

RAJASTHAN POWER SECTOR REFORMS ACT, 1999

23 of 1999

[28th December, 1999]

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RAJASTHAN POWER SECTOR REFORMS ACT, 1999

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CHAPTER 1 PRELIMINARY

1. Short title, extent and commencement :-

This Act may be called the Rajasthan Power Sector Reforms Act, 1999. It shall extend to the whole of the State of Rajasthan. It shall come into force on such date as the State Government may, by notification, appoint.

2. Definitions :-

In this Act, unless the context otherwise requires, - "Area of supply" means the area within which a supply licensee or any other person is for the time being authorized to distribute and supply energy "Area of transmission" means the area within which a holder of a transmission licence or any other person is for the time being authorized to transmit energy "Board" means the Rajasthan State Electricity Board constituted under section 5 of the Electricity (Supply) Act, 1948(Central Act 54 of 1948) "Central Act" means the Electricity Regulatory Commission Act, 1998 (Central Act No.14

of 1998) "Central Commission" means the Central Electricity Regulatory Commission, established under sub-section (1) of section 3 of the Electricity Regulatory Commission act, 1998 (Central Act No. 14 of 1998) "Commission" means the Rajasthan Electricity Regulatory Commission constituted under section 3 of this Act "Corporation" means the Rajasthan Rajya Vidyut Prasaran Nigam Ltd. as constituted in terms of section 13 of this Act "Distribution Company" means a Company registered under the Companies Act, 1956 (Central Act No. 1 of 1956) and which has among its objects the distribution and supply of electricity "Generating Company" means a Company registered under the Companies Act, 1956 (Central Act No. 1 of 1956) and which has among its objects the establishment, operation and maintenance of generating stations "High Court" means the High Court of Judicature for the State of Rajasthan "Licence" means a licence granted under section 18 of this Act "Licensee" or "licence holder" means a person licensed under this Act to transmit, distribute or supply energy "Local authority" means a Municipal Corporation, a Municipal Council, a Municipal Board, a Zila Parishad and a Panchayat Samiti in the State "Member" means the member of the Commission and shall include the Chairperson "Regulations" means the regulations made by the Commission under this Act "Rules" means rules made by the State Government under this Act "Selection committee" means the selection committee constituted under section 4 of this Act "Supply licence" means a licence granted under clause (b) of sub-section (1) of section 18 of this Act "Transmission licence" means a licence granted under clause (a) of sub-section (1) of section 18 of this Act "Transmit" in relation to electricity, means the transportation or transmission of electricity by means of a system operated or controlled by a licensee which consists, wholly or mainly, of extra high voltage and extra high tension lines and electrical plant and which is used for transferring and for conveying and/or transmitting electricity from a generating station to a sub-station, from one generating station to another or from one sub-station to another or from one place to another. "Utility" means any person or entity engaged in the generation, transmission, sale, distribution or supply, as the case may be, of energy Words and expressions used but not defined in this Act and defined in the Electricity (Supply) Act, 1948 (Central Act No. 54 of 1948) shall have the meanings respectively assigned to them in that Act; and Words and expressions used but not defined either in this Act or in the Electricity (Supply) Act, 1948 (Central Act No. 54

of 1948) and defined in the Indian Electricity Act, 1910 (Central Act No. 9 of 1910) have the meanings respectively assigned to them in that Act The Rajasthan Electricity Regulatory Commission

CHAPTER 2

THE RAJASTHAN ELECTRICITY REGULATORY COMMISSION

3. Establishment and constitution of the Commission :-

(1) The State Government shall within three months of coming into force of this Act, establish by notification a Commission to be known as the Rajasthan Electricity Regulatory Commission: Provided that Commission constituted by the State Government in terms of sub-section (1) of section 17 of the Electricity Regulatory Commission Act, 1998 (Central Act No. 14 of 1998) and existing on the date of the commencement of this Act shall be the first Commission for the purpose of this Act. (2) The Commission shall be a body corporate by the name aforesaid, having perpetual succession and common seal, with power to acquire, hold and dispose of property both movable and immovable, and to contract and shall, by the said name, sue or be sued. (3) The Commission shall consist of three Members including the Chairperson. The State Government shall specifically designate one of the three members as Chairperson, the inter-se seniority of the other two members shall be such as may be indicated in the orders of appointment. (4) The Chairperson and the Members of the Commission shall be appointed by the State Government on the recommendation of a selection committee referred to in section 4. (5) The Chairperson shall be the Chief Executive of the Commission.

4. Constitution of the selection committee to select Members :-

(1) The State Government shall for the purposes of selecting the Members of the Commission, constitute a selection committee, consisting of,-

- A person who is or has been a Judge of the High Court as recommended by the Chief Justice of the High Court- Chairperson;
- Chief Secretary to the Government of Rajasthan – Member
- Chairperson or Member of the Central Electricity Regulatory Commission as recommended by the Chairperson – Member:

Provided that the selection committee constituted under section 18 of the Electricity Regulatory Commissions Act, 1998 (Central Act No. 14 of 1998) and existing on the date of commencement of this Act shall be deemed to have been constituted under this Act. (2) No appointment of a Member shall be invalid merely by reason of any vacancy in the selection

committee. (3) 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 a Member, make a reference to the Selection Committee for filling up of the vacancy. (4) The selection committee shall finalise the selection of the Members, within one month from the date on which the reference is made to it. (5) The selection committee shall submit a panel of two suitable persons in alphabetical order for each vacancy referred to it. (6) Before recommending any person for appointment as a Member, the selection committee shall satisfy itself that such person does not have any financial or other interest, which is likely to affect prejudicially his functions as a Member.

5. Qualification for appointment of Chairperson and other Members of the Commission :-

(1) The Chairperson and the Members of the Commission shall be persons having adequate knowledge or have capacity in, dealing with problems relating to engineering, finance, commerce, economics, law or administration and shall be appointed in the following manner, namely:-

- One person having qualification and experience in the field of engineering with specialisation in generation, transmission or distribution of electricity;
- Two persons having qualification and experience in the field of finance, economics, commerce, law or administration: Provided that not more than one Member shall be appointed under the same category under clause (ii): Provided further that persons below the age of fifty years shall not be eligible for appointment as Chairperson or Member, as the case may be.

(2) A person shall be disqualified for being appointed as a Member of the Commission if he is a Member of Parliament or of any State Legislature or of 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 businesses related to generation, transmission, distribution or supply of electricity or manufacture, sale or supply of any fuel, machinery, plant, equipment etc. related to these activities. (3) The Chairperson or any other Member of the Commission shall not hold any other office.

