
Himachal Pradesh Electricity Distribution Management Responsibility Act, 2014

(Act No. 5 Of 2015)

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SCHEDULE

(Received the assent of the Governor on the 20th January, 2015 and was published both in Hindi and English in the Rajpatra, Himachal Pradesh, dated the 22nd January, 2015, pp. 5726-5747).

An Act to provide for responsibilities of the State Government to ensure financial and operational turn-around and long-term sustainability of the State-owned Distribution Licensee to enable adequate electricity supply to consumers through financial restructuring, support on sustainable basis in the areas of long term planning, corporate governance, regulatory compliances, and laying down of policy directives and various other measures connected therewith or incidental thereto.

Himachal Pradesh Electricity Distribution Management Responsibility Act, 2014

(Act No. 5 Of 2015)

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Sixty-fifth Year of the Republic of India as follows:-

1. Short title, applicability, extent and commencement.-

(1) This Act may be called the Himachal Pradesh State Electricity Distribution Management Responsibility Act, 2014.

(2) The provisions of this Act shall, in accordance with the objectives of the Financial Restructuring Plan, apply to the State Distribution Licensee owned by the State Government or the Board or the Department under the State Government engaged in distribution of electricity.

(3) It extends to the State of Himachal Pradesh.

(4) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Definitions.-

(1) In this Act, unless the context otherwise requires-

(a) "Action Plan" shall have the meaning assigned to it in section 3 of this Act;

(b) "Aggregate Technical and Commercial Loss" or "AT& C Loss" means the difference between the energy input into the distribution system and the energy realised wherein the energy realised shall be equal to the product of energy billed and collection efficiency;

(c) "Authority" means the Central Electricity Authority referred to in sub- section (1) of section 70 of the Electricity Act;

(d) "Board" shall have the meaning assigned to it under the Electricity Act, 2003;

(e) "Collection efficiency" means the ratio of total revenue realized to the total revenue billed for the same year;

(f) "Electricity Act" means the Electricity Act, 2003 as in force;

(g) "fiscal responsibility and budget management limit" means limit imposed on State Government borrowings from Central Government under the statute relating to fiscal responsibility and budget management of the State, as may be in force from time to time;

(h) "Financial Restructuring Plan or "FRP" means a plan for financial restructuring of the Distribution Licensee as notified by the State Government in accordance with the provisions of the Financial Restructuring Scheme notified by the Central Government in terms of Office Memorandum No. 20/11/2012-APDRP, dated 5th October, 2012;

(i) "Key Performance Indicators (KPIs)" means the performance standards laid by the State Commission, if any, and/or in the Financial Restructuring Plan, if any,

and till such time the KPIs are laid down, the KPIs as provided for in the Schedule to this Act;

(j) "Nodal Bank" means the bank nominated by the Department of Financial Services, for the purposes of financial restructuring of the State Distribution Licensee and for the purposes of co-ordination with the State Government, State Distribution Licensee and the participating Lenders;

(k) "prescribed" means prescribed by rules made by the State Government under this Act;

(l) "Schedule" means Schedule appended to this Act;

(m) "State Commission" means the Himachal Pradesh Electricity Regulatory Commission constituted under section 82 of the Electricity Act, 2003 (36 of 2003);

(n) "State Distribution Licensee" or "Distribution Licensee" means the Himachal Pradesh State Electricity Board Ltd. constituted under sub-section (1) of section 5 of the Electricity (Supply) Act, 1948 (54 of 1948) or the Government Company or the Department under the State Government engaged in distribution of electricity; and

(o) "State Government" means the Government of Himachal Pradesh.

(2) All other words in this Act, not expressly defined herein, shall have the meanings assigned thereto under the Financial Restructuring Plan, the Electricity Act, 2003, or notifications, rules, and regulations made thereunder.

