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BIHAR ELECTRICITY REGULATORY COMMISSION

REGULATIONS FOR GRANT OF TRADING LICENCE FOR INTRA-STATE ELECTRICITY
TRADING IN THE STATE OF BIHAR

NOTIFICATION

The 4th December 2007

Notification No. 9/2007–No.BERC-Reg.-1/2007– In exercise of the powers conferred under section 181 read with section 52 of the Electricity Act, 2003 (36 of 2003) and all other powers enabling it in that behalf, the Bihar Electricity Regulatory Commission hereby makes the following Regulations for grant of licence for intra-state trading in Electricity, the duties and responsibilities of electricity trader and other related matters:

Chapter – 1 General

1. Short title, extent and commencement

- (i) These Regulations shall be called “ **the Bihar Electricity Regulatory Commission (Licencing for Intra-State Trading in electricity) Regulations, 2007.**”
- (ii) These Regulations shall be applicable to any person engaged in intra-state trading in electricity within the territory of the State of Bihar.
- (iii) These regulations shall come into force from the date of publication in the Official Gazette of the State.

2. Definitions and interpretation:

- (i) In these Regulations, unless the context otherwise requires
 - (a) ‘**Act**’ means the Electricity Act 2003, (36 of 2003)
 - (b) ‘**Agreement**’ means agreements(s) entered into by the Electricity Trader with the seller of electricity, buyer of electricity, other licensees etc, which enables trading transactions to take place.
 - (c) ‘**Annual accounts**’ means the accounts of a trading licensee prepared in accordance with the provisions of the Companies Act, 1956 and / or in such manner as the Commission may direct in terms of provisions of the Act.
 - (d) ‘**Area of activity**’ means the area of activity specified by the Commission in the licence within which the licensee is authorized to trade.

- (e) **‘Applicant’** means a person, who has made an application for grant of licence to the Commission U/S 15 of the Act for intra–state trading in electricity.
 - (f) **‘Commission’** means the Bihar Electricity Regulatory Commission.
 - (g) **‘Customer’** means any person purchasing electricity from a trader and includes a distribution licensee, any trader and consumer.
 - (h) **‘Distribution’** means conveyance or wheeling of electricity by means of a distribution system.
 - (i) **‘Force Mejeure’** means events beyond the reasonable control of the licensee, including, but not limited to earthquakes, cyclones, floods, storms, adverse weather conditions, war, terrorist attacks, civil commotion or similar other occurrence that leads to any act that involves a breach of relevant laws or regulations related to electrical safety.
 - (j) **‘Grid Code’** means the state grid code, specified by the Commission, covering all technical aspects relating to connections to the operation of the grid, the use of transmission system or the operation of electrical lines / plant connected to the transmission system / distribution system or the system of a supplier.
 - (k) **‘Intra – State trading’** means trading in electricity within the territory of the State of Bihar by an electricity trader.
 - (l) **‘Licence’** means a licence granted by the Commission under section 14 of the Act to conduct licenced business of trading in electricity.
 - (m) **‘Other Business’** means other business(es) of a trading licensee other than the licenced business.
 - (n) **‘Person’** shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person.
 - (o) **‘Specific conditions’** means the conditions in addition to or in variation of the general conditions specified by the Commission to a trading licensee.
 - (p) **‘State’** means State of Bihar.
 - (q) **‘Trading’** means purchase of electricity for resale thereof and the expression trade shall be construed accordingly.
 - (r) **‘Trading licensee’** means the licensee to whom a licence has been granted by the Commission under section 14 of the Act for undertaking trading in electricity and includes a deemed licensee also.
- (ii) Unless the subject matter otherwise requires, the words and expressions used in these regulations and not defined in the Act, Rules and the Regulations shall have the meaning assigned to them in the Act, Rules and Regulations.
- (iii) **Words and phrases not defined in these Regulations**
 Words and phrases used in these Regulations and defined in the Electricity Act, 2003 shall have the same meaning as defined therein. Words and phrases defined neither in these Regulations nor in the Electricity Act, 2003 but defined in other Acts and laws will have the meaning as defined therein unless the context requires otherwise. Words and phrases defined neither in these Regulations nor in any Act (or Law) shall have the same meaning as used in general electrical engineering practice and electricity industry.
- (iv) **Interpretation**
 In these Regulations, the following shall be interpreted as:
- (a) Words in the singular include the plural and vice versa
 - (b) Words in the masculine gender include the feminine gender and vice versa.
 - (c) the terms “include” or “including” shall be considered as followed by “without limitation” or “but not limited to” whether they are actually followed by similar expressions or not in these Regulations.
 - (d) References to these Regulations shall be construed as references to the Regulations as amended or modified from time to time.
 - (e) The headings are inserted for convenience.
 - (f) References to various Acts, Laws, Rules, Regulations and guidelines shall be construed as including all amendments notified thereto.

3. Requirements of an Electricity Trader

- (1) Technical requirements for an Electricity Trader:
- (a) Applicant shall have the following:
- (i) experts and skilled staff with relevant qualification and experience in (1) power system, (2) finance, and commerce;
 - (ii) adequate space for office, communication facilities like telephone, fax, computer, internet facilities etc; and
 - (iii) own website to post all necessary information relating to his electricity trade
- (a) The applicant shall submit along with his application the following information to the Commission for assessment of his capabilities with regard to the resources deployed in his trade:
- (i) the number of experts, summary of their qualifications, experience and knowledge in regard to electricity industry / market, their understanding of the operation of the system, commercial transactions and number of years of experience of each of the personnel.
 - (ii) details of key staff, their academic and technical qualification and business skills; and
 - (iii) details of office accommodation, communication facilities available and website.
 - (iv) copies of relevant documents in respect of items (i) to (iii) above
- (b) The applicant shall satisfy the Commission that his technical capacities and resources exhibited are sufficient to manage the activities pertaining to the intra – state trading.
- (c) The applicant shall comply with all the technical requirements while applying for a licence for intra – state trading in electricity.
- (d) The Commission shall satisfy itself before granting intra – state trading licence that the applicant has fulfilled all the above conditions required for grant of the trading licence.
- (2) Financial requirements for a trader in electricity:
- (a) Every applicant shall submit the following information to the Commission in regard to his financial requirement to show that he is capable of meeting the net worth requirement as per sub regulation (c) below
- (i) History of his earnings
 - (ii) Balance sheet and cash flow statement
 - (iii) Funding arrangements
 - (iv) Risk management strategy
- (b) The applicant shall comply with the above financial requirements before applying for the grant of licence for intra – state trading.
- (c) The net worth requirement of an electricity trader at any time shall be not less than the following financial limits:

| Category of the trading licence | Annual volume of electricity to be traded | Net worth requirement (Rs. Crores) |
|---------------------------------|---|------------------------------------|
| A | Upto 50 MU | 1.00 |
| B | Above 50 MU and upto 100 MU | 1.50 |
| C | Above 100 MU and upto 200 MU | 3.00 |
| D | Above 200 MU and upto 300 MU | 4.50 |
| E | Above 300 MU and upto 400 MU | 6.00 |
| F | Above 400 MU and upto 500 MU | 7.50 |
| G | Above 500 MU and | 10.00 |

The limits indicated above are subject to

- (i) the licensee shall increase his net worth corresponding to the volume of trade increased from a lower limit to the next higher limit;
- (ii) the change of category shall be based on the volume of trade as on 31st March each year;
- (iii) the licensee shall keep the Commission informed of his moving from one category to another and the consequential changes in the net worth.