6. Term of office, salaries and allowances and other conditions of service of Chairperson and Members :-

(1) The Chairperson and any other Member shall hold office for a

period of five years from the date he enters upon his office but shall not be eligible for re-appointment: Provided that no Chairperson or no other Member shall hold office as such after he has attained,-

- In the case of the Chairperson, the age of sixty five years, and
- In the case of any other Member, the age of sixty two years;

Provided further that a Member shall be eligible for appointment as Chairperson subject however that his combined tenure in the Commission as Member and Chairperson shall not exceed five years: Provided also that the first three Members shall be appointed for varying periods of three years, four years and five years respectively so as to avoid the retirement of all the members at the same time and ensure continuity in the functioning of the Commission: (2) The salary and allowances payable to, and the other terms and conditions of service of, the Members of the Commission shall be such as may be prescribed by the State Government. (3) The salary, allowances and other conditions of service of the Members, shall not be varied to their disadvantage after appointment. (4) The Chairperson and every other Member shall before entering upon his office, make and subscribe to an oath of office and of secrecy in such form and in such manner and before such authority as may be prescribed. (5) Notwithstanding anything contained in sub-section (1) or sub-section (2), a Member may,-

- Relinquish his office by giving in writing to the State Government a notice of not less than three months; or
- Be removed from his office in accordance with the provisions of section 7. (6) Any Member ceasing to hold office as such shall,-
- Be ineligible for further employment under the Central Government of any State Government for a period of two years from the date he ceases to hold such office;
- Not accept any commercial employment for a period of two years from the date he ceases to hold such office; and
- Not represent any person before the Central Commission or any State Commission in any manner.

Explanation.-- For the purpose of this sub-section,- "Employment under the Central Government or under the State Government" includes employment under any local or other authority within the territory of India under the control of the Central Government or a State Government, or under any corporation or society owned or controlled by the Government "Commercial employment" means employment in any capacity under, or agency of, a person engaged in trading, commercial, industrial or financial business in the electricity industry and also includes 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.

7. Removal of Members :-

(1) Subject to the provisions of sub-section (3), any Member of the Commission shall only be removed from his office by order of the State Government on the ground of proved misbehavior after the High Court, on reference being made to it by the State Government, has on inquiry, held in accordance with the procedure prescribed in that behalf by the High Court, reported that the Member, ought on such ground to be removed. (2) The State Government may, in consultation with the Chief justice of the High Court, suspend any Member of the Commission in respect of whom a reference has been made to the High Court under sub-section (1) until the State Government has passed orders on the receipt of the report of the High Court on such reference. (3) Notwithstanding anything contained in sub-section (1), the State Government may by order remove from office any Member if he,-

- Has been adjudged as insolvent; or
- Has been convicted of an offence which, in the opinion of the State Government, involves moral turpitude; or
- Has become physically or mentally incapable of acting as a Member; or
- Has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member, or
- Has so abused his position as to render his continuance in office prejudicial to the public interest.

(4) Notwithstanding anything contained in sub-section (3), no Member shall be removed from office on the grounds specified in clause (d) or clause (e) of that sub-section unless the High Court on a reference being made to it in this behalf by the state government, has, on an inquiry held by it in accordance with such procedure as prescribed in this behalf by the High Court, reported that the Member ought on such ground or grounds to be removed.

8. Officers of the Commission and other staff :-

(1) The State Government may appoint a Secretary to exercise and perform under the control of the Chairperson such duties and powers as may be specified by regulations made by the Commission. (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. (3) The salaries and allowances payable to, and other conditions of service of the Secretary, other officers and employees shall be such as may be determined by the

Commission, by regulations with the approval of the State Government. (4) The method and manner of selection of the officers and other employees may be prescribed by the Commission by regulations with prior consultation with the State Government. (5) The Commission may appoint consultants required to assist the Commission in the discharge of its functions on the terms and conditions as may be determined by regulations by the Commission.

CHAPTER 3

FUNCTIONS, PROCEEDINGS AND POWERS OF THE COMMISSION

9. Functions, Proceedings and Powers of the Commission **Functions of the Commission :-**

(1) Subject to the provision of this Act, the Commission shall discharge the following functions, namely:- (a) to determine the tariff for electricity, wholesale, bulk, grid or retail, as the case may be, in the manner provided in section 26 of this Act; (b) to determine the tariff payable for the use of the transmission facilities in the manner provided in section 26 of this Act; (c) to issue licences for transmission, bulk supply, distribution or supply of electricity and determine the conditions to be included in the licences; (d) to regulate the working of the licensees and other persons authorised or permitted to engage in the electricity industry in the State and to promote their working in an efficient, economical and equitable manner; (e) 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 and supply in the State; (f) to regulate the investment approval for transmission, distribution and supply of electricity to the entities operating within the State; (g) to aid and advise the State Government, in matters concerning electricity generation, transmission, distribution and supply in the State; (h) to regulate the operation of the power system within the State; (i) to require licensees to formulate perspective plans and schemes in co-ordination with others for the promotion of generation, transmission, distribution, supply and utilisation of electricity, quality of service and to devise 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, efficiency and economy and make avenues for

participation of private sector in the electricity industry in the State, and also to ensure a fair deal to the customers; (l) to lay down and enforce safety standards; (m) to aid and advise the State Government in the formulation of the State Power Policy; (n) to collect and record information concerning the generation, transmission, distribution and 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 concerning or related to the electricity industry in the State including the conditions governing entry into, and exit from, the electricity industry in such manner as to safeguard the public interest; (q) to adjudicate upon the disputes and differences between the licensees and utilities and to refer the matter for arbitration; (r) to co-ordinate with environmental regulatory agencies and evolve policies and procedures for appropriate environmental regulation of the electricity sector and utilities in the State; (s) to aid and advise the State Government on any other matter referred to the Commission by such Government; (t) to lay down uniform system of accounts among the licensees; and (u) to regulate the intra-state transmission of energy. (2) The Commission shall exercise its functions in conformity with the national power plan

10. Head Quarters and proceedings of the Commission :-

(1) The headquarters of the Commission shall be at Jaipur. The Commission shall meet at the headquarter or any other place in the State at such time as the Chairperson may direct and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meeting) as may be determined by regulations. (2) The Chairperson or, if he is unable to attend a meeting of the Commission, any other Member nominated by the Chairperson in this behalf and, in the absence of such nomination or where there is no Chairperson, any Member chosen by the Members present from among themselves, shall preside at the meeting. (3) All questions which come up before any meeting of the Commission shall be decided by a majority of votes of the Members present and voting, and in the event of and equality of votes, the Chairperson or the person presiding shall have the rights to exercise a second or casting vote. (4) Save as otherwise provided in sub-section (3), every Member shall have one vote. (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 Chairperson in this behalf.

11. Powers of the Commission :-

(1) The Commission shall, for the purpose 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 (Central Act No. 5 of 1908), in respect of following matters, namely:- (a) the summoning and enforcing of 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; (e) the issue of commission for examination of witnesses; (f) review of its decisions, directions and orders; and (g) any other matter which may be prescribed. (2) The Commission shall have the powers to pass such interim order in any proceeding, hearing or matter before the Commission as the Commission may consider appropriate.