3. State Electricity Distribution Management Statement to be laid before the State Legislature.-

(1) The State Government shall lay, in each financial year during the Budget Session, before the State Legislature, a State Electricity Distribution Management Statement on the measures taken by the State Government in relation to electricity distribution in the State including, in the areas of long-term planning, consumer protection, regulatory compliance, corporate governance, financial restructuring of the State Distribution Licensee, so as to bring about the operational and financial viability of the State Distribution Licensee, on sustainable basis and which shall comprise of the following:-

(a) State Electricity Distribution Strategy Statement laying down the policies and strategies of the State Government for achieving the Key Performance Indicators, for the ensuing financial year, relating to the conditions or provisions provided under sections 4, 5, 6 and 8 and description of other activities which have potential implications on financial and operational turn-around of the State Distribution Licensee;

(b) action plan, on long-term, medium term and short-term basis, laying down time bound programme to-

(i) execute strategic priorities to achieve Key Performance Indicators;

(ii) monitor and ensure compliance of the Key Performance Indicators, and strategic priorities;

(iii) feedback loop for in/mid-course corrections; and

(iv) such other actions as may be required to meet the obligations cast under this Act on the State Government and achieve the objectives of this Act:

Provided that the action plan shall contain steps for eliminating and minimizing deviation in actual performance and Key Performance Indicators; and

(c) State Electricity Distribution Performance Statement laying down an assessment of compliance, by the State Electricity Distribution Licensee or the State Government, as the case may be, with the conditions or provisions provided under sections 4, 5, 6 and 8 of this Act.

(2) The State Electricity Distribution Management Statement shall be in such form as may be prescribed.

(3) The State Electricity Distribution Management Statement shall be without prejudice to any consequences to which the State Distribution Licensee may be liable under the Electricity Act, 2003 in particular, the timeline referred to in section 55 of the said Act, and any orders and directions of the authorities in relation to any of the requirements under the said enactment:

Provided that nothing in this section shall imply relaxation of any requirement under the Electricity Act, 2003.

4. Long term Planning for sustainability of State Distribution Licensee.-

The State Government shall take, appropriate measures, to provide for the following matters, namely:-

(a) that the State Distribution Licensee estimates the demand, Aggregate Technical and Commercial loss and availability of electricity on long term basis and contracts with the approval of the State Commission, through long or medium or short term agreements for purchase of power to meet the demand;

(b) that the State Distribution Licensee prepares, with the approval of the State Commission, a time bound road map for Aggregate Technical and Commercial loss reduction:

Provided that the road map shall be prepared within six months from the date of coming into force of this Act;

(c) that the State Distribution Licensee undertakes energy accounting and auditing of all 33 kV feeders, 11 kV feeders and Distribution Transformers alongwith consumer indexing and time bound metering of each category of consumers and in doing so the Distribution Licensee should consider latest developments in metering technologies:

Provided that the road map in relation to energy accounting and auditing and time bound metering of all consumers shall be prepared within six months from the date of coming into force of this Act and approval for the same shall be sought from the State Commission:

Provided further that the consumer indexing shall be completed within two years from the date of coming into force of this Act:

Provided further that the State Distribution Licensee shall submit to the Authority and the State Commission half yearly progress reports with respect to energy accounting, auditing, metering and feeders and Distribution Transformers wise consumer indexing;

(d) that if the State Government requires the grant of any subsidy to any consumer or class of consumers, the State Government shall declare the quantum of subsidy in advance categorically stating the consumer or the class of consumers to whom it is to be provided and in doing so, the State Government shall be guided by the Regulations for Multi Year Distribution Tariff evolved by Forum of Regulators;

(e) create annual budgetary provision and also timely release of subsidies, if committed, in accordance with section 65 of the Electricity Act, 2003 on actual basis;

(f) ensure that there are no arrears of electricity charges for electricity supplied to various Departments and Institutions of the State Government on or before the date of coming into force of this Act, and in case of failure to do so, it would be adjusted against the budgetary grant:

Provided that the State Government shall make budgetary provisions including grants, to ensure payment to the State Distribution Licensee within due date of the charge for electricity supplied to its various Departments and Institutions;

(g) set up, within one year from the date of coming into force of this Act, special courts, where it has not been done, to tackle theft of electricity in accordance with sections 153 to 157 of the Electricity Act, 2003;

(h) ensure that the State Load Despatch Centre is operated within six months from the date of coming into force of this Act, by a Government company or any authority or corporation (other than the State Transmission Utility) established or constituted by or under any State Act, as may be notified by the State Government, and provide for other measures which shall ensure functional and financial autonomy, independent and sustainable revenue streams and adequate manpower:

Provided that such Government company or any authority or corporation shall not engage in any functions other than those specified under sections 32 and 33 of the Electricity Act, 2003;

(i) provide for the formation of subsidiaries, joint venture companies or other schemes of division, amalgamation, merger or reconstruction or arrangements in relation to the State Distribution Licensee which shall promote the profitability and viability of the resulting entity, ensure economic efficiency, public private partnership, encourage competition and protect consumer interests; and

(j) such other measures as may be prescribed.

