concerned within a period of sixty days of receipt of such report.

8. Officers Of The Commission And Other Staff :-

(1) The Commission may appoint a Secretary to exercise and perform, under the control of the Chairperson, such powers and duties as may be specified by regulations.

(2) The Commission may, in consultation with 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 and appoint them.

(3) The salaries and allowances payable to, and other conditions of service of, the Secretary, officers and other employees shall be such as may be determined by regulations, in consultation with the State Government.

(4) The Commission may appoint consultants required to assist the Commission in the discharge of its functions on such terms and conditions as may be determined by regulations.

9. Proceedings Of The Commission :-

(1) The Commission shall ordinarily meet once in every fortnight at such time and place within the State as the Chairperson may think fit: Provided that a meeting shall be convened earlier if a request is so made by a Member.

(2) All matters which come up before the Commission shall be decided by a majority of the Members present and voting and all decisions, directions and orders of the Commission shall be in writing supported by reasons and shall be available for inspection by any person and copies of the same shall also be made available in such manner as the Commission may determine.

(3) Two Members shall form the quorum for a meeting of the Commission, but in case of a difference of opinion among them on any issue, the matter shall be placed at the next meeting: Provided that where there is a vacancy in the Commission or only two Members are present at the meeting, the Member presiding over the meeting shall have a casting vote.

(4) The Commission shall regulate its own procedure.

(5) All orders and decisions of the Commission shall be authenticated by the Secretary or any other officer of the Commission duly authorised by the Secretary in this behalf.

10. Functions Of The Commission :-

(1) The Commission shall have the following functions; namely, -

(a) to determine the tariff for electricity, wholesale, bulk, grid or retail, as the case may be;

- (b) to determine the tariff payable for the use of the transmission facilities;
- (c) to regulate power purchase and procurement process of the transmission utilities and distribution utilities including the price at which the power shall be procured from the generating companies, generating stations or from other sources for transmission, sale, distribution or supply in the State;
- (d) to promote competition, efficiency and economy in the activities of the electricity industry to achieve the objects and purposes of this Act;
- (e) to regulate investment approval for transmission, distribution or supply of electricity to the entities operating within the State;
- (f) to aid and advise the State Government in matters concerning electricity generation, transmission, distribution and supply in the State;
- (g) to issue licence for transmission, distribution or supply of electricity and determine the conditions of the licence;
- (h) to regulate the working of licensees and other persons authorised or permitted to engage in the electricity industry in the State and to make their working efficient, economical and equitable;
- (i) to require licensees to formulate plans and schemes for the promotion of generation, transmission, distribution, supply or utilisation of electricity and quality of service and to device proper power purchase and procurement process;
- (j) to set standards for the electricity industry in the State including standards relating to quality, continuity and reliability of service;
- (k) to promote competitiveness and make avenues for participation of private sector in the electricity industry in the State, and also to ensure a fair deal to the consumers;
- (l) to lay down and enforce safety standards;
- (m) to aid and advise the State Government in formulating power policy for the State;
- (n) to collect and record information relating to generation, transmission, distribution or utilisation of electricity;
- (o) to collect and publish data and forecasts on the demand for, and use of electricity in the State and to require the licensees to collect and publish such data;
- (p) to regulate the assets, properties and interest in properties relating to the electricity industry in the State in such manner as to safeguard the public interest;
- (q) to adjudicate upon the dispute and differences between a

licensee and utility or to refer the same for arbitration;

(r) to co-ordinate with environmental regulatory agencies for evolving policies and procedures for appropriate environmental regulation of Electricity Sector in the State; and

(s) to aid and advise the State Government on any other matter referred by the State Government

11. Powers Of The Commission :-

(1) The Commission shall, while performing its adjudicatory functions under this Act, have all the powers of a Civil Court trying a suit in respect of the following matters, namely, -

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

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses and documents; and

(f) any other matter which may be prescribed.

(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 or 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 any officer so specified such information in his possession, power or control as may be required by the Commission for the purposes of discharge of its functions under this Act.

(3) Where, during any inquiry or proceedings under this Act, the Commission has any ground to believe that any books or documents of, or relating to, any unit or person to which such inquiry is being made or proceeding relates, is being made or which the owner of such unit may be required to produce in such inquiry or proceeding, are being, or may be, destroyed, mutilated, altered, falsified or secreted, the Commission may, by a written order, authorise any officer of the Commission to exercise 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 general or special order, call upon any person, including a generating company or a licensee, to furnish periodically any information concerning the activities carried on by such person relating to generation, transmission, distribution or supply or use of electricity, or with regard to the connection between such person and any other person or undertaking including information relating to the organisation, business and cost of production of electricity to enable the Commission to carry out its functions under this Act.

(5) In the discharge of its functions, the Commission may consult persons or group of persons affected or likely to be affected by the decisions of the Commission.