CHAPTER 4

POWERS OF THE STATE GOVERNMENT

12. Powers of the STATE Government General powers of the State Government :-

(1) In the discharge of its function, the Commission shall be guided by such directions in the matter of policy involving public interest as the State Government may give to it in writing. (2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, it shall be referred to the Central Commission whose decision thereon shall be final and binding. (3) The State Government shall consult the Commission in relation to any proposed legislation or rules concerning any policy direction and shall duly take into account the recommendation, if any, made by the Commission on all such matters. Re-Organisation of Electricity Industry

CHAPTER 5

RE-ORGANISATION OF ELECTRICITY INDUSTRY

13. Constitution and functions of the Corporation :-

(1) Within sixty days of coming into force of this Act, the State Government shall establish Rajasthan Rajya Vidyut Prasaran Nigam Ltd. under the provisions of the Companies Act, 1956 (Central Act No. 1 of 1956), with the principal objects of engaging in the business of procurement, transmission, distribution and supply of electric energy. (2) The Corporation established by the State

Government in terms of sub-section (1) shall be the principal company to undertake all planning and co-ordination in regard to transmission; undertaking the works connected with transmission, determining the electricity requirements in the State in co-ordination with the Generating companies, State Government, the Commission, the Regional Electricity Boards, and the Central Electricity Authority; the operation of the power system. (3) The Corporation shall undertake the functions specified in this section and such other functions as may be assigned to it by the licence to be granted to it by the Commission under this Act. (4) Upon the grant of licence to the Corporation under sub-section (4) of section 17 or sub-section (1) of section 18 of this Act, it shall exercise such powers and perform such duties and functions of the Board including those under the Indian Electricity Act, 1910 (Central Act No. 9 of 1910) and the Electricity (Supply) Act, 1948 (Central Act No. 54 of 1948) or the rules framed thereunder as the Commission may specify in the licence and it shall be the statutory obligation of the Corporation to undertake and duly discharge the powers, duties and functions so assigned. (5) Subject to the provisions of sub-sections (1) and (2) and to the overall supervision and control of the Corporation a number of subsidiary or associated transmission companies may be established in the State and the Commission may grant licences under the terms of this Act to such transmission companies, in consultation with the Corporation.

14. Reorganisation of Rajasthan State Electricity Board :-

(1) With effect from the date on which a transfer scheme prepared by the State Government to give effect to the objects and purposes of this Act is published or such further date as may be specified by the State Government (hereinafter in this part 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 re-vested by the State Government in the Corporation and generating company or companies or distribution company or companies, in accordance with the transfer scheme so published along with such other property, interest in property, rights and liabilities of State Government as may be specified in such scheme, on such terms and conditions as may be agreed between the State Government

and the Corporation or generating company or companies or distribution company or companies, as the case may be. Explanation - For the purposes of this part generating company or companies, shall mean the company or companies to be incorporated to implement the reorganisation of the Electricity Industry in the State and distribution company or companies shall mean the or distribution company or companies to be incorporated to implement the reorganisation of the Electricity Industry in the State. (3) Such of the rights and powers exercisable by the Board under the Electricity (Supply) Act, 1948 (Central Act No. 54 of 1948) as the State Government may, by notification specify, shall be exercisable by the Corporation or generating company or companies, or distribution company or companies, as the case may be, for the purpose of discharging the functions and duties with which it is charged. (4) Notwithstanding any thing in this section, where,-

- The transfer scheme involves the transfer of any property or rights to any person or undertaking not wholly owned by the State Government, the scheme shall give effect to the transfer only for fair value to be paid by the transferee to the State Government;
- A transaction of any description is effected in pursuance of a transfer scheme, it shall be binding on all persons including third parties and even if such persons or third parties have not consented to it.

(5) The State Government may, after consulting the Corporation (the "transferor licensee") or generating company or companies, or distribution company or companies, as the case may be, require them to draw up a transfer scheme to vest in a further licensee (the "transferee licensee") or any generating companies, or distribution company or companies, any of the functions including distribution function, property, interest in property, rights and liabilities which have been vested in the transferor licensee or generating companies, or distribution company or companies, as the case may be under this section and publish the same as Statutory Transfer Scheme under this Act. The Transfer Scheme to be notified under this sub-section shall have the same effect as the Transfer Scheme under sub-section (2). (6) A transfer scheme may,-

- (a) Provide for the formation of subsidiaries, joint venture companies or other schemes of division, amalgamation, merger, reconstruction or arrangements;
- (b) Define the property, interest in property, rights and liabilities to be allocated,-

- By specifying or describing the property, rights and liabilities in question;
- By referring to all the property, interest in property, rights and liabilities comprised in a specified part of the

transferor's undertaking; or • Partly in one way and partly in the other; (c) Provide that any rights or liabilities specified or described in the scheme shall be enforceable by or against the transferor or the transferee; (d) Impose on the licensee an obligation to enter into such written agreements with or execute such other instruments in favour of, any other subsequent licensee as may be specified in the scheme; (e) Make such supplemental, incidental and consequential provisions as the transferor licensee considers appropriate including provision specifying the order in which any transfer or transaction is to be regarded as taking effect; and (f) Provide that the transfer shall be provisional for a specified period. (7) All debts and obligations incurred, all contracts entered into and all matters and things engaged to be done by the board, with the Board or for the Board, or the Corporation or generating company or companies or distribution company or companies, before a transfer scheme becomes effective shall, to the extent specified in the relevant transfer scheme, be deemed to have been incurred, entered into or done by the Board, with the Board or for the State government or the transferee and all suits or other legal proceedings instituted by or against the Board or transferor, as the case may be, may be continued or instituted by or against the State government or concerned transferee, as the case may be. (8) In the event that a licensee is required to vest any part of its undertaking in another licensee pursuant to sub-section (5), the commission shall amend the transferee's licence in accordance with section 22 or revoke its licence in accordance with section 21. (9) The Board shall cease to be charged with, and shall not perform, the functions and duties specified in sub-section (3) with regard to transfers made on and after the effective date. (10) The exercise by a licensee of any of the rights of the Board and powers may be made on such conditions as may be specified in the transfer scheme including a condition that they shall be exercised by the licensee only with the approval of the Commission.

15. Provisions relating to Personnel :-

(1) The State Government may by a transfer scheme provide for the transfer of the personnel to Corporation, generating company or companies, distribution or other companies hereinafter referred to as the transferee company or companies; on the vesting of properties, rights and liabilities in such transferee companies as provided under section 14. (2) Upon such transfer under a transfer scheme, the personnel, shall hold office or service under the

transferee company on terms and conditions as 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. Provided further that the transfer can be provisional for a specified period. Explanation .-- For the purposes 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.

16. Payment of Compensation or damages on transfer :-

Notwithstanding anything in the Industrial Disputes Act, 1947 (Central Act No 14 of 1947) or any other law for the time being in force and except for the provisions made in this act, the transfer of the employment of the personnel referred to in sub-section (1) of section 15 shall not entitle such personnel to any compensation or any damages under this Act, or any other Central or State law or under the general law, save as provided in the transfer scheme.