5. Financial Restructuring Plan for State Distribution Licensee.-

(1) In the event that a Financial Restructuring Plan has been notified, inter-alia, to operationalize the financial restructuring of the State Distribution Licensee, the State Government shall take appropriate measures, to ensure that the trajectories of the operational and financial parameters in the Financial Restructuring Plan, are

achieved within the stipulated time frame.

(2) The State Government shall, subject to any order or direction of the State Commission, notify a Plan to undertake financial liabilities of the State Distribution Licensee and for achieving the operational and financial trajectories considered in the Financial Restructuring Plan for financing of operational losses and interest of the State Distribution Licensee and such other measures as may be specified in the Financial Restructuring Plan or any other financial restructuring scheme:

Provided that these fiscal responsibilities shall be consistent with the budgetary constraints/fiscal limits available in the State fiscal responsibility and budget management limit, if any:

Provided further that the State Government shall not adjust any financial liability, after it has taken them over, as loan to the State Distribution Licensee:

Provided further that if the fiscal space including Debt- Gross State Domestic Product ratio under the Fiscal Responsibility and Budget Management Act, 2005, if any, is available, the State Government shall not exceed its net borrowing ceiling of the relevant fiscal year as notified by the Finance Commission from time to time:

Provided further that if in a particular year the State Government has fiscal space available more than the originally projected, it shall take over the additional liabilities as soon as possible.

(3) The State Government shall make Financial Restructuring Plan or such other financial scheme a part of the State budget statements for effective monitoring of its impact on the State finances.

(4) The State Government shall ensure that the State Distribution Licensee does not resort to short-term loans for funding operational losses except as provided in the Financial Restructuring Plan.

6. Accounting Measures.-

(1) The State Government shall ensure that the State Distribution Licensee establishes, within six months from the date of coming into force of this Act, an Empowered Committee to ensure identification, provisioning and write offs of receivables and bad and doubtful debts in the books of accounts of the State Distribution Licensee:

Provided that the State Distribution Licensee shall prepare accounting policies which shall provide for its financial management and management of its receivables and provisioning for bad and doubtful debts containing timeline for writing them off.

(2) The State Government shall ensure that the Distribution Licensee completes physical verification and preparation of fixed assets register on a commonly accepted definition of fixed assets under the financial accounting standards within two years from the date of coming into force of this Act:

Provided that the said plan referred to in sub-section (2) shall be submitted to the State Commission for approval.

(3) The State Government, by notification, shall establish an Empowered Committee consisting of,-

(i) Principal Secretary (Finance) to the Chairperson;

Government of Himachal Pradesh

(ii) Principal Secretary (Power) to the Member; and

Government of Himachal Pradesh

(iii) Head of the State Distribution Licensee Secretary. Member-

7. Corporate Governance.- (1) It shall be duty of the State Government to ensure that the Board of Directors of the State Distribution Licensee has an optimum combination of functional, nominee and independent directors:

Provided that the number of functional directors (including Chairman-cum-Managing Director/Managing Director) shall not exceed fifty percent of the actual strength of the Board:

Provided further that the number of nominee Directors appointed by the State Government shall be restricted to a maximum of two:

Provided further that the number of Independent Directors shall be as per provisions under the Companies Act, 2013.

Explanation:-'Independent Director' shall mean a part-time director of the distribution licensee who,-

(a) apart from receiving director's remuneration, does not have any material pecuniary relationship or transaction with the State Distribution Licensee, its Directors, its senior management, its holding company, its subsidiaries and associates, and the State Government, which may affect the independence of the Director;

(b) is not related to persons occupying management positions at the Board level or at one level below the Board;

(c) is not a partner or an executive, or was not a partner or an executive during the preceding three years, of any of the following:-

(i) the statutory audit firm or the internal audit firm or tax audit firm or energy audit firm or management audit firm or risk audit firm or insurance audit firm, that is associated with the State Distribution Licensee; and

(ii) the panel of advocate(s) or legal firm(s) or consultant(s) and consulting firm(s) or expert(s) that have a material association with the State Distribution Licensee;

(d) is not a material supplier, service provider or customer or a lessor or lessee of the State Distribution Licensee, which may affect the independence of the Director;

(e) is not a substantial shareholder of the State Distribution Licensee i.e. owning

2% or more of the block of voting shares; and

(f) is a person of ability, integrity and standing, having qualification in engineering or law or economics or commerce or finance or management and having knowledge and experience in the areas of generation or transmission or distribution of electricity.

