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WEST BENGAL ELECTRICITY REGULATORY COMMISSION

NOTIFICATION

No.17/WBERC Dated: 9.6.2004

In exercise of the powers conferred by Section 13, 14, 15, 16, 17, 18 and 19 read with Section 181 of the Electricity Act, 2003 (No. 36 of 2003) and all powers enabling on that behalf, West Bengal Electricity Regulatory Commission (WBERC) hereby makes the following Regulations.

1. Short title, commencement and interpretation.

These Regulations may be called the West Bengal Electricity Regulatory Commission (Licensing and Conditions of Licence) Regulations, 2004.

- i) These shall come into force on the date of the publication in the official Gazette unless otherwise stated in these Regulations and shall be concurrent within the area of jurisdiction of West Bengal Electricity Regulatory Commission.
- ii) The Bengal General Clauses
 Act, 1899 (Ben. Act I of
 1899) shall apply to the
 interpretation of these

regulations unless otherwise indicated in these Regulations or inconsistent with the Provisions of the Electricity Act, 2003.

2. Definitions.

In these Regulations, unless the context otherwise requires:

- a) The Act means the Electricity Act, 2003;
- Regulations means the Regulations made under the Act;
- c) Rules means the Rules made under the 'Act' by the Govt.of West Bengal (the State Government);
- d) Commission means the "West Bengal Electricity Regulatory Commission" constituted under Section 82 of the Electricity Act, 2003 and in short called WBERC;
- e) Distribution Licensee means
 a licensee authorized by
 WBERC to operate and
 maintain a distribution

system for supplying electricity to the consumers in his authorized area of supply;

Provided further that the deemed licensee as per the provisions of the Act who are authorized to act as a distribution licensee within the authorized area of supply in the State of West Bengal shall also be distribution licensee for the purpose of these Regulations.

f) Transmission Licensee means a licensee authorized by WBERC to establish or operate transmission lines as per the transmission licence within the area of jurisdiction of West Bengal Electricity Regulatory Commission.

Provided further that the deemed licensee as per the provisions of the Act who are authorized to act as a transmission licensee within the authorized area of supply in the State of West Bengal shall also be transmission

- licensee for the purpose of these Regulations.
- g) Trading Licensee means
 Licence given by WBERC
 for purchase of electricity for
 resale thereof within the area
 of jurisdiction of West
 Bengal Electricity
 Regulatory Commission.

Provided that a distribution licensee shall not require a licence to undertake trading in electricity.

- h) Conduct of Business
 Regulation (CBR) means the
 West Bengal Electricity
 Regulatory Commission
 (Conduct of Business)
 Regulations 2003.
- Words and expression used and not defined in any of the Regulations shall have the meanings as defined in the Act.

3. Form and manner of application for licence.

3.1 The application for licence shall be made in accordance with the provisions of the Act and these Regulations read with WBERC

- (Conduct of Business)
 Regulations, 2003 and in the form
 of a draft as far as possible in
 accordance with Form at
 Annexure-1.
- 3.2 Every application for a licence shall be signed by the applicant or by a duly authorized representative on behalf of the applicant and shall be addressed to the Commission and delivered to the Receiving Officer:
 - a) Six copies, in print, each signed by the applicant, of the draft licence as proposed by the applicant with the name and address of the applicant printed prominently on the first page of the draft. The form of the draft licence shall be as in Annexure-2.
 - b) Six copies, each signed by the applicant, of the maps of the proposed area of transmission or distribution or trading and, in case of distribution, of streets or roads in which the

distribution of energy is to be made. In case of transmission, the area to which the energy is to be transmitted should be clearly marked by giving the names of appropriate locations, if any. Such copies are to be so marked in colour as to define any portion of the area and street or road which are administrative under the control of various local authorities and shall be on a scale.

For Distribution Licence

- (i) if not less than 10 centimeters to a kilometer, or
- (ii) if no such maps are available, of not less than that of largest scale maps available, or
- (iii) on such other scales as may be directed by the Commission or acceptable to the Commission.

For Transmission Licence and Trading Licence On such scale as may be directed by the Commission

or acceptable to the Commission.