CHAPTER 6

LICENSING OF TRANSMISSION, DISTRIBUTION AND SUPPLY

17. Licensing :-

(1) No person, other than those authorised to do so by licence or by virtue of exemption under this Act or authorised to or exempted by any other authority under the Electricity (Supply) Act, 1948 (Central Act No. 54 of 1948), shall engage in the State in the business of,- • Transmitting electricity; or • Distributing and supplying electricity. (2) Where any question arises as to whether any person is engaged or about to engage in the business of transmitting, distributing or supplying electricity as specified in subsection (1), the matter shall be referred to the Commission and the decision of the Commission shall be final. (3) The Commission shall order any unlicensed person to discontinue transmission, distribution or supply, as the case may be, of electricity. (4) Notwithstanding anything contained in any other provisions of this Act and until the establishment of the Commission in terms of section 3, the State Government shall 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 of transmission, distribution and supply of electricity on such terms and conditions as the State Government may determine consistent with the provisions of this Act, subject to the following conditions, namely:- • Upon the establishment of the

Commission, each of the provisional licences granted by the State Government 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 • Each provisional licence granted under this section shall cease to be valid from the date notified by the Commission. (5) The State Government shall be empowered to confer on the provisional licensees to whom licences have been granted under sub-section (4) such powers, rights and authorisation as the Commission is entitled to grant to the licensees under this Act. (6) The Commission shall exercise all powers and functions under the Act in regard to any provisional licence granted under sub-section (4) in the same manner as in the case of a licence under Section 18 of this Act.

18. Grant of licences by the Commission :-

(1) The Commission may, on an application made in prescribed form and on payment of the prescribed fee, grant a licence to any person to,- • Transmit electricity in a specified area of transmission; or • Distribute and supply electricity in a specified area of supply including bulk supply to licensees or any person. (2) In respect of every such licence and the grant thereof the following procedure shall have effect, namely:- (a) Any person applying for a licence under this Part shall publish a notice of his application in prescribed manner, and with prescribed particulars and the licence shall not be granted,- (i) until all objections received by the Commission with reference thereto have been considered by it: Provided that no objection shall be so considered unless it is received before the expiration of one month from the date of the first publication of such notice as aforesaid; and (ii) until, in the case of an application for a licence for an area including the whole or any part of any cantonment, aerodrome, fortress, arsenal, or camp or of any building or place in the occupation of the Central Government for defence purposes, the Commission has ascertained that there is no objection to the grant of the licence on the part of the Central Government; (B) 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 reason for such opinion; (C) no application for a licence under this Part shall be made by any local authority except in pursuance of a resolution passed at a meeting of such authority held after notice of the same and of the purpose thereof has been given in the manner in which notices of meeting of such local

authority are usually given; (D) a licence under this Part,- (i) may prescribe such terms as to the limits within which, and the conditions under which, the supply of energy is to be compulsorily or permissible, and generally as to such matters as the Commission may think fit; and (ii) save in cases in which under section 10, clause (b) of the Indian Electricity Act, 1910 (Central Act No. 9 of 1910), the provisions of section 5 and 6, or either of them, have been declared not to apply, every such licence shall declare whether any generating station to be used in connection with the undertaking shall or shall not form part of the undertaking for the purpose of purchase under section 5 or 6 of Indian Electricity Act, 1910 (Central Act No. 9 of 1910); (E) the grant of a licence under this part for any purpose shall not in any way hinder or restrict the grant of a licence to another person within the same area for like purpose. (F) the provisions contained in the Schedule to the Indian Electricity Act, 1910 (Central Act No. 9 of 1910) shall be deemed to be incorporated with, and to form part of, every licence granted under this Part, save in so far as they are expressly added to, varied or excepted by the licence, and shall, subject to any such additions, variations or exception which the State Government is hereby empowered to make, apply to the undertaking authorised by the licence: Provided that where a licence is granted in accordance with the provisions of Clause IX of the Schedule for the supply of energy to other licensees for distribution by them, then so far as such licence relates to such supply, the provisions of Clauses IV, V, VI, VII, VIII and XII of the Schedule shall not be deemed to be incorporated with the licence.

19. Exemptions from the requirement to have a licence :-

(1) The Commission may by order grant exemption from the requirement to have a supply licence, but subject to compliance with such conditions if any, as may be specified in the order: Provided that the Commission shall not, under any such regulation, grant any exemption except with the consent,-

- Of the local authority, if any, constituted in the area where energy is to be supplied;
- In any case where energy is to be supplied in any area forming part of any cantonment, aerodrome, fortress, arsenal, or camp or any building or place in the occupation of the Central Government for defence purposes, of the Central Government;
- In any area falling within the area of supply of a licensee, of that licensee: Provided further that, except in a case falling under 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 persons of a particular category;
- or
- To a particular person; or
- For a particular period; and an exemption to persons of a particular category or to a particular person 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 and 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) An exemption, unless previously revoked, shall continue in force for such period as may be specified in or determined by or under the exemption. (5) Every exemption granted by the Commission under this Act shall be published in the Official Gazette.

20. General Duties and Powers of the licensees :-

(1) It shall be the duty of the holder of a supply licence or a transmission licence in respect of a particular area to develop, maintain and provide to the consumers or the licensees as the case may be or any other person an efficient, co-ordinated and economical system of electricity supply, distribution or transmission in the area of transmission or area of supply, 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 power system and electric supply lines. (3) Subject to sub-section (4), sections 12 to 19 of the Indian Electricity Act, 1910(Central Act No. 9 of 1910)(which relate to the carrying out of works) shall have effect in relation to a person authorised by a licence under this Act to transmit or supply electricity as if he is a licensee under that Act. (4) Where any of the sections mentioned in sub-section (3) is applied to a licence holder by his licence, it shall have effect subject to such restrictions, exceptions and conditions as may be included in the licence.

21. Revocation of licences :-

(1) 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 willful or unreasonably prolonged default in doing anything required of him by or under this Act, or under any regulation or orders of the Commission;
- (b) Where the licensee breaks any of the terms or condition 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 fixed in this behalf by his licence or any longer period which the Commission may substitute thereof by order,-

- To show, to the satisfaction of the Commission that he is in a position to fully and efficiently discharge the duties and obligations imposed on him by his licence; or
- To make the deposit or furnish the security required by his licence;

(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. (e) Where a licensee, in the opinion of the Commission, has made default in complying with any direction issued under Section 22-A of Indian Electricity Act, 1910 (Central Act No. 9 of 1910). (2) Where in its opinion of the Commission the public interest so permits, the Commission may, on the application or with the consent of the licensee and after consulting the State Electricity Board or Corporation as the case may be, and the Central Government where the Government is interested, and if the licensee is not a local authority, after consulting the local authority concerned, if any, revoke a licence as to the whole or any part of the area of supply upon such terms and conditions as it thinks fit. (4) No licence shall be revoked under sub-section (1) 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 any cause shown by the licensee within the period of that notice, against the proposed revocation. (4) Where the Commission might under sub-section (1) revoke licence it may instead of revoking the licence, permit it to remain in force subject to such further terms and conditions as it thinks fit to impose and any further terms or conditions so 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.