4. Capital adequacy and credit worthiness to qualify as a trader

- (1) The applicant shall declare to the Commission the maximum trade volume which he can handle in a month and his future plans of trading during the initial three years.
- (2) The applicant shall maintain the capital adequacy and the net worth, sufficient to cover the maximum trade volume supported by documentary evidence over an average settlement period of 30 days (one month) worth of credit for the applicant as an electricity trader, subject to the limits specified in sub – regulation 3(2)(c) above.
- (3) The trader shall make endeavors to maintain investment grade credit rating from an independent Credit Rating Agency through the period of licence.
- (4) The capital adequacy shall be a dynamic function, which shall be based,
 - (i) on the quantum of trade, which the trader is allowed by the Commission based on the business plan submitted by the trader;
 - (ii) it shall correspond to the pool-rate of the power handled by the trader along with company expenses.
 - (iii) trade risks on account of default in payment and change in price adjusted on six monthly basis by corresponding adjustments in the equity of the trader over and above the initial limit of capital adequacy fixed by the Commission.
- (5) Credit worthiness of the trader shall correspond to percentage trade default in relation to the capital adequacy for three settlement periods. The credit worthiness shall be revised every six months along with the revision in capital adequacy as deemed fit by the company.
- (6) The Commission, shall fix trading margin to the electricity trader.

5. Intra – State Trading by Deemed Licensee

A deemed licensee, under section 14 of the Act, shall undertake intra – state trading in electricity. The Commission may specify general or specific conditions, if any, under section 16 of the Act, which shall be deemed to be the conditions for such licence.

6. Procedure for grant of licence for intra – state trading

The procedure for grant of licence to an intra – state electricity trader by the Commission shall be governed by the following regulations,

1. Application for licence
 - (1) (a) Any person who intends to carry intra–state trading in electricity in the State of Bihar shall apply in the form in Annexure I to the Commission for grant of a licence in the manner specified by the Commission together with such prescribed fee as specified by the State Govt. in shape of B.D. payable at Patna in favour of the Bihar Electricity Regulatory Commission.
 - (b) The applicant shall furnish six (6) copies of all relevant documents in support of the information furnished by him.
 - (2) (a) The Commission shall specify the condition for the grant of licence for intra – state trading in electricity and applicant shall abide by the conditions stipulated in the licence.
 - (b) These conditions shall also apply to deemed licensee as defined under provision first, second, third and fifth to section 14 of the Act.
 - (3) The Commission may, in addition to the general conditions, specify any special conditions at the time of granting a licence which the applicant shall abide.
 - (4) (a) While applying for grant of a licence for intra–state trading, applicant may suggest any modification(s) / to the conditions stipulated by the Commission, which shall be in the interest of the public.

(b) The Commission shall consider the suggestion (s) made by an applicant under sub – regulation (a) above, if the Commission considers that the suggestion (s) made will be in public interest.

7. Obtaining additional information

The Commission may, upon scrutiny of the application require the applicant to furnish, within a specified period, such additional information, particulars or documents as it may consider necessary for the purpose of processing the applicant’s case.

8. Publication of notice of application

The applicant, within seven days of submitting his application for intra – state trading licence to the Commission, shall publish notice of his application along with such particulars in the manner specified by the Commission, in two daily news papers, one in English and another in the local language, having wide circulation in the State of Bihar.

9. Objections:

(1) Any person who desires to file an objection for grant of licence to the applicant, shall file his objections / suggestions to the Commission, with a copy to the applicant, within 30 days from the date of publication of the notice by the applicant.

(2) The Commission, if it considers necessary, may call for the comments of the applicant on the objections / suggestions, if any received within the stipulated time, and take a suitable decision on the application for grant of licence.

10. Grant of Licence:

(1) If the Commission decides for grant of licence, it shall publish notice informing the name and address of the person to whom it decides to grant a licence together with other details necessary and seek suggestions / objections from the public and also indicate a date for hearing, if required.

(2) After considering all the suggestions / objections and hearing, where necessary, the Commission shall issue orders granting a licence in the format in Annexure II.

(3) The Commission shall also forward a copy of the licence to the State Government, Central Electricity Authority, Central Electricity Regulatory Commission and to such other authorities/persons as it may deem necessary.

11. Refusal to grant a licence

If the Commission decides to refuse to grant a licence, it shall give an opportunity to the applicant for being heard in person before rejecting the application.

12. Term of the licence:

The trading licence granted by the Commission shall come into force from the date specified by it in the order, granting the licence subject to the terms and conditions specified therein and shall be in force for a period of twenty five years or till it is revoked by the Commission, whichever is earlier.

13. Compliances with Acts, Rules, Regulations etc

(1) The Trading licensee shall comply with the provisions of the Act, Rules, Regulations, orders and directions issued by the Commission from time to time and the provisions of all other laws applicable to electricity industry including National Electricity Policy and Plan, State Government Policy for development and promotion of trading and market.

(2) The Trading licensee shall also comply with Regulations on phasing of open access in electricity distribution, standards of performance, Electricity Supply Code, specified by the Commission, etc.

(3) The Trading licensee shall furnish to the Commission such information as may be required to monitor the trader’s performance, compliance with the terms and conditions of the licence and any other legislative or regulatory requirement.

(4) The Trading licensee shall comply with all the directions issued by the State Load Despatch Centre (SLDC)

(5) The trader shall provide all data and his trading business plan to the Commission, the State Transmission Utility and the SLDC annually by a date specified by the Commission and also at request.

(6) The trading margin, if any, fixed by the Commission under section 86(1)(j) of the Act for the intra – state trading shall be applicable to the trader.

14. Licence fee

- (a) Every licensee shall pay a licence fee in shape of Bank Draft in favour of Bihar Electricity Regulatory Commission payable at Patna on or before a specified date as may be fixed by the Commission
- (b) If the licensee fails to pay to the Commission the prescribed fee on the due date, the licensee shall be liable:
 - (i) to pay to the Commission interest on the outstanding amount a simple interest at the rate of 1½ % per month or part thereof. The interest shall be payable for the period from the day on which the amount became due and ending on the day on which the Commission receives the payment; or
 - (ii) to the proceedings for the recovery of such fees as stipulated in the Act in case of non-payment of fees and/or interest, as the case may be; or
 - (iii) to revocation of his licence by the Commission under section 19 of the Act; as the Commission deems fit.
- (c) The licensee shall be entitled to take into account any fee paid by him for determination of aggregate revenues made in accordance with sub-regulation (a) above but shall not take into account any interest paid in accordance with sub – regulation (b) (i) above.

15. Acts which a Licensee (s) shall not undertake

- (1) No licensee, except with prior approval of the Commission, shall undertake:
 - (a) any transaction to acquire, through purchase or takeover or otherwise, any utility of any other licensee; or
 - (b) merge his utility with another utility of any other licensee.
- (2) No licensee shall, without prior approval of the Commission, assign or transfer his utility or Licence or part thereof through sale, lease, exchange or otherwise.
- (3) Before obtaining approval under sub–regulations (1) and (2) above, a Licensee who applies for such approval to the Commission, shall give a notice of not less than one month to every other Licensee, who distributes electricity in the area of such licensee.
- (4) Any agreement entered into by the licensee in respect of sub – regulations (1) to (3) above shall become void unless prior approval of the Commission is obtained thereto.
- (5) Where such permission is required, the licensee shall file an application with the Commission duly furnishing all relevant information. The Commission may, within 30 days of the receipt of such application, accord required permission subject to the terms and conditions as it deems necessary or reject the application for the reasons to be recorded in writing in support of such rejection.

16. Amendment, alteration etc to a Licence

- (1) The Commission may on an application by the licensee or either suo-motu or otherwise and in public interest, make such amendments, alterations etc to the terms and conditions specified in a licence, as it may deem necessary.
- (2) Such amendments or alterations shall generally be with the consent of the licensee concerned unless the Commission considers it unnecessary.
- (3) Before making alterations or amendments, the following conditions shall be observed:
 - (a) Where the licensee makes an application under sub–regulation (1) above proposing an alteration or amendment, the licensee shall publish a notice of such application with details and in such manner as may be specified by the Commission.
 - (b) Where any alteration or amendment is proposed, otherwise than on an application, the Commission shall publish such alterations or amendments with such particulars as it may deem necessary.
 - (c) Any alteration or amendments shall be made only after considering all the suggestions or objections received with-in thirty days from the date of publication of such notice.