(2) The State Government shall lay down a code of conduct in line with the Guidelines on Corporate Governance for Public Sector Enterprises, as notified by the Department of Public Enterprises, Government of India, for all Board Members and senior management of the State Distribution Licensee, which shall include but be not limited to a clear delineation of the roles and division of responsibilities between the Board and the management.

8. Regulatory Compliance and Tariff Filings.-

(1) The State Government shall, twice in a year, evaluate the status of compliance by the State Distribution Licensee with the Electricity Act, 2003 and Rules and Regulations made thereunder as also regulatory directives and policies as well as steps taken to rectify instances of non-compliances since the last such evaluation.

(2) The State Government shall ensure regular and timely filing of true-up petitions, Aggregate Revenue Requirement and tariff petitions, and petitions for adjustments on account of fuel and cost of power purchased by the State Distribution Licensee, as per the orders or regulations specified by the State Commission.

(3) Notwithstanding sub-section (2), it shall be the duty of the State Government to make fiscal provision or provision of grant to the State Distribution Licensee if there is an adverse financial impact due to the failure of the State Distribution Licensee to minimize or eliminate the following:-

(a) variations in the actual power purchase cost and the power purchase cost approved by the State Commission;

(b) variations in the actual and approved expenditure of other items of the Aggregate Revenue Requirement such as but not limited to Operation and maintenance expenditure and capital expenditure; and

(c) variation between average cost of supply and average realization of revenue:

Provided that the variation, if any, between average cost of supply and average realization of revenue, shall be bridged/filled in a period of three to five years from the date of coming into force of this Act.

(4) The State Government shall ensure that the regulatory assets, if any, are liquidated expeditiously in a period of three to five years from the date of coming into force of this Act, or within such period stipulated, if any, by the State Commission, whichever is earlier.

9. Memorandum of Understanding.-

(1) The State Government and the State Distribution Licensee, shall, within a period not exceeding six months from the date of coming into force of this Act in this behalf, enter into a memorandum of understanding for setting targets for Key

Performance Indicators and performance evaluation of the State Distribution Licensee for each financial year:

Provided that the memorandum of understanding shall be aimed at providing greater autonomy to the State Distribution Licensee to perform and comply with its legal and regulatory obligations including but not limited to,-

(a) timely filing of Annual Revenue Requirement and tariff petitions and adjustments on account of fuel and cost of power purchased by the State Distribution Licensee;

(b) prudent investment and capital expenditure planning; and

(c) financial management, to enable adequate and affordable electricity supply to consumers:

Provided also that the memorandum of understanding shall provide for performance milestones for all the financial and operational parameters provided in this Act and State Electricity Distribution Management Statement.

(2) The State Distribution Licensee shall submit every six months, a report to the State Government, on its operational and financial performance as required under various provisions of this Act:

Provided that the report shall lay down the strategy and plan for achieving the performance milestones and actual performance against these performance milestones as may be prescribed by the State Government:

Provided further that the State Distribution Licensee shall indicate revised strategies and plans in case they fail to achieve the agreed milestones.

10. Monitoring mechanism.-

(1) The State Government shall, by notification, establish a Committee for effective implementation of this Act, consisting of,-

(a) Chief Secretary, Government of Himachal Pradesh: Chairperson;

(b) Principal Secretary (Finance) to the Government of Himachal Pradesh: Member;

(c) Principal Secretary (Power) to the Government of Himachal Pradesh: Member-Secretary;

(d) Head of the State Distribution Licensee: Member;

(e) Head of the State owned Generating Company: Member;

(f) Head of the State owned: Member;

Transmission Licensee:

(g) Representatives of the Nodal Bank Member; and
and three major Lenders of the State

Distribution Licensee:

(h) Representative from Central Member.
Electricity Authority

11. Measures to enforce compliance.-

(1) The Committee established under section 10 shall review and recommend remedial measures, if any, every quarter, compliance of the obligations cast on the State Government under this Act, and the State Government shall place before the State Legislative Assembly, the outcome of such reviews.

(2) Except as may be provided under this Act, no deviation in fulfilling the obligations cast on the State Government under this Act, shall be permissible without approval of the State Legislative Assembly.