22. Amendment of licences :-

(1) Where in its opinion the public interest so permit, the Commission, on the application of the licensee or otherwise, and after consulting the local authority; on the application of the local authority concerned, may make such alternations and amendments to the terms and conditions of a licence, including the provisions specified in clause (f) of sub-section (2) of section 18, as it thinks fit: Provided that no such alterations or amendments, shall be made except with the consent of the licensee unless such consent has, in the opinion of the Commission, been unreasonably withheld.

(2) Where the licensee has made an application under sub-section (1) seeking any alterations or amendments in his licence, the following provisions shall have effect, namely:- (a) the licensee shall publish a notice of the application in the prescribed manner and prescribed particulars; (b) the Commission shall not make any alterations or amendments until all objections received by it with reference to the application within one month from the date of the first publication of the notice have been considered; (c) in the case of an application seeking alterations or amendments in an area of supply comprising the whole or any part of the cantonment, aerodrome, fortress, arsenal, 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 in the prescribed manner and with prescribed particulars and consider all objections received by it with reference to the proposed alterations or amendments within one month from the date of the first publication of the notice; and where alterations or amendments have been proposed in an area of supply or transmission such as is referred to in clause © of sub-section (2), the Commission shall not make any alterations or amendments except with the consent of the Central Government.

23. Provisions where licence of a licensee is revoked :-

(1) Where the Commission revokes, under sub-section (1) of section 21, the licence of a licensee, the following provisions shall have effect:-

- The Commission shall serve a notice of revocation upon the licensee and shall fix a date on which the revocation shall take effect; and on and from the earlier date, on which the undertaking of the licensee is sold to a purchaser in pursuance of any of the succeeding clauses or is delivered to a designated purchaser in pursuance of sub-section (3), all the powers and liabilities of the licensee under this Act shall absolutely cease and determine;
- The Commission shall invite applications for acquiring the undertaking of the licensee whose licence has been revoked and determine terms and conditions of the sale of the undertaking;
- 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 and such person is referred to in this section as the "purchaser";

and • The Commission may make such interim arrangement in regard to the undertaking of the licensee for maintaining the electricity transmission, distribution 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 the licensee the purchase price of the undertaking determined by the Commission in accordance with the provisions of sub-sections (1) and (2) of section 7-A of Indian Electricity Act, 1910 (Central Act No. 9 of 1910) or as the case may be, sub-section (3) of that section. (3) Where the Commission issues any notice under sub-section (1) requiring the licensee 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 determination and payment of the purchase price of the undertaking: Provided that in any such case, the purchaser shall pay to the licensee interest at the Reserve Bank rate ruling at the time of delivery of the undertaking plus one per centum, on the purchase price of the undertaking for the period from the date of delivery of the undertaking to the date of payment of the purchase price. (4) Where before the date fixed in the notice issued under clause (a) of sub-section (1) being the date on which the revocation of the licence shall take effect, no notice has been issued to the licensee requiring him to sell the undertaking or where for any reason no sale of the undertaking has been effected under that sub-section, the State Government shall acquire the undertaking on the date of revocation of the licence and shall pay to the licensee an amount determined in accordance with sub-section (1) and (2) of section 7-A of the Indian Electricity Act, 1910 (Central Act No. 9 of 1910), as applicable in the State and shall perform all the obligations of the licensee until such time as the State Government is able to sell the undertaking to a new licensee which it shall endeavour to do expeditiously without undue delay.

24. Licensee not to purchase, or associate himself with, other licensed undertakings :-

(1) The licensee shall not, 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, distributing or supplying energy is concerned with, any person generating,

transmitting, distributing, supplying or intending to generate, transmit distribute or supply energy under any other licence: Provided that before granting the consent the Commission shall hear such person or authority as the Commission shall consider appropriate. Provided further that nothing in this sub-section shall be construed to require the consent of the Commission for the supply of energy by one licensee to another in accordance with the provisions of clause IX of the Schedule to the Indian Electricity Act, 1910 (Central Act No. 9 of 1910). (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 agreement relating to any transaction of the nature described in sub-section (1) or sub-section (2), unless made with or subject to such consent as aforesaid, shall be void.

25. Annual accounts of licensee :-

(1) Every licensee shall, unless expressly exempted from the liability by his licence, or by order in writing of the Commission, prepare and render to the Commission or to such authority as the Commission may appoint in this behalf, on or before the prescribed date in each year, an annual statement of accounts of his undertaking made up to such date, in such form and containing such particulars, as may be prescribed in this behalf. (2) The licensee shall keep copies of such annual statement at his office and sell the same to any applicant.

CHAPTER 7 **TARIFF**

26. Determination of tariff by the Commission :-

(1) Notwithstanding anything contained in any other law for the time being in force the tariff for intra-State transmission of electricity and the tariff for distribution and supply of electricity, grid, wholesale, bulk or retail, as the case may be (herein after referred to as the tariff), shall be subject to the provisions of this Act and the tariff shall be determined by the Commission in accordance with the provisions of this Act. (2) The Commission shall determine by regulations the terms and conditions for the fixation of tariff, and in doing so, shall be guided by the following, namely:-

- The principles and their applications provided in sections 46, 57 and 57-A of the Electricity (Supply) Act, 1948 (Central Act No. 54 of 1948) and the Sixth Schedule thereto;
- In the case of the Board or its successor entities, the principles under section 59 of

the Electricity (Supply) Act, 1948 (Central Act No. 54 of 1948); • That the tariff progressively reflects the cost of supply of electricity at an adequate and improving level of efficiency. • The factors which would encourage efficiency, economical use of the resources, good performance, optimum investments, and other matters which the Commission considers appropriate for the purpose of this Act; • The interests of the consumers are safeguarded and at the same time, the consumers pay for the use of electricity in a reasonable manner based on the average cost of supply of energy; • The electricity generation, transmission, distribution and supply are conducted on commercial principles; and • National power plans formulated by the Central Government. (3) Where the Commission departs from any factors specified in clauses (a) to (f) of subsection (2), it shall record the reason for such departure in writing. (4) The Commission, while determining the tariff under this Act, shall not show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, total consumption of energy during any specific period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required. (5) The holder of each licence and other persons including the Board or its successor body authorised to transmit, sell, distribute or supply electricity wholesale, bulk or retail, in the State shall observe the methodologies and procedures specified by the Commission from time to time in calculating the expected revenue from charges which he is permitted to recover. (6) Where the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the Commission under this section, the State Government shall pay the amount of subsidy to compensate the person affected by the grant of subsidy, in the manner the Commission may direct, as a condition for the licence or any other person concerned to implement the direction with regard to subsidy provided for by the State Government. (7) The Commission shall also endeavour to fix tariff in such a manner that, as far as possible, similarly placed consumers in different areas pay similar tariff. (8) No tariff or part of any tariff, may be amended more frequently than once in any financial year, ordinarily except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be prescribed by regulations. (9) Notwithstanding anything contained in sections 57-A and 57-B of the Electricity (supply) Act, 1948 (Central Act No. 54 of 1948), no rating Committee shall be

constituted after the date of commencement of this Act and the Commission shall ensure 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.