17. Revocation of Licence

- (1) The Commission may, in public interest, revoke a licence, after making an independent enquiry, in the following cases
 - (a) Where a licensee makes willful or continuous default in doing any act required to be done by him under the Act or the rules/regulations made thereunder.
 - (b) Where a licensee fails to observe any of the terms and conditions specified while granting the licence or any order/direction of the Commission.
 - (c) when a Licensee fails, within the time allowed by the Commission:

- (i) to show to the Commission that he is in a position to fully and effectively discharge the duties and obligations imposed on him by the licence.
 - (ii) to make a deposit or furnish security or pay fees or other charges required by his Licence
- (d) Where the Commission feels that the financial position of the licensee is such that he is not in a position to fulfill efficiently his duties / responsibilities / obligations imposed on him by his licence.
- (2) The Commission may revoke a licence on an application or with the consent of the licensee either in whole or part of his area of distribution on such terms and conditions as it may deem necessary.
 - (3) The Commission, before revoking a Licence, shall give a notice of not less than three months in writing indicating the grounds on which the licence is proposed to be revoked and consider the reasons put forth by the licensee against such revocation.
 - (4) The Commission, may instead of revoking the licence under sub – regulation (1) above, may allow the licence to remain in force subject to further terms and conditions, as it may deem fit, which shall be binding and followed scrupulously by the licensee.
 - (5) The Commission, while ordering revocation of licence, shall specify the date from which the revocation takes effect.
 - (6) Apart from the revocation of licence under this Regulation, the Commission may also impose any penalty, which it deems appropriate or initiate proceedings for prosecution of the licensee under the provisions of the Act.

18. Settlement of Disputes and Arbitration

- (i) The Commission shall adjudicate the disputes between the licensees or refer any dispute for arbitration on application by any licensee(s).
- (ii) The Commission shall issue notices to all the concerned licensees indicating the details of the dispute(s) and after hearing the parties concerned, the Commission shall pass such order / direction as it may deem necessary.
- (iii) If any licensee is not satisfied with order passed by the Commission, the licensee may make a request to the Commission for appointment of an Arbitrator.
- (iv) On receipt of an application for appointment of an Arbitrator, the Commission shall appoint an Arbitrator under section 86(f) of the Act duly indicating the terms and conditions of such appointment for settlement of the dispute(s).
- (v) The Arbitrator(s) nominated by the Commission, after hearing both the parties shall pass a speaking order giving reasons for the decision on all the issues raised in the dispute(s).
- (vi) The Commission, on receipt of the arbitration award shall communicate the award to the concerned parties for filing their views. After considering the views of the concerned parties, the Commission shall pass final orders, as it deems fit.
- (vii) The costs of arbitration shall be borne by the concerned licensees, as may be decided by the Commission.

19. Powers of Licensee

The Commission may publish an order authorizing the licensee to exercise any power or authority that could be given to the licensee under the Act if it considers necessary.

20. Review:

The Commission may, from time to time, review these regulations;

- (i) for the purpose of harmonising the same with reference to open access and/or to cater to the needs of the developing power markets, in accordance with section 66 of the Act; and
- (ii) Keeping in view the need for improving the performance of the licensees in public interest.

21. Enforcement of order passed by the Commission

- (1) when the Commission is satisfied that a licensee has failed to comply with any of the conditions of the licence or provisions of the Act or codes or regulations, it may direct an investigation into the affairs of the licensee by an independent authority in accordance with the provisions of section 128 of the Act.
- (2) On receipt of investigation report from the investigating authority, the Commission may give an opportunity to the licensee to make representation on the findings contained in the report. After examining the representation of the licensee, the Commission may

- (i) direct the licensee to take such action in respect of any matter arising out of the report as the Commission may think fit; under section 129 of the Act;
or
 - (ii) revoke or suspend the business of the distribution licensee
 - (3) The Commission may also, after giving reasonable notice to the licensee, publish the report submitted by the investigating authority or relevant portion of the report, as it may deem necessary.
 - (4) The Secretary shall ensure enforcement and compliance of the orders passed by the Commission, under the Conduct of Business Regulations and in accordance with the provisions of section 129 of the Act.
- 22. Service and publication of notice**
1. When the Commission is satisfied, based on the materials in its possession, that the licensee is contravening or is likely to contravene any of the conditions for grant of licence or any of the provisions of the Act, it shall by an order give necessary directions to secure compliance with the relevant conditions or provisions duly taking into account the loss or damage to any person consequent to such contravention and after giving notice to the licensee.
 2. The notice shall be served to the address of the licensee by Registered Post with Acknowledgment due or through Special Messenger and signed acknowledgment receipt obtained.
 3. In case the premises is found locked it shall be served by affixing the notice on the conspicuous part of the premises.
 4. The notice shall be published in one English and one Hindi newspaper having wide circulation in the licensee's area of activities.

Chapter - 2

Duties and obligations of an Electricity Trader

- 23. Duties relating to trading transactions**
- (1) The trader shall have in place all agreements for the purchase and sale of electricity, and any necessary related authorisations and arrangements as required for the discharge of his obligations under the Licence. Necessary safeguards with regard to supply of electricity through trading, or payment for electricity traded shall be included in the agreements between the parties.
 - (2) The trader shall have in place the open access agreements with each transmission licensee and distribution licensee concerned for the conveyance of electricity, unless the trader's customer or power supplier has entered into such access agreements.
 - (3) The trader shall have in place a well-structured payment security mechanism, i.e., through letters of credit or any other superior instrument mutually acceptable to the parties concerned.
 - (4) The trader shall maintain an up-to-date register or record of his customers and all the business transactions.
- 24. Duties relating to supply to customers**
- The trader shall be responsible to the Commission, the customers and others concerned in the matter of supply of electricity through trading to his customers notwithstanding the default of Distribution Licensee, if any.
- 25. Technical resources, Capital adequacy and Creditworthiness**
- (1) The trader shall maintain the technical resources specified in regulation 3(1) and provide to the Commission the details of any changes justifying that the capability is, and continues to remain, adequate to cater to the volume of his trade.
 - (2) If the trading volume of the trader exceeds the specified volume of trade in any financial year then the trader shall immediately report to the Commission of his moving to the higher category and increase his net worth to the applicable level as specified in regulation 3(2)(c) and pay the balance license fee prorated for the rest of the year by the following 30th April.
 - (3) In case of non-reporting of such an event, the Commission may levy penalty on the trader in terms of Section 142 of the Act, in addition to levy of late payment surcharge / interest for non-payment / delayed payment of the additional licence fee

due from the Trader as per sub-clause (2) above, in the manner and at the rate specified in regulation 26, apart from suspension of his licence.

The trader shall make reasonable endeavours to maintain investment grade credit rating (obtained from a leading independent Credit Rating Agency) for all debts throughout the period they remain on the books of the trader:

26. Payment of Annual Licence Fee

- (1) The trader shall pay to the Commission a non-refundable annual (April to March) licence fee as specified in the Fees and Fines Regulations issued by the Commission from time to time by means of a demand draft/pay order drawn on Patna branch of a scheduled bank in favour of Bihar Electricity Regulatory Commission payable at Patna.
- (2) Such fee for the first year or a part thereof shall be paid before the commencement of operations, provided that for a part of the year, the licence fee shall be payable pro rata on the basis of number of days.
- (3) The annual licence fee for the subsequent years starting from the first day of April, shall be paid in full before the start of the year. In case the trader fails to pay the licence fee or a part thereof in time, the trader shall be liable to pay late payment surcharge / interest on the outstanding amount at the rate of 1.5% of the licence fee payable per month or a part of the month, for the period the licence fee or any part thereof remains unpaid.
- (4) Notwithstanding the liability of the trader to pay the late payment surcharge as aforesaid, the delay in payment of licence fee or a part thereof, shall be construed as breach of the terms and conditions of the licence rendering the licence liable to be revoked on this ground alone.