- c) A list of local authorities vested with the administration of any portion of the area.
- d) An approximate statement describing any land parcels which the applicant proposes to acquire for the purpose of the licence and the proposed means of such acquisition.
- e) Financial capability of the applicant along with the statement of the capital proposed to be expended in connection with the proposed utility along with the source of funding, cost of funding, expenditure on major items with other relevant information.
- f) In respect of distribution licence for cases falling under sixth Proviso to Section 14 of the Act, documents relating to creditworthiness, capital adequacy or code of conduct

- prescribed by the Central Government in this behalf.
- g) Documents on the technical capability of the applicant to undertake the activities for which the licence has been applied along with the relevant details and documents...
- h) A declaration whether the area for which the licence is applied for includes 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. In case any such area is included, then the applicant shall also apply for no objection for grant of the licence from the Central Government and shall include the relevant copy of application made therefor.
- i) A copy of the Memorandum and Articles of Association or any other documents of incorporation, Annual

- Accounts for the last 3 years along with the Director's Report and the Auditor's Report thereon where applicable.
- j) Short term and long term broad business plans for the utility for at least next 10 years.
- k) Name and designation of the owners and management, if both are separate and in case of company the same for all members of the Board of Directors along with the name of the key officials of the applicant along with their experience and qualifications.
- In case of partnership firm the name of all the partners along with their respective share pattern and the names of the key officials with their experience and qualification.
- m) If the applicant is also engaged in any other business, brief particulars thereof.

- n) Technical competence and experience of the applicant in the field for which licence has been applied for.
- o) If the applicant has any collaboration agreement in the proposed venture then its brief relevant details.
- p) Any other relevant information in support of the licence.
- q) Appropriate fees as prescribed by the State
 Government and other charges etc. as per CBR.
- r) Copy of the proposed notice of the application to be published in terms of Section 15(2) of the Act.
- s) Any other information or particulars or documents as may be directed by the Commission from time to time.
- 4. Special Provision for Transmission Licence Application.

A person intending to act as a transmission licensee shall, immediately on making the application, forward a copy of such application to the West Bengal State Transmission Utility.

5. Manner and particulars of application to be published.

- 5.1 The applicant shall, within 7 (seven) days after making such application, publish a notice of application in the manner specified in the CBR and such notice shall contain at least the following:
 - (a) A short descriptive title of the utility together with the address and description of the applicant and if the applicant is a company, the names of all the Directors of the company and in case of partnership firm, the name of all the partners;
 - (b) Type of licence applied for;
 - (c) Locations of the proposed service area including

5.2

- description of the proposed area;
- (d) Whether any area falls under Section 15(2)(i) of the Act requiring approval of the Central Government;
- (e) Financial competence and amount of the investment in venture along with the broad details of the expenditure.
- (f) Technical competence and experience in brief.
- (g) Collaboration agreement in the venture, if any.
- (h) Experience in any existing and or previous business in Generation/Transmission/Dis tribution/Trading.
- (i) Place and timing where the complete application can be seen by any person who want to object or give any comments.
- (j) Such other particulars as the Commission may direct.

The advertisement shall be headed by a short title corresponding to that given at the head of the draft licence and shall give the addresses of the offices at which the copies of the maps therein referred to may be inspected and the copies of the application perused or purchased along with the dates and time and shall state that every local authority / licensee or any other person desirous of objection making any or suggestion with reference to the application may do so by writing to the Commission in the manner prescribed in the CBR so as to the office of reach to the Commission within 30 days of the date of issue of the notice. The full address of the Commission should also be given.

6. Objections, suggestions and recommendations.

6.1 Any person intending to object to the grant of licence shall file written objections so as to reach the office of the Commission within the due date and time and in the manner provided for in the Act

and Regulation and the as Commission may direct. The objection shall be filed in the form of objection and the provisions of the **WBERC** (Conduct of Business) Regulations, 2003 shall apply to the filing of such objections.

6.2 Where applicable, the applicant shall immediately apply for and obtain the no objection required from the Central Government in terms of Clause (ii) of Section 15 of the Act and produce within 30 days of the publication of the notice.

If any objection has been raised by the concerned authority or no objection declined, then the same shall be brought to the notice of the Commission by the applicant appropriately within 3 days of its receipt. Also non-reply, if any, by 30 days from the date of publication will also be brought to the notice of the Commission on affidavit.

6.3 In case of application for transmission licence,

recommendations, if any, of the State Transmission Utility made within 30 (thirty) days after receipt of a copy of the application shall be considered by the Commission. The recommendations given by the State Transmission Utility shall not be binding on the Commission.

7. Rejection of Application for non-compliance.

The Commission may, at any point of time after receipt of the application, reject the same for reasons to be recorded in writing if such application does not conform to provisions of the Act or the Rules or the Regulations made thereunder or the provisions of any other law for the time being in force, after giving the applicant reasonable opportunity of being heard.

8. Notice prior to issue of Licence.

Before granting a licence, the Commission shall publish a notice in at least two such daily newspapers, as the Commission may consider necessary, stating the name and address of the person to whom it proposes to issue the licence.