27. Finances of licensees :-

(1) The State Government may from time to time make subventions to any licensee 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 partly owned by the State Government on such terms and conditions, not inconsistent with the provisions of this Act or the Electricity(supply) Act, 1948 (Central Act No. 54 of 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 partly owned by the State Government, or for the discharge of any other financial obligation of any such licensee or generating company. (4) The State Government shall have power to inspect and verify the accounts of every licensee or Generating Company obtaining the benefits under sub-sections (1) (2) or (3)

CHAPTER 8

POWER OF THE COMMISSION TO PASS ORDERS AND ENFORCE DECISIONS

28. Interim Orders for securing compliance :-

(1) Where the Commission is satisfied that a licensee is contravening or is likely to contravene any condition of his licence, it shall by final order under section 29 and if it thinks it appropriate, in accordance with sub-section (2) by interim order, 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,-

- The extent to which the contravention or likely contravention by the licensee will affect the achievement of the objects and purposes of this Act.;
- The extent to which any person is likely to sustain loss or damage in consequence of anything which is likely to be done, or omitted to be done, before a final order can be made; and
- The extent to which having regard to the following provisions of this

section herein after made there is any other remedy available in respect of the alleged contravention of a relevant condition of license. (3) Where 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,-

- The relevant conditions or requirements which the proposed order is intended to secure compliance,
- The acts or omissions which in its opinion constitute contravention of any condition or requirement,
- Other facts which in its opinion, justify the making of the proposed order, and
- The effects of the proposed order;

(c) specifying the period (being not less than 5 days from the date of receipt of notice) within which the licensee may make representations or objections to the proposed order. (4) Subject to the provisions contained in sub-section (5) and 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 sub-section (3) if,-

- 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 condition of the licence;
- 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,-

- Shall require the licensee to whom it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;
- Shall take effect from such time, being the earliest practicable time, as is determined by the order; and
- 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 the period specified in the order unless before the expiry of said period the Commission after following the procedure set out in section 29 declares the interim order to be a final order.

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

- Serve a copy of the order on the licensee to whom the order relates;
- Publish the order in such manner as it considers appropriate for the purpose of bringing it to the attention of the persons likely to be affected by it; and
- Commence proceedings to declare the interim orders to be a final order, in accordance with section 29.

29. Final orders for securing Compliance :-

(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, -

- Stating that it proposes to make the final order or to declare the interim order to be a final order;
- Setting out the information referred to in clause (b) of sub-section (3) of section 28 in respect of the proposed final order; and
- Specifying the period (being not less than 60 days from the date of publication of the notice) within which representations or objections to the proposed order may be made; and shall consider any representations or objections that are duly made and not withdrawn. The Commission shall publish notice of such representations or objections and specify a period (being not less than 30 days from the date of publication of the notice) within which further representations or objections may be made.

(2) A notice under sub-section (1) shall be given,-

- 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
- By serving a copy of the notice and a copy of the proposed final order on the licensee to whom the order relates.

(3) 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 sub-section (1), except,-

- With the consent to the modification of the licensee to whom the proposed final order relates; and
- After complying with the requirements of sub-section (4).

(4) The requirements mentioned in sub-section (3) are that the Commission shall,-

- Serve on the licensee to whom the proposed final order relates such notice as appears to the Commission requisite of its proposal to modify the proposed final order, together with details of such modifications;
- In that notice specify the period (being not less than 30 days from the date of the service of the notice) within which representations or objections to the proposed modifications can be made; and
- Consider any representations or objections, which are duly made and not withdrawn within 10 days of the receipt thereof.

(5) The provisions of clauses (a) and (b) of sub-section (6) of section 28 shall apply to final orders. (6) 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. (7) The Commission may revoke a final order at any time, but before revoking a final order the Commission shall give notice,-

- Stating that it proposes

to revoke the order and setting out its effect; and • Specifying the period (being not less than 30 days from the date of delivery 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 10 days of the receipt thereof. (8) If, after giving a notice under sub-section (7), 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. (9) A notice under sub-section (7) or sub-section (8) shall be given in accordance with the procedure set out in clauses (a) and (b) of sub-section (7) of section 28.

30. Effect and enforcement of Interim and Final Orders and emergency provision :-

(1) Without prejudice to section 49 of this Act, all orders and directions, interim or final, passed by the Commission shall be enforceable in law as if it were a decree passed by a Civil Court. (2) The Commission may take such assistance of the police and other authorities in the State as may be required to effectively enforce the orders and directions given by it. (3) The Commission may give orders or directions for vesting of the management and control of any undertaking of the licensee with the assets, interests and rights of the undertaking with any other person or authority pending any inquiry and passing of interim or final orders in the matter, if the Commission considers, taking into account the objects and purposes of this Act and the need to maintain continued supply of electricity in an efficient and safe manner to the consumer, if necessary and expedient to pass such orders or give such directions. Such directions or orders shall not be questioned on the ground that no prior notice of or hearing on the intention to pass the order or direction was given to the licensee . The Commission shall however give opportunity to the licensee and hear the licensee before passing further orders in terms of sections 28 and 29 of this Act.

31. Fines and Charges :-

(1) The Commission shall have power 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 or the directions given or orders passed by the Commission from time to time and such fines or charges may

extend to rupees five lakhs for an act of non-compliance or violation and in the event of continuance of such acts of violations or non compliance by the generating companies, licensees or other persons, a further amount not exceeding rupees twenty thousand per day for the period during which the non-compliance or violation persists. (2) The Commission shall have power, while making an interim or final order under this Part, be entitled to direct that compensation 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 without prejudice to any other action that may be taken or initiated under any other law for the time being in force against the person committing any non compliance or violation of the provisions of this Act, rules or regulations.

CHAPTER 9

COMMISSION ADVISORY COMMITTEE AND 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. (2) The Commission Advisory Committee shall consist of not more than twenty one members to represent the interests of commerce, industry, transport, agriculture, labour, consumers, non-governmental organisations and academic and research bodies in the energy sector. (3) The Chairperson and Members of the Commission shall be the ex-officio Chairperson and Members of the Commission Advisory Committee. (4) The terms of the Members of the Commission Advisory Committee shall be for a period not more than three years and one third of the members shall retire annually: Provided that for first time one third of the Members shall be appointed for varying period of one year, two years and three years (5) The Commission Advisory Committee shall advise the Commission on, -

- Major questions of policy;
- Matters relating to quality, continuity and extent of service provided by the licensees;
- Compliance by licensees with the conditions and requirements of their licence;
- Protection of consumer interest; and
- Energy supply and overall standards of performance by utilities.