Chapter – 3

Compliances and information submission

- 27.**
- (1) At the end of every quarter, the trader shall provide information to the Commission in such form and manner as may be directed by the Commission from time to time to demonstrate that he has complied with the net worth criteria mentioned in Regulation 3(2) (c).
 - (2) The trader shall comply with Regulations, codes, orders and directives such as Regulations on phasing of open access in electricity distribution, Standards of Performance, Electricity Supply Code, billing and settlement code, etc.
 - (3) The trader shall furnish to the Commission such information as may be required to monitor the trader's performance, compliance with the terms and conditions of the licence and any other legislative or regulatory requirement.
 - (4) The trader shall comply with any direction issued by the State Load Dispatch Centre (SLDC).
 - (5) The trader shall provide data and his business plan to the Commission, the State Transmission Utility and the SLDC, annually, as well as on request.
 - (6) The trading margin, if any, fixed by the Commission under Section 86 (1) (j) of the Act for the intra-State trading shall be applicable to the trader.
 - (7) To enable the Commission to determine the trading margin, the trader shall file the details in such form and in such manner as may be required by the Commission from time to time.
 - (8) The trader shall as soon as practicable report to the Commission: (a) any significant changes in his circumstances which may affect the trader's ability to meet his obligations under the Act, rules and regulations directions/orders issued by the Commission, the State Grid Code, agreements or the licence; (b) any material breach of the provisions of the Act, rules and the regulations, directives/orders issued by the Commission, the State Grid Code, agreement or the licence; and (c) any major change in shareholding pattern, ownership or management of the trader.

Chapter - 4

Accounts of the Electricity Trader

28. (1) The trader shall maintain separate accounts for his intra-State trading business and prepare the same in accordance with the guidelines issued by the Commission and till such time these guidelines are issued by the Commission, the accounts shall be maintained in accordance with the provisions of the Companies Act, 1956, as amended from time to time.
- (2) The trader shall prepare on a consistent basis from such records, accounting statements for each financial year comprising a profit and loss account, a balance sheet and a statement of sources and application of funds together with notes thereto and showing separately the amounts of any revenue, costs, assets, liabilities, reserves or provisions which have been:
1. Charged from or to any other business together with a description of the basis of that charge, and / or
 2. Determined by apportionment or allocation between the various business activities together with a description of the basis of the apportionment or allocation.
- (3) The trader shall provide, in respect of the accounting statements prepared in accordance with foregoing clauses, a report by the Auditors in respect of each financial year, stating whether in their opinion the statements have been properly prepared and give a true and fair view of the revenue, costs, assets, liabilities, reserves and provisions reasonably attributable to the trading business.
- (4) The trader shall submit to the Commission copies of the accounting statements and Auditor's report thereon not later than six months after the close of the financial year to which they relate.
- (5) Any person authorised by the Commission shall be entitled to inspect and verify the accounts of the trader and the trader shall render all necessary assistance to such person.

Chapter – 5

Miscellaneous

29. Prohibitions

- (1) The trader shall not engage in the business of transmission of electricity.
- (2) The trader shall not, without prior approval of the Commission assign or transfer his licence to any person, by sale, lease, exchange or otherwise.
- (3) Wherever prior approval of the Commission is required, the trader shall file an appropriate application before the Commission, in accordance with the Conduct of Business Regulations.

30. Contravention of terms and conditions of licence

The Commission may pass such orders as it deems fit in accordance with the provisions of the Act, and this Regulation if there is a contravention or the likelihood of a contravention of the terms and conditions of licence by the Licensee.

31. **Saving:** Nothing contained in this Regulation shall affect the rights and privileges of a consumer under any other law for the time being in force, including the Consumer Protection Act, 1986 (68 of 1986).

32. Dispute resolution

In case of any dispute or complaint in respect of supply, the consumers shall be entitled to approach the concerned Forum for Redressal of Grievances of Consumers, and any appeal thereon shall lie with the Vidyut Ombudsman, in accordance with Bihar Electricity Regulatory Commission (Forum for redressal of Grievances of consumers and Vidyut Ombudsman) Regulations.

33. Issue of orders and practice directions

Subject to the provisions of the Act and this Regulation, the Commission may, from time to time, issue orders and practice directions in regard to the implementation of this Regulation,

the procedure to be followed etc., and other matters, which the Commission has been empowered by this Regulation to specify or direct.

34. Power to remove difficulties

In case of any difficulty in giving effect to any of the provisions of this Regulation, the Commission may remove such difficulty by general or special order, not being inconsistent with the provisions of the Act, as may appear to be necessary for the purpose of removing the difficulty.

35. Power to amend

The Commission may, at any time, add, vary, alter, modify, amend or suspend any provisions of this Regulation.

By order of the Bihar Electricity Regulatory Commission

**Sd/-
Secretary**

**Application form for Intra State Trading Licence
(See Regulation 6 (1))**

Part – A: GENERAL INFORMATION OF APPLICANT

1. Details of Applicant
 - a. Full Name of the Applicant :
 - b. Full Address of the Applicant :
 - c. Name, Designation & Address
of the Contact Person :
 - d. Contact Telephone Numbers:
Fax Number(s) :
Email ID :
2. Details of Ownership
 - a. Company / Firm / Co-op Society / Individual / Others :
 - b. Details of Incorporation / Registration
Place of Incorporation / Registration :
Year of Incorporation :
Registration Number :
 - c. Names and Addresses of Directors / Partners / governing body
members / trustees
 - d. Permanent Account Number allotted by Income Tax Department
3. Principal Shareholders / Partners / Members
4. Details of the area of operation
 - a. Nature of other electricity licenses / authorization, if any, of the applicant for
electricity transmission, distribution or trading already granted:
5. Details of Operation
 - a. Maximum trading volume proposed to be undertaken by the applicant on a monthly
basis for the first three years; (In Million units and capacity)
6. Funding arrangements (source and application) to meet the obligations :
7. Arrangement for purchase of energy
8. Arrangement, if any, proposed with other existing trading and distribution licensees
9. Resume of the Organization giving details of
 - a. Management capability
 - b. Financial strength
 - c. Ability to attend to the activities in a sustainable manner
10. Date from which licence is sought

Date

Signature of the Applicant

Part – B: LIST OF DOCUMENTS TO ACCOMPANY LICENCE APPLICATION

1. Documents (attested copies) to be submitted along with the licence application
 - (a) Information relating to pre-existing licence (if any), with copy of licence / sanction
 - (b) Certificate of Incorporation / Registration
 - (c) Certificate of commencement of Business
 - (d) Original Power of Attorney of the Signatory to commit the Applicant or its Promoter.
 - (e) Articles of Association, Memorandum of Association and similar constitutional documents
 - (f) Details of Income Tax registration, PAN / TAN.

2. Organizational and Managerial Compatibility of Applicant
 - (a) Managerial
 - (i) Senior management's curriculum vitae
 - (ii) Cadre strength for different categories (technical and non-technical)

 - (b) Financial
 - (i) Bank references asserting that the Applicant is financially solvent
 - (ii) Annual Audited Reports for the past 5 years for the Applicant and for any Holding Company, Subsidiary or affiliated company (if any).

 - (c) Any other document evidence to substantiate the financial capabilities, technical competence and others.