9. Forwarding copies of licence.

The Commission shall. immediately after issue of licence, forward a copy of the licence to the State Government, Central Electricity Authority, local authority, and to such other Commission persons the as considers necessary.

10. Conditions in Licence.

- 10.1 The conditions under which the licensee shall be governed and regulated will be as given in the licence.
- 10.2 The Commission may, at any time, direct or specify any general or specific condition to apply to a licence to ensure competition on a level playing field, develop market, avoid market domination and or any other factor which may become necessary to carry out

provisions of the Act and the Regulation made thereafter.

- 10.3 The following conditions shall be added and / or replaced for the existing ones or stand amended / modified as the case may be after expiry of one year from 10th June, 2003 in case of the licensees referred to in 1st, 2nd, 3rd, 4th and 5th provisos of Section 14 of the Act.
 - a) The licensee shall comply with all the provisions made under the Act, Rules and Regulations made thereunder.
 - b) The terms and conditions of licence given in Annexure-2 of this Regulation shall be deemed to be part of their existing licence from 10th June, 2004 except terms and conditions in Part 'A'.
 - c) The licensees shall immediately carry out and change / modify any arrangement made by them which is against the provisions of the Act, Rules or Regulations immediately.

- d) The Commission may direct licensee to purchase such power and at such rates from non-conventional sources of energy as may be determined or directed by the Commission and the same will be complied with by the licensee at once.
- e) The power to be exported out of the area of supply in case of distribution licensee, if any, shall be only after meeting the just reasonable demand of its consumers in that area.

11. Amendment of licence.

- 11.1 Before any alterations or amendments in the licence are made, the following shall have effect, namely:
 - a) where the licensee has made an application proposing any alterations or modifications in his licence, the licensee shall publish a notice of such application with such

particulars and in such manner as is applicable in case of applicant of new licence or as may be directed by the Commission on the application of the licensee in this regard.

Provided that in the case of application an proposing alterations or modifications in the existing area of supply comprising the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the of occupation the Government for defence purposes, the applicant shall also apply for no objection in this regard to the competent authority and obtain consent of the Central Government before the Commission makes any alterations or modifications.

 where any alterations or modifications in a licence are proposed to be made otherwise than on the application of the licensee, the Commission shall publish the proposed alterations or modifications with such particulars and in such manner as considered appropriate by the Commission.

11.2 The Commission may make alteration or modification as it may deemed fit after considering all suggestions or objections received within 30 (thirty) days from the date of publication of the notice.

12. Grant of exemption of licence.

Exemption from licensing requirement under Section 13 of the Act may be granted in accordance with the national policy formulated under Section 5 and in the public interest, on the recommendation of the State Government. The exemption will be granted by giving appropriate notification and will be subject to such conditions and restrictions including such period of years as be specified may in the notification.

- 13. (i) The Commission may, at any time at its sole discretion vary, alter, modify, add or amend any provision of this Regulation.
 - (ii) If any difficulty arises in giving effect to any of the provisions of this Regulation, the Commission may for

Place: Kolkata
Date: 9.6.2004

reasons to be recorded in writing direct the licensee or consumer by general or special order, for taking suitable action not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty.

(iii) Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent

power of the Commission to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Commission.

By order of the Commission
(Dr. R. N. Das)
Secretary of the Commission

Annexure - 1

[See Regulation 3.1] General headings

Before the West Bengal Electricity Regulatory Commission, Kolkata

Application for Transmission / Distribution / Trading Licence

Sir,

We hereby apply for Transmission / Distribution / Trading Licence, with details as under:

A. Particulars:

- 1. Name
- 2. Address of Registered Office
- 3. Company / Firm / Association / Individual
- 4. Year of formation
- 5. List of partners / directors
- 6. Address for communication
- 7. Authorised person to whom communication is to be addressed

B. Details of Licence Application:

- 1. Type of licence applied for (Distribution / Transmission / Trading).
- 2. Draft Licence along with the changes proposed from the standard terms and conditions and reasons therefor.
- 3. Proposed area of licence applied for :

The area is bounded as follows:

North - By

East - By

South - By

West – By the boundaries whereto are delineated in the deposited maps.

- 4. Deposited map of area (In case map as per standard scale required as per Regulation is not available the justification for different parameters adopted).
- 5. List of local authorities vested with administration of any portion of the area applied for.
- 6. Land parcels proposed to be acquired by applicant, if any, and proposed means of acquisition.
- 7. Declaration on area applied for :

Whether area includes any part of the area covered by the Section 15(2)(ii) of the Act, if yes, area details thereof and copy of the application made for approval of the Central Government.