33. Consumer protection standards of performance :-

(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 such licensees are to inform consumers of their rights; (b) the standards of performance in relation to any duty arising under sub-clause (a) or otherwise in connection with the electricity supply to the consumers; and (c) the circumstances in which licensees are to be exempted from any requirements of the regulations or of this section and may make different provisions for different licensees. (2) Nothing contained in this Act shall in any way prejudice or affect the rights and privileges of the Consumers under other laws including the Consumer Protection Act, 1986 (Central Act No. 68 of 1986).

34. Electricity supply, overall performance standards :-

The Commission may, after consultation with the licensees, the Commission Advisory Committee, and with 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 publications, 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 performance :-

(1) The Commission shall from time to time collect information with respect to, - • The fines or penalties levied on licensees under this Act; • The levels of overall performance achieved by such licensees in connection with the transmission and provision of electricity supply services; and • The levels of performance achieved by such 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 the number of cases in which a penalty was levied and the aggregate amount of those penalties; and • With respect to each standard determined such information with respect to the level of performance achieved by the licensee. (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 necessary.

36. Restriction on disclosure of information :-

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

- In the opinion of the Commission is confidential; and
- Has been obtained by the Commission under or by virtue of any of the provisions of this Act; and
- Relates to the affairs of any individual or to any particular business; shall during the lifetime of that individual or for so long as that particular business continues to be carried on, 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,-

- For the purpose of facilitating the carrying out by the State Government of any of its functions under a statute;
- For the purpose of facilitating the carrying out by the Central Government of any of its duties or functions under any Central legislation;
- For the purpose of facilitating the Accountant General, Rajasthan to carryout his duties and functions under this Act;
- For the purpose of enabling or assisting any competent person to carryout functions under the enactment relating to insolvency;
- In connection with the investigation of any criminal offence or for the purpose of any criminal proceedings; or
- For the purpose of any civil proceedings brought under or by virtue of this Act or any other State or Central legislation to which the information is directly relevant.

(3) The restrictions contained in sub-section (1) do not apply to the disclosure of any information relating to public Domain.

CHAPTER 10

ARBITRATION AND APPEALS

37. Arbitration by the Commission :-

(1) Notwithstanding anything contained in the Arbitration and Conciliation Act, 1996(Central Act No. 26 of 1996), any dispute arising between licensees shall be referred to the Commission. The Commission may proceed to act as arbitrator or nominate arbitrator or 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 an award is made by the arbitrator appointed by the

Commission, it shall be filed before the Commission and the Commission may pass appropriate orders on the award including orders to,-

- Confirm and enforce the award;
- Set aside or modify the award;
- or
- Remit the award for reconsideration by the arbitrator.

(3) The award given by the Commission under sub-section (1) or 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 by the commission under sub-section (1), or an order passed by the Commission under sub-section (2) shall be enforceable as if it was a decree of the Civil Court. (5) The Commission may make such interim orders as it may consider appropriate at any time before the commencement or during the pendency or proceedings under this section.

38. Appeals from decisions of Electrical Inspectors :-

Notwithstanding anything to the contrary in the Indian Electricity Act, 1910 (Central Act No. 9 of 1910) or the Electricity (Supply) Act, 1948 (Central Act No. 54 of 1948), or any rule 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 :-

(1) Any person aggrieved by any decision or order of the Commission passed under this Act, may file an appeal to the High Court. (2) Except as provided under sub-section (1), no appeal or revision shall lie to any court from any decision or order of the Commission. (3) Every appeal under this section shall be preferred within sixty days from the date of communication of the decision or order of the Commission to the person aggrieved by the said decision or order; Provided that the High Court may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that the aggrieved person had sufficient cause for not preferring the appeal within the said period of sixty days.

CHAPTER 11

OFFENCES AND PENALTIES

40. Punishment for Non-Compliance of Orders or directions under this Act :-

Whoever fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction, or contravenes or attempts to contravene or abets the

contravention of any of the provisions of this Act or any rules or regulations made thereunder shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to rupees one lakh, or with both, in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to rupees four thousand for every day during which the failure continues after conviction for the first such offence.

41. Punishment for non-compliance of directions given by the Commission :-

In case any complaint is filed before the Commission by any person or if the Commission is satisfied that any person has contravened any directions issued by the Commission under this Act, rules or regulations made thereunder, the Commission may after giving such person an opportunity of being heard in the matter, by order in writing direct that without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty which shall not exceed rupees one lakh for each contravention and in case of a continuing contravention with an additional penalty which may extend to rupees six thousand for every day during which the contravention continues after first contravention of such direction.

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,- "Company" means a body corporate and includes a firm or other association of individuals; and "Director" in relation to a firm, means a partner in the firm.

43. Inconsistency in laws :-

Nothing contained in this Act or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect in so far as it is inconsistent with any provisions of the Consumer Protection Act, 1986 (Central Act No 68 of 1986) or the Atomic Energy Act, 1962 (Central Act No. 33 of 1962).

44. Cognizance of offences :-

No Court shall take cognizance of any offence punishable under this Act, except upon a complaint in writing; made by the Commission or by any other officer duly authorised by the Commission for this purpose.

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 taken or initiated under any other law for the time being in force including the Indian Electricity Act, 1910 (Central Act No. 9 of 1910) and the Electricity (Supply) Act, 1948 (Central Act No. 54 of 1948)

CHAPTER 12

ACCOUNTS, AUDIT AND REPORTS

46. Budget of Commission :-

The Commission shall prepare, in such form and at such time in each financial year as may be prescribed, its budget for the next financial year, showing estimated receipts and expenditure of the Commission and forward the same to the State Government.

47. Accounts and Audit of Commission :-

(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Accountant General, Rajasthan. (2) The accounts of the Commission shall be audited by the Accountant General, Rajasthan at such intervals as may be specified by the State Government and any expenditure incurred in connection with

such audit shall be payable by the Commission to the Accountant General, Rajasthan. (3) The Accountant General and any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and authority in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission for the aforesaid objective. (4) The accounts of the Commission, as certified by the Accountant General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the State Government by the Commission and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature.

48. Annual report of the Commission :-

(1) The Commission shall prepare once every year in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the State Government. (2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before the State Legislature

CHAPTER 13

MISCELLANEOUS

49. Recovery of fees, fines and charges :-

The Commission shall have the power to recover all sums due under this Act, whether by way of licence fees, fines or charges, in accordance with the provisions of the Rajasthan Public Demands, Recovery Act, 1952(Act No. 5 of 1952), as if any such sum were a public demand as defined in that Act or as arrears of land revenue under the Rajasthan Land Revenue Act, 1956(Act No. 15 of 1956) and hand over the amount due to the person or authority concerned.