3. Data relating to the Applicant's Proposed Business
 - (a) Approach and Methodology (Applicant is required to describe Approach and Methodology for establishment of the Trading arrangements as proposed by the Applicant)
 - (b) Business plan (with 5 years projection) for the proposed business for which licence is sought (which should contain year wise anticipated growth in trade volumes, metering plan, treatment of previous losses, debt restructuring plan, projected profit and loss account, projected balance sheets, projected cash flow statements and projected important financial parameters).
 - (c) Five year annual forecasts of costs, sales, revenues, project financing and funding arrangements (clearly specifying the assumptions involved)

Date

Signature of the Applicant

Part C : FORMAT FOR ASSESSING COMPETENCE OF APPLICANT

(This form to be filled by an Applicant applying for a Trading licence)

1. Previous Experience (Past 5 years details for Related Business)

[To be filled in by the applicant or by each participant separately in case of JVC/ consortium (As applicable)]

| | | | | | |
|---|----------|--------|--------|--------|--------|
| General Information | | | | | |
| Does the applicant have previous experience in electricity trading? If yes, Specify location (State / Country) | Yes / No | | | | |
| Does the applicant have trading experience in any other related sector? If yes, name the sector Specify location? (State / Country) | Yes / No | | | | |
| Details of electricity trading in the last 5 years – Commercial Operations | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
| Trading volume at various voltage levels (Million Units) Bulk trade Retail trade | | | | | |
| Number of Ongoing Contracts with details Bulk trade Retail trade | | | | | |
| Bulk trade (Nos. and Quantum) End consumers Re-sellers(s) / Trader(s) | | | | | |
| Retails trade Consumer Base (Nos. and Quantum) High Tension Low Tension | | | | | |
| Revenue from electricity trading (Rs. Lakhs) Bulk trade Retail trade | | | | | |
| Details of trading in other sectors during the last 5 years – Commercial Operations | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
| Trading volume (_____ Units) Bulk trade Retail trade | | | | | |
| Revenue from trading (Rs. Lakhs) Bulk trade Retail trade | | | | | |

| Number of Ongoing trading Contracts with details Bulk trade Retail trade | | | | | |
|---|--------|--------|--------|--------|--------|
| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
| Financial Information (Rs. lakhs) | | | | | |
| Equity Promoters' Government/ Financial Institutions Public Others | | | | | |
| Liabilities Long Term Short Term | | | | | |
| Income Electricity trading Others | | | | | |
| Expenses Administration and General Expenses Employee Cost Depreciation Interest and Financial Charges Long Term Short Term Others | | | | | |
| Profits and Returns Net Profits Dividends Paid | | | | | |

2. Details of Proposed Trading Activity (Business for which licence is sought)

[To be filled in by the applicant or by each participant separately in case of JVC/ consortium (As applicable)]

| Funding | |
|---|----------|
| Whether applicant himself shall be financing the proposed trading fully on its own balance sheet | Yes / No |
| Proposed means of Finance Equity (Rs. Lakhs) Applicant Co-promoters Others (<i>specify</i>) | |

| | |
|---|---|
| <p>Debt</p> <p>Domestic (Rs. Lakhs)</p> <p>Indian Financial Institutions</p> <p>Commercial Banks</p> <p>Others (<i>specify</i>)</p> <p>International (FC Million)</p> <p>Supplier's Credit</p> <p>Direct Borrowing</p> <p>Others (<i>specify</i>)</p> <p>Equivalent INR (with Exchange rate used)</p> <p>Others (<i>specify</i>)</p> | |
| <p>In case trading activity is proposed to be jointly funded along with External Agency</p> <p>Name and Address of the Agency, and contact details of the reference person of the Agency (name, address, telephone/fax numbers, email etc.,)</p> <p>Proposed Equity from the Agency (Rs. Lakhs)</p> <p>Agency's equity as a percentage of total equity (%)</p> <p>Nature of proposed tie-up between Applicant and the other agency.</p> | |
| <p>Details of debt proposed for trading activity</p> <p>Details of Lenders (name & address).</p> <p>Details of Loan packages indicating the loan amount, currency, Term of loan, interest rate, up-front fees, Commitment charges etc.</p> <p>Whether any guarantee is being sought for the loans from any agency.</p> <p>If Yes, provide details</p> | <p>Yes/ No</p> |
| <p>Minimum level of communication infrastructure available</p> <p>Any other (<i>specify</i>)</p> | <p>Telephone / Fax / Internet / V-Sat</p> |

Note :

Consent letters of the other Agency and Contractors to associate with the Applicant for the above project to be enclosed.

Necessary approvals and no objection certificates to be obtained at appropriate time and forwarded to the Commission.

3. Qualifications and Expertise (Personnel)

| Name of personnel | Qualification | Specialisation | Years of experience | Status in the firm |
|-------------------|---------------|----------------|---------------------|--------------------|
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |

Note : Atleast one full time professional, having experience in each of the disciplines like Power Systems Operation, Finance should be part of the Core team.

Knowledge and understanding of power systems operation (covering generation availability, capacity utilization, demand, plant load factor, flow of electricity etc), power market operations ,commercial arrangements(PPAs, BSA, TSA, etc) and communication and scheduling of power (load dispatch are required)

4. Revenue Potential (Business for which licence is sought)

| | |
|--|--|
| General Information | |
| Details of Target Bulk consumers End consumers Reseller(s) / Trader(s) | |
| Retails consumer base (Nos.) High Tension Low Tension | |
| Trading of electricity (expected annual) Bulk Trade Expected quantum (mu) Anticipated demand growth (%) Retail Trade Expected quantum (mu) Anticipated demand growth (%) | |
| Commercial Information | |
| Existing Average Tariff (Rs./ Unit) Bulk supply tariff Retail supply tariff High tension Low tension | |
| Financial Information | |
| Annual expected turn over (Rs. Lakhs) | |

5. Financial Soundness (Other Subsidiary Business Units)

[To be filled in by the applicant or by each participant separately in case of JVC/ consortium (As applicable)]

| General Information | | | | | |
|---|---|---------------|---------------|---------------|---------------|
| Names of Subsidiary Business Units 1. 2. 3. 4. 5. | Products Manufactured/ Services 1. 2. 3. 4. 5. | | | | |
| Banker's details Details of Bank Accounts Name and Address of the Bank Account Number Contract person & details Name of the representative Designation Contact numbers e-mail ID | | | | | |
| Financial Indicators | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
| Fixed Assets Gross Fixed Assets Accumulated Depreciation Net Fixed Assets | | | | | |
| Equity Promoters' Government/ Financial Institutions Public Others | | | | | |
| Liabilities Long Term Short Term | | | | | |
| Income Sale of Power Others (<i>specify</i>) | | | | | |
| Expenses Administration and General Expense Repairs and Maintenance Employee Cost Depreciation Interest and Financial Charges Long Term Short Term Others (<i>specify</i>) | | | | | |

| Financial Indicators | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
|--|---------------|---------------|---------------|---------------|---------------|
| Overall Turnover (Rs. Lakhs) | | | | | |
| Profits and Returns (Rs. Lakhs) Net Profits Dividends Paid | | | | | |
| Operating Ratios Return on Equity Return on Capital Employed Return on Net Fixed Assets | | | | | |
| Liquidity Ratio Debt Service Coverage Ratio Current Ratio Quick Ratio | | | | | |
| Capital Adequacy and Credit Worthiness Debt/ Networth Debt/ Equity | | | | | |
| Turnover Ratio Total Asset Turnover Fixed Asset Turnover | | | | | |

6. Baseline Information (Business for which licence is sought)

| | |
|--|--|
| Commercial Information | |
| Metering Status Total interconnection points Unmetered interconnection points Consumers with TOD meters Metered retail consumers Unmetered retail consumers Consumer with TOD meters | |
| Billing Status Billing (as a % of Total Input) | |
| Loss Commercial loss (%) | |

Note :

1. Certificates/documents in support of all the credentials detailed above, from the Owner/ Client for whom the project were promoted should be submitted along with the application.
2. Wherever conversion factor is used (for currency conversion and others), mention the conversion factor used for this purpose.