(3) Where owing to unforeseen circumstances, there is a deviation in fulfilling the obligations cast on the State Government under this Act, the Committee established under section 10 shall make a statement before the State Legislative Assembly explaining-

(i) the reasons for deviation in fulfilling the obligations cast on the State Government under this Act;

(ii) whether such deviation is substantial and has potential implications on financial and operational turn-around of the State Distribution Licensee; and

(iii) the remedial measures that the State Government proposes to take on the recommendations made by the Committee established under section 10.

(4) Non-compliance of the duties by the State Government may attract appropriate action by the Central Government that may render the State ineligible for power from the unallocated quota, etc.

12. Power of State Government to make rules.-

(1) The State Government shall, by notification, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(i) the form of the State Electricity Distribution Management Statement referred to in section 3;

(ii) such other measures for long term planning as may be required under section 4; and

(iii) any other matter which is required to be, or may be, prescribed.

13. Rules to be laid before State Legislature.-

Every rule made by the State Government shall be laid, as soon as may be after it is made, before the State Legislature.

14. Protection of action taken in good faith.-

No suit, prosecution or other legal proceeding shall lie against the State Government or State Distribution Licensee or any officer of the State Government or State Distribution Licensee, for anything which is in good faith done or intended to be done under this Act.

15. Application of other laws not barred.-

The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

16. Power to remove difficulties.-

(1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of three months from the date of coming into force of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before the State Legislative Assembly.

17. Act not to apply in certain cases.-

(1) Nothing in this Act shall apply to any Distribution Licensee that is not owned or controlled by the State Government or to a successor entity of the State Distribution Licensee that is not owned or controlled by the State Government.

(2) Notwithstanding sub-section (1), all directives issued by the State Government under this Act shall continue to apply for the period for which such directions were issued by the State Government.

SCHEDULE

(Sections 2(1)(l) and 3)

Illustrative Key Performance Indicators (KPIs)

The State Electricity Distribution Management Statement as provided in section 3 of this Act shall include but not limited to, the Key Performance Indicators in the following areas:-

I. Planning:

(a) power Procurement with accurate Demand Estimation to mitigate Energy and Peak Shortages on long-term, medium-term and short-term basis-undertake forecasting of demand and estimation of Aggregate Technical and Commercial losses within one year, procurement of power as per forecast from second year

onwards and 100% electricity supply to consumers in next three to five years;

(b) payment of dues of electricity by Government Departments and Institutions.- the current dues have to be paid within due date of raising of bills;

(c) distribution loss reduction trajectory.- Aggregate Technical and Commercial losses to be reduced @3% per year for losses above 30% and @ 1.5% per year for losses below 30%;

(d) provisioning of subsidy.- it should be provided upfront by the Government by way of budgetary provision;

(e) energy accounting and energy auditing of all 33 kV feeders, 11 kV feeders and distribution transformers.- to be achieved within one and two years;

(f) 100% Metering and Consumer Indexing.- to be achieved within three years;

(g) setting up Special Courts for settling theft cases.- to be set up within one year, if not already set up.

II. Financial Restructuring:

(a) improvement in collection efficiency.- to be increased @ 1.5% per year if it is between 95 to 99%, @ 3% per year if it is between 90 to 95% and @ 5% per year if it is between 80 to 90%;

(b) recovery of past receivables.- past receivables to be reduced @ 20% per year till the normative level allowed by the Commission in the working capital computation;

(c) liquidation of payables and other liabilities.- 20% reduction every year till normative levels are achieved;

(d) Capital Expenditure alongwith its funding plan.- to get timely approved every year as per the norms specified by the Commission;

(e) quantum and rate of short term power purchase.- not more than 10 to 15% every year;

(f) discharge of Contingent liabilities.- 20% every year; and

(g) discharge of terminal benefit liabilities of the employees.-within one year for the past employees and for currently retiring - on the date of retirement;

III Accounting Measures :

(a) timely preparation and audit of Annual Accounts (Annual Accounts to be prepared within due date of 30th September and realigned with the current accounting standards); and

(b) provision for bad and doubtful debts/write offs;

IV Corporate Governance:

(a) number of Functional Directors.- as per Guidelines for Corporate Governance for Central Public Sector Undertakings; and

(b) number of Independent Directors.- as per Guidelines for Corporate Governance for Central Public Sector Undertakings;

V Regulatory Measures,-

(a) gap between Average Revenue Realization and Average Cost of Supply.- to be eliminated in a period of three to five years; and

(b) liquidation of Regulatory Assets.- to be liquidated in a period of three to five years.