50. 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.

51. No part of the fines or penalties imposed to be passed on :-

The licensee, Generating Companies and others on whom the fines,

charges, 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.

52. Protection of action taken in good faith :-

No suit, prosecution or other legal proceedings shall lie against the Government or the Commission or any officer of State Government or any Member, officer or other employees of the Commission for anything which is in good faith done or intended to be done under this Act or the rules or regulation made thereunder.

53. Bar of jurisdiction :-

Save as otherwise provided under this Act, no order or proceeding made under this Act or rules or regulations framed thereunder shall be appealable and no Civil Court including Arbitral Tribunal exercising powers under the Arbitration and Conciliation Act, 1996 (Central Act No. 26 of 1996) 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 decide or determine.

54. 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 order shall be made under this section after the expiry of two years from the date of commencement of this Act. (2) Every order made under this section shall laid, as soon as may be after it is made, before the State Legislature.

55. Proceedings before Commission :-

All proceedings before the Commission shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code, 1860 (Central Act No. 45 of 1860) and the Commission shall be deemed to be a Civil Court for the purposes of section 345 and section 346 of the Code of Criminal Procedure, 1973 (Central Act No. 2 of 1974).

56. Members and staff of Commission to be public servant :-

The Chairperson, Members, officers and other employees of the Commission shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act No. 45 of 1860).

57. Power of the Commission to make regulations :-

(1) The Commission may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder, to carry out the purposes of this Act. (2) In particular and without prejudice to the generality of the foregoing power such regulations may provide for all or any of the following matters, namely:-

- (a) the duties and powers of the Secretary of the Commission;
- (b) the salary, allowances and other conditions of service of the Secretary, other officers and employees of the Commission;
- (c) the method and manner of selection of the officers and other employees of the Commission;
- (d) the terms and conditions of consultant appointed under sub-section (5) of section 8;
- (e) the procedure in regard to transaction of business at the meetings of the Commission including the quorum at such meetings;
- (f) the terms and conditions for the operation and maintenance of power system and electric supply lines;
- (g) the manner in which charges for energy may be determined under sub-section (2) of section 26;
- (h) the fines and charges under section 31;
- (i) the circumstances in which the licensees are to inform the consumers of their rights;
- (j) the standards of performance in relation to any duty arising under clause (a) of sub-section (1) of section 33 or otherwise in connection with the electricity supply to the consumers;
- (k) the circumstances in which the licensees are to be exempted from any requirements of the regulations or of section 33; and
- (l) the practice or procedure to be followed in connection with adjudication and settlement in arbitration proceedings.

58. Power of the State Government to make rules :-

(1) The State Government may, by notification in the Official Gazette, make rules to carry out the provisions of the 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:-

- (a) the salary, allowances and other conditions of service of the Members;
- (b) the form and the manner in which and the authority before whom the oath of office and secrecy should be subscribed to the Chairperson and Members;
- (c) the form in which and the fee with which the application may be made to the Commission by any person seeking license;
- (d) the manner in which and the particulars with which the notice of application shall be published by the person applying for the license;
- (e) the manner in which and the particulars with which the notice of

application seeking any alterations or amendments in the license shall be published by the Licensee; • (f) the manner in which and the particulars with which the Commission shall publish the proposed alterations or amendments in a license; • (g) the date before which in each year, the form in which and the particulars with which the annual statement of accounts shall be prepared and rendered to the Commission by the licensee; • (h) the form in which and the time at which the commission shall prepare its budget; • (i) the form in which annual statement of accounts should be prepared by the Commission; • (j) the form in which and time at which annual report shall be furnished by the Commission to the State Government; and • (k) any other matter which is to be or may be prescribed or in respect of which provision is to be made by the rules

CHAPTER 14

EFFECT ON EXISTING CENTRAL LEGISLATION

59. Effect of the Act on the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 :-

(1) Except as provided in section 61 of this Act, the provisions of this Act, notwithstanding that the same are inconsistent with or contrary to the provisions of the Indian Electricity Act, 1910 (Central Act No. 9 of 1910) or the Electricity (Supply) Act, 1948 (Central Act No. 54 of 1948) shall prevail 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 (Central Act No. 9 of 1910) and the Electricity (Supply) Act, 1948 (Central Act No. 54 of 1948) with which 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 the Corporation: Provided that,- (a) The State Government shall have the power to issue all policy directives and undertake overall planning and co-ordination as specified in section 12 of this Act and to this extent the powers and functions of the Board as per the provisions of the Indian Electricity Act, 1910 (Central Act No. 9 of 1910) and the Electricity (Supply) Act, 1948 (Central Act No. 54 of 1948) or rules made thereunder shall vest in the State Government and the State Government shall co-ordinate 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 the regulations or in the licence as the case may be in generating company or companies, the licensees or

other body corporate as may be designated by the Commission shall discharge the functions of the Board under the Indian Electricity Act, 1910 (Central Act No. 9 of 1910) and the Electricity (Supply) Act, 1948 (Central Act No. 54 of 1948) to the extent directed by the Commission or specified in licences. (3) Subject to sub-section (1) and sub-section (2) of this section, upon the establishment of the Commission the provisions of the Indian Electricity Act, 1910 (Central Act No. 9 of 1910) and the Electricity (Supply) Act, 1948 (Central Act No. 54 of 1948) shall, in their application to this State be read subject to the following modifications and reservations

60. Provisions of Central Act how effected :-

On and from the date of commencement of this Act,- (a) The Commission, if any, constituted, under sub-section (1) of section 17 of the Central Act and deemed to be the first Commission in terms of proviso to sub-section (1) of section 3, shall exercise all powers and functions in accordance with the provisions of this Act; (b) Save as otherwise provided in clause (a), the provisions of the Central Act dealing with Commission shall have no application in the State; and (c) The provisions of the central Act, with respect to the matters for which provisions have been made in this Act, shall not apply in the State.

61. Savings :-

Notwithstanding anything contained in this Act, the powers, rights and functions of the Regional Electricity Authority, the Central Electricity Authority, the Central Government, the Central Commission and authorities other than the State Electricity Board and the State Government under the Indian Electricity Act, 1910 (Central Act No. 9 of 1910) or the Electricity (Supply) Act, 1948 (Central Act No. 51 of 1948) or rules framed thereunder shall remain unaffected and shall continue to be in force. 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 the electricity or generating companies owned or controlled by the Central Government or undertaking owned by the Central Government. All actions taken by the State Government or the Commission under the Central Act prior to the commencement of this Act shall be valid and enforceable notwithstanding the same are inconsistent with or contrary to the provisions of this Act All actions taken by a person or authority including the Board under the Indian Electricity Act, 1910 or the

Electricity (Supply) Act, 1948 prior to the commencement of this Act shall continue to be valid and enforceable notwithstanding the modifications to the said Acts made by this Act.