Date

Signature of the Applicant

FORMAT AND CONDITIONS OF LICENCE OF AN ELECTRICITY TRADER

Licence granted for Trading in electricity

[See Regulations 10(2)]

Licence granted by the Bihar Electricity Regulatory Commission (hereinafter referred to as “the Commission”), in exercise of the powers conferred under section 14 of the Electricity Act, 2003 (Act 36 of 2003, hereinafter referred to as “the Act”), hereby grants this licence as a Category _____ trader to _____, (hereinafter referred to as “the licensee”) to trade in electricity as an electricity trader in the area stated in schedule to the Licence subject to the terms and conditions contained in the Act, (in particular, Section 17 to 22 thereof, both inclusive), the rules made by the Central Government (hereinafter referred to as “the Rules”) and the regulations specified by the Commission (hereinafter referred to as “the Regulations”), including statutory amendments, alterations, modifications, re-enactments thereof, which shall be read as part and parcel of this licence.

The licence shall come into effect from

PART – I DEFINITIONS

1. Words, terms and expressions to which meanings are assigned by the Electricity Act 2003 (36 of 2003), shall have the same meaning in these General Conditions.
2. Unless the context otherwise requires:
 - (a) **“accounting statement”** means for each financial year, accounting statements for the licensed business comprising a profit and loss account, a balance sheet and a statement of sources and application of funds, together with notes thereto as detailed under the Companies Act, 1956 (1 of 1956) or the respective Acts under which the licensee is governed and such other particulars and details in the manner as the Commission may prescribe from time to time. If the trading licensee engages in any business or activity in addition to the licensed business, the accounting statements shall comply with the regulations of the Commission dealing with the treatment of other business of trading licensees and show specifically the amounts of any revenue, cost, asset, liability, reserve or provision, which has been either:
 - (i) charged from the licensed business to any other business or vice versa together with a description of the basis of that charge; or
 - (ii) determined by apportionment or allocation between the licensed business and any other business of the licensee together with a description of the basis of the apportionment or allocation.
 - (b) **“Act”** means the Electricity Act, 2003 (Act 36 of 2003)
 - (c) **“agreement”** means agreement entered into by the electricity trader with the seller of electricity, buyer of electricity, other licensees, State Load Despatch Centre, consumer etc. that enables the trading transactions;
 - (d) **“annual accounts”** means the accounts of the licensee prepared in accordance with the provisions of the Companies Act, 1956 and/or in such other manner as may be directed by the Commission in terms of the provisions of the Act;
 - (e) **“area of activity”** means the area of activity stated in schedule to the trading licence within which the licensee is authorised to trade;
 - (f) **“auditors”** means the licensee’s auditors holding office in accordance with the requirements of sections 224 to 234A or section 619 as appropriate, of the Companies Act 1956 (1 of 1956);

- (g) **“authorised”**, in relation to any person, business or activity, means authorised by licence granted under section 14 of the Act or deemed to be granted under the first, second, third and fifth proviso to section 14 of the Act or exemption granted under section 13 of the Act and the regulations of the Commission;
- (h) **“Commission”** means the Bihar Electricity Regulatory Commission;
- (i) **“Conduct of Business Regulations”** means the Bihar Electricity Regulatory Commission - Conduct of Business Regulations for the time being in force;
- (j) **“customer”** means any buyer purchasing electricity from the trader, viz. distribution licensee, any other trading licensee and any customer that the licensee gets into a sale agreement with.
- (k) **“Force Majeure”** means events beyond the reasonable control of the licensee, including, but not limited to earthquakes, cyclones, floods, storms, adverse weather conditions, war, terrorist attacks, civil commotion or other similar occurrences that leads to any act that would involve a breach of relevant laws or regulations concerned with electrical safety;
- (l) **“licence”** means a licence granted under section 14 of the Act;
- (m) **“licensee”** means a person who has been granted a licence under section 14 of the Act;
- (n) **“licensed business”** means the business of trading of electricity in the area of activity as authorised under the licence;
- (o) **“open access”** means the non-discriminatory provision for the use of transmission lines or distribution lines or transmission systems or distribution systems or associated facilities with such lines or systems by any licensee or customer or a person engaged in generation in accordance with the regulations specified by the Commission;
- (p) **“person”** shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;
- (q) **“regulations”** means the regulations made by the Commission, under the provisions of the Act;
- (r) **“State”** means the State of Bihar;
- (s) **“State Government”** means the Government of the State of Bihar;
- (t) **“subsidiary”** shall have the same meaning as in section 4 of the Companies Act 1956 (1 of 1956);
- (u) **“supply”** in relation to electricity means the sale of electricity to a licensee or consumer;
- (v) **“Electricity Supply Code”** means the Code published by the Commission under section 50 of the Act;
- (w) **“trader”** means a person who has been granted a licence or deemed to be a licensee to undertake trading in electricity under section 14 of the Act;
- (x) **“trading”** means purchase of electricity for resale thereof and the expression “trade” shall be construed accordingly;
- (y) **“trading business”** means the authorised business of the trading licensee in the area of supply;
- (z) **“transfer”** shall include the sale, exchange, gift, lease, licence, loan, securitisation, mortgage, charge, pledge or grant of any other encumbrance or otherwise permitting of any encumbrance to subsist or parting with physical possession or any other disposition or dealing;
- (aa) **“transmit”** means conveyance of electricity by means of transmission lines and the expression "transmission" shall be construed accordingly;

- (ab) **“transmission licensee”** means a licensee authorised to establish or operate transmission lines;
- (ac) **“transmission system”** means the system consisting mainly of extra high voltage electric lines having design voltage of 66 kV and higher, owned or controlled by the transmission licensee, and used for the purposes of the conveyance of electricity and includes all bays/equipments upto the interconnection with the distribution system, and any plant, apparatus and meters owned or used in connection with the transmission of electricity, but shall not include any part of a distribution system;

PART – II
GENERAL CONDITIONS

3. TERM OF THE LICENCE

- (1) The trading licence shall come into force on the date specified by the Commission in the order granting such licence and unless revoked earlier, in accordance with the regulation 17 of these regulations or under section 19 of the Act, shall remain in force for 25 (Twenty five) years from that date.
- (2) This trading licence is not transferable, except in accordance with the provisions of the Act, the rules and the regulations.

4. COMPLIANCE WITH LAWS, RULES AND REGULATIONS

- (1) The trading licensee shall comply with the provisions of the Act, rules, regulations, orders and directions issued by the Commission from time to time.
- (2) The trading licensee shall act in accordance with this General Conditions except where the licensee is exempted from any provisions of these General Conditions at the time of the grant of licence or otherwise specifically permitted by the Commission for any deviation therefrom.
- (3) The trading licensee shall duly comply with the order and directions of the National Load Despatch Centre, Regional Load Despatch Centre and the State Load Despatch Centre and other statutory authorities issued in the discharge of their functions.

5. DUTIES OF THE TRADING LICENSEE

- (1) The trading licensee may engage in the business of trading in electricity in the State provided that any such sale or supply of electricity to customer subject to the trade margin that may be fixed by the Commission from time to time.
- (2) The trading licensee shall have in place all agreements, including the billing and settlement agreement, for the purchase, sale and supply of electricity, and all necessary authorisations as required by it to be able to perform its obligations under such agreements.
- (3) The trading licensee shall not without the prior approval of the Commission:
 - (a) undertake any transaction to acquire by purchase or takeover or otherwise, the utility of any other licensee in its area of activity; or
 - (b) acquire any beneficial interest in any generating company or generating station or distribution licensee or any other trading licensee;or
 - (c) merge its utility with any other licensee within the State; or
 - (d) assign its licence, or transfer its utility, or any part thereof, by sale, lease, exchange or otherwise;

Any agreement relating to any transaction referred to in sub-clause (a) to subclause (d) unless made with the approval of the Commission, shall be void.

- (4) To obtain the approval of the Commission as aforesaid, the licensee shall file a suitable application with the Commission disclosing relevant facts in that behalf and the Commission shall dispose such application expeditiously.
- (5) The grant of this trading licence to the licensee shall not in any way hinder or restrict the right of the Commission to grant a licence to any other person within the same area for trading in electricity as an electricity trader. The trading licensee shall not claim any exclusivity.
- (6) The trading licensee shall carry out trade by entering into appropriate contracts. Necessary safeguards with regard to supply of electricity through trading, or payment for the electricity traded shall be included in the agreements between the parties. All trading arrangements shall be done through the letters of credit or with any other superior instrument.
- (7) If the contract of the trading licensee with its customer is for a fixed term, then prior to the expiry of such fixed term, the licensee shall inform the customer as to when the term expires and the tariffs and terms and conditions applicable to the customer beyond the expiry of the contract, if the arrangement is continued.
- (8) The trading licensee shall comply with the requirements of laws in force and, in particular, the provisions of the Act, the rules and the regulations, Bihar Electricity Grid Code, Bihar Electricity Distribution Code, Bihar Electricity Supply Code, other codes, orders and directions issued by the Commission from time to time.
- (9) The trading licensee shall maintain an up to date register or record of all the business transactions.
- (10) The trading licensee shall be governed by the technical requirement, capital adequacy requirement and creditworthiness specified by the Commission in these regulations, for being an electricity trader and shall upgrade these technical and capital adequacy requirements including staff, when the volume of trade increases.
- (11) The trading licensee shall increase its networth if the quantum of trade moves from a lower category to a higher category and the change of category shall be decided based on the volume of electricity traded cumulated as on 31st March of each year of which the licensee shall keep the Commission informed of his moving from one category to the other and subsequent changes in the networth.
- (12) The trading licensee shall establish adequate communication facilities like telephone, fax, computer and internet facilities, before undertaking the trading.
- (13) The trading licensee shall render all assistance to any person authorised by the Commission for carrying out his duties relating to the licence.
- (14) The trading licensee shall pay the licence fee specified under the regulations in accordance with the time-schedule specified thereunder.
- (15) The trading licensee shall purchase the energy required for meeting its obligation under its licence in an economical manner and under a transparent power purchase or procurement process and in accordance with the regulations, guidelines, directions made by the Commission from time to time.

6. ACCOUNTS

- (1) Unless otherwise permitted by the Commission the financial year of the trading licensee for the purposes of these General Conditions and matters relating to the licensed business shall run from the first of April to the following thirty-first of March.
- (2) The trading licensee shall, in respect of the licensed business and any other business:
 - (a) prepare on a consistent basis from such accounting records and deliver to the Commission
 - (i) the accounting statements;

- (ii) in respect of the first six months of each financial year, a half yearly profit and loss account, cash flow statement and
balance sheet together with such supporting documents and information as the Commission may prescribe from time to time such statements and documents to be published in the manner prescribed by the Commission;
 - (iii) in respect of the accounting statements prepared, an auditor's report for each financial year, stating whether in their opinion these statements have been properly prepared in accordance with this clause and give a true and fair view of the revenues, costs, assets, liabilities, reserves and provisions of, or reasonably attributable to such businesses to which the statements relate; and
 - (iv) a copy of each half yearly profit and loss account not later than three months after the end of the period to which it relates, and copies of the accounting statements and auditor's report not later than six months after the end of the financial year to which they relate.
- (3) The trading licensee shall not normally change the basis of charge or apportionment or allocation of revenues or expenses in relation to the preparation of the accounting statements in respect of a financial year from those applied in respect of the previous financial year, without prior intimation to the Commission. Any change, if proposed, in the basis of charge or apportionment of revenues or expenses shall be consistent with the provisions of the Companies Act, 1956, the accounting standards or rules and any guidelines issued by the Commission in this regard.
- (4) Where, in relation to the accounting statements in respect of a financial year, the licensee has changed the basis of charge or apportionment or allocation from those adopted for the immediately preceding financial year, the licensee shall, if requested by the Commission, (in addition to preparing accounting statements on those basis which it has adopted), prepare such accounting statements on the basis which it applied in respect of the immediately preceding financial year.
- (5) Accounting statements under sub-clause (2) above shall, unless or otherwise approved or directed by the Commission:
 - (a) be prepared and published with the annual accounts of the trading licensee, in the manner provided herein;
 - (b) state the accounting policies adopted;
 - (c) be prepared in accordance with generally accepted Indian accounting standards; and
 - (d) be prepared in the form as the Commission may stipulate from time to time;
- (6) The references to costs or liabilities of, or reasonably attributable to licensed business or other business shall be construed as excluding taxation, and capital liabilities which do not relate principally to such business and interest thereon.
- (7) The trading licensee shall ensure that the accounting statements in respect of each financial year prepared under sub-clause (2) and the auditor's report in respect of each financial year are publicised in such manner as the Commission may direct and are made available to any Person requesting them at a price not exceeding the reasonable cost of duplicating them.
- (8) The Commission may, from such time it considers appropriate, require the licensee to comply with the provisions of sub clause (1) to (7) above treating the trading and other activities of the licensee as separate and distinct businesses and shall comply with any guidelines issued by the Commission in this regard.
- (9) Any person authorised by the Commission shall be entitled to inspect and verify the accounts of the trading licensee and the licensee shall render all necessary assistance to such person.

7. PROVISION OF INFORMATION TO THE COMMISSION

- (1) The trading licensee shall furnish to the Commission without undue delay such information, documents and details related to the licensed business or any other business of the licensee, as the Commission may require for its own purposes or for the purposes of the Government of India, State Government, the State Transmission Utility, The State Load Dispatch Centre, the Central Commission and/or the Central Electricity Authority.
- (2) The trading licensee shall furnish the information as may be required from time to time to monitor the licensee's performance and compliance of the terms and conditions of the licence and any other legislative or regulatory requirement in the manner required by the Commission.
- (3) The trading licensee shall file the annual revenue requirements, at a time as may be directed by the Commission, and in the form and manner specified thereof, to enable the Commission to determine the trading margin, wherever necessary.
- (4) The trading licensee shall duly inform the Commission about any incident restricting it from meeting its obligation under the licence granted including any act of omission or commission by others and steps taken by the licensee to mitigate the effect of such incident. The trading licensee shall notify the Commission as soon as possible the occurrence of any other incident which materially affect any part of its trading activities and in any event, by not later than thirty days from the date of such occurrence:
 - (a) submit a report to the Commission giving full details of the facts within the knowledge of the licensee regarding the incident and its cause; and
 - (b) give copies of the report to all parties concerned with such incident and to such other persons as the Commission may direct.
- (5) The Commission may by order, after providing an opportunity of hearing, direct the trading licensee to provide such amount of compensation as the Commission may direct, to persons who are affected or prejudiced by any act of commission, omission or negligence on the part of any of the employees or agents of the licensee.
- (6) The trading licensee shall submit a business plan in accordance with the provisions of BERC (Terms and Conditions for determination of tariff) Regulations - 2007.

8. CAPITAL ADEQUACY, CREDIT WORTHINESS NORMS TO BE MAINTAINED

- (1) The trading licensee shall duly comply with the regulations, guidelines, directions and orders the Commission may issue from time to time in regard to the technical and financial parameters and norms to be maintained at all times by the trading licensee.
- (2) The net worth at any point of time during the operation of trading shall not reduce below 75% of the minimum requirements specified for the respective category of trader and shall be replenished at the end of every quarter ending March, June, September & December every year to the above specified levels. An audited certificate of compliance would need to be submitted to the Commission for every quarter within a period of 30 days from the end of that quarter.
- (3) The trader shall make reasonable endeavours to maintain investment grade credit rating obtained from a leading independent Credit Rating Agency for all debts throughout the period they remain on the books of the trader.
- (4) The non-maintenance of the technical and financial parameters as per subclause (1) above shall amount to a material breach of the obligations by the licensee;
- (5) The trading licensee shall maintain the technical resources as specified in the regulations and provide to the Commission details of any changes justifying the adequacy of its capability to cater to the volume of trade it handles;
- (6) If the trading volume of the licensee exceeds its specified maximum volume of trade, then the licensee shall immediately inform the Commission and increase its networth

as specified in the regulations. In case of non-reporting of such an event the Commission shall levy compensation to the licensee for such negligence, and the licence shall be liable for revocation.

- (7) The increased networth shall remain in force till such time the increased networth consistently exceeds the requirement for a particular volume of trade through three consecutive months. On any such consistent reduction in volume of trade, the networth requirement may be revised in proportion to the average traded volumes during the three months, specified herein.

9. PAYMENT OF LICENCE FEES

- (1) Within thirty days or such further period as the Commission may allow after the coming into force of this licence, the licensee shall pay to the Commission a fee as may be specified by the Commission, on a prorata basis for the balance period of the year in quarterly instalments as specified in sub-clause (2)
- (2) For the subsequent financial year(s), for as long as this licence remains in force, the licensee shall, in four equal instalments by the 10th of April, 10th of July, 10th of October and 10th of January in each year, or such further period as the Commission may allow, pay to the Commission an annual licence fee as specified by the Regulations.
- (3) The Commission may, from time to time revise the annual licence fee payable by the licensee. The Commission may publish such notice, detailing the annual licence fee payable by the licensee on/ or before the start of each financial year.
- (4) Where the trading licensee fails to pay to the Commission any of the fees due under sub-clauses (1) or (2) by the due dates:
 - (a) without prejudice to other obligations, the licensee shall be liable to pay interest on the outstanding amount at a simple interest rate of 1.5 (one & half) percent, the interest being payable for the period beginning on the day after which the amount became due, and ending on the day on which the payment is made to the Commission in cleared funds; and
 - (b) in the event of continued default by the licensee, the Commission may revoke this licence pursuant to section 19 of the Act and regulation 18 of the regulations.
- (5) The trading licensee shall be entitled to take into account any fee paid by it under this clause as an expense in the determination of aggregate revenues, but shall not take into account any interest paid pursuant to this clause.
- (6) In case the trading licensee has moved from a lower Category to a higher Category, the balance of licence fee applicable to the licensee for such changed category shall be paid before 30th April of each year.

10. AMENDMENT OF LICENCE CONDITIONS

Any terms and conditions of licence may be altered or amended by the Commission at any time in public interest in exercise of powers under section 18 of the Act. The following provisions shall have effect for any alterations or amendments:

- (a) where the licensee has made an application under sub-section (1) of section 18, of the Act proposing any alteration or modifications to the terms and conditions of licence, the licensee shall publish a notice of such application with such particulars and in such manner as specified in Regulation 8 of the regulations;
- (b) in the case of an application proposing alterations or modifications in the area of activity comprising the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for defence purposes, the Commission shall make any alterations or modifications only with the consent of the Central Government; the Commission shall not make any alterations or modification unless all suggestions or objections

received within thirty days from the date of the first publication of the notice have been considered.

11. SETTLEMENT OF DISPUTES

The provisions contained in regulation 18 of these regulations, shall apply to any dispute between the trading licensee and any generating company or transmission licensee or consumers or distribution licensee and such disputes shall be settled in accordance with the provisions contained in the said regulations.

12. TARIFF, TRADING MARGINS AND EXPECTED REVENUE CALCULATION

- (1) The trading licensee shall calculate the expected revenue from charges, which it is permitted to recover in accordance with the provisions of the Act, the regulations of the Commission, the tariff terms and conditions and other guidelines, orders and directions issued by the Commission from time to time.
- (2) The trading licensee shall file the expected revenue calculation in the manner provided in the Conduct of Business Regulations and consistent with the regulations issued under section 61 of the Act.
- (3) Unless otherwise provided in the Special Conditions or in any order or direction made by the Commission the licensee shall every year, not later than 31st November, submit to the Commission a Statement with full details of its expected aggregate revenues and cost of service for the ensuing financial

year for its licensed business in accordance with the provisions of the Act and the regulations, guidelines and orders issued by the Commission from time to time.

13. COMPLIANCE AND SUBMISSION OF INFORMATION TO STATE LOAD DESPATCH CENTRE & CENTRAL ELECTRICITY AUTHORITY

- (1) The trading licensee shall comply with the provisions of codes and regulations published / specified by the Commission and directives of the Commission issued from time to time;
- (2) The trading licensee shall submit to the State Load Dispatch Centre (SLDC) all such information pertaining to the trade of electricity by the licensee, provided further that the SLDC shall verify the information provided by the licensee on quantum of electricity traded as against its reports and submit a review report to the Commission.
- (3) The trading licensee shall submit information to the Central Electricity Authority as required under section 74 of the Act in accordance with clause (i) of section 73 of the Act;
- (4) The trading licensee shall pay the SLDC charges as may be specified by the Commission from time to time;
- (5) The distribution licensee(s) when trading with other distribution licensee(s) shall comply with the Commission's specified ceiling value of trading margin.
- (6) The trading licensee shall comply with the requirements under section 66 of the Act as may be specified by the Commission to promote the development of market;

14. PRUDENTIAL REPORTING

The trading licensee, shall, as soon as practicable report to the Commission:

- (a) Any significant changes in its circumstances which may affect the licensee's ability to meet its obligations under the Act, rules and

regulations directions/orders issued by the Commission, the Bihar Electricity Grid Code, agreement or the licence.

(b) Any material breach of the provisions of the Act, the rules and the Regulations, directives/orders issued by the Commission, the Bihar Electricity Grid Code, the Bihar Electricity Distribution Code, the Bihar Electricity Supply Code, agreement or the licence.

(c) Any major change in shareholding pattern, ownership or management of the licensee.

15. COMMUNICATION

(1) All communications relating to the trading licence shall be in writing and shall be delivered either in person to the addressee or his authorised agent, or sent by registered/speed post to the place of business of the addressee.

(2) All communications shall be regarded to have been given by the sender and received by the addressee:

(a) when delivered in person to the addressee or to his authorised agent;

(b) on expiry of fifteen days from the date of sending by registered/speed post at the address of the addressee.

16. INTRODUCTION OF COMPETITION IN TRADING

(1) The Commission may grant licence to more than one person to trade in the same area of activity of the licensee subject to the proviso to section 14 of the Act.

(2) The Commission may, after considering applicable Government policy and in consultation with the licensees and generating companies, formulate arrangements for the introduction of competition in supply / promote the development of a market (including trading of power) in the State. These consultations will adhere to the principles of natural justice, financial viability of the sector and will afford a reasonable opportunity to the affected parties to represent their perspectives in the matter.

(3) The Commission may, with reasons recorded in writing, and after providing reasonable opportunity to the licensee to be heard, issue such appropriate orders modifying or amending the conditions of this licence, as it shall consider appropriate for the purpose of implementing the arrangements referred to in this clause.

(4) The trading licensee shall arrange systems and other resources necessary for complying with this clause.

(5) The trading licensee in any circumstances shall not enter into any Agreement or abuse its dominant position or enter into a combination, which is likely to cause or causes an adverse effect on competition in the electricity industry.

(6) If the trading licensee anticipates that it will be unable to meet any of the obligations under this clause, it shall as soon as possible notify the Commission and give sufficient reasons for the same.

17. APPLICATION OF THE GENERAL CONDITIONS TO DEEMED LICENSEES

The conditions as set out herein above are applicable to any person who is a deemed licensee under section 14 of the Act.

Area of Activity of the Trading Licensee

The following circles/districts in the state of Bihar:

..... including cantonment, aerodrome, fortresses, arsenal, dockyard or camp or any building or place in occupation of Central Government for defence purposes and without however affecting the rights of any other Licensee or exemption holder, as the case may be, under the provisions of the Electricity Act,2003

By order of the Commission
Sd/-

Secretary
Bihar Electricity Regulatory Commission

Patna
Dated :