C. Financial and technical fulfillment of requirements:

- 1. Financial capability of the applicant along with statement of capital proposed to be expended, source of funding, cost of funding and expenditure on major items with other relevant information.
- The documents relating to creditworthiness, capital adequacy, code of conduct in case of licence falling under Sixth Provisio of Section 14 of the Act.
- 3. Short term and long term broad business plans for at least next 10 years.

- 4. Technical competence and experience of the applicant in the field for which licence has been applied.
- 5. Brief details of collaboration agreement in the venture, if any.
- 6. If the applicant is also engaged in any other business, brief particulars thereof.
- 7. Names, experience and educational qualification of key management personnel.
- 8. The amount of security deposit proposed to be deposited along with the manner in which it is proposed to be given. In case of bank guarantee it shall be from approved banks and in the proforma to the satisfaction of the Commission. The security deposit shall normally be equal to 1% of the investment in case of transmission and distribution licence or 1% of the average of 3 years projected revenue whichever is higher.

The minimum security deposit shall be Rs.50 lakhs and maximum Rs.25 crores.

D. Others:

- 1. Summarised particulars of application for publication.
- 2. Details of fees and other charges paid.

We request for grant of transmission / distribution / trading licence as detailed hereinabove.

Yours faithfully,

Signature with designation

Enclosures:

- 1. Draft licence.
- 2. Memorandum and Articles of Association / Partnership Deed.
- 3. Audited Accounts for last 3 years including Director's Report and Auditor's Report.

4. Area of map.

Licence No.....

- 5. Documents relating to financial capability, creditworthiness, proposed capital expenditure, source of funding, cost of funding etc.
- 6. Documents relating to technical competence and experience.
- 7. Other documents as per the Regulation and this application.

ANNEXURE - 2

Form of Licence for the Transmission / Distribution / Trading Licence

Part 'A'

Licence is hereby granted by the West Bengal Electricity Regulatory Commission under the
Electricity Act, 2003 to to transmit / distribute / trade in
electrical energy in the area specified hereunder with the powers, duties and obligations and
the terms and conditions specified hereunder subject to the terms and conditions of the
Electricity Act, 2003 and the Regulations made thereunder.

Short Title

1.	(a) This licence may	be cited as	Transmission /	Distribution /	Trading 1	Licence N	۱o
	dated						

Licence Term & Nature of Supply

(b)	The Commission hereby grants to						
(c)	The nature of supply shall be or such other as the Commission may allow.						
	Security Deposit						
(a)	The licensee shall within 30 days of the date of issue of licence shall deposit Rs Lakhs as security deposit to fulfill its duties and obligations under the licence.						
	The amount of security deposit shall be in bank guarantee in a pro-forma and the bank to be approved by the Commission.						
(b)	(b) 50% of the security deposit shall be released within 15 days of satisfactor completion date of roll out period and the balance will remain as security deposit to be released as per the direction of the Commission but 25% not later than one year from satisfactory completion of roll out period and balance 25% after two years from the date of roll out Area of Supply						
	Area of supply means the area within which the licensee will operate and is authorized by the licence (the area of supply) is the whole of the area bounded as follows: North – By East – By South – By						

the boundaries whereto are delineated in the deposited maps.

2.

3.

Roll Out Period

Part 'B'

Definitions & Interpretation

- 5. In this licence, unless the context otherwise requires:-
 - (a) "The Act" shall mean the Electricity Act, 2003;
 - (b) "Affiliate" means in relation to the licensee, any holding company or subsidiary of the licensee, or any subsidiary of the holding company of the licensee or any company in which the applicant has majority control directly or indirectly.
 - (c) "Area of Supply" means the geographic area set out in the licence and referred to in regulation 3 of this licence within which any activity authorized by this licence is allowed.
 - (d) "Auditors" means the licensee's auditors holding office in accordance with the requirement of the Companies Act, 1956 to audit the accounts of the company and / or under the provisions of the Act of incorporation of the applicant.

- (e) "Authorised" in relation to any person, business or any activities means authorized by the licence granted under the provisions of the Act or exemption granted under the provisions of the Act or Regulation.
- (f) "The Commission" means the West Bengal Electricity Regulatory Commission;
- (g) "Controlling Interest" shall mean (i) majority ownership, and / or (ii) majority control of voting rights and or ability to appoint majority of the Directors on the Board of Directors of a Company or to control the management of the Company in any effective manner.
- (h) "The map" or "Deposited maps" means the plans of stipulated area of supply which has been deposited and approved by the Commission and has been signed for the purpose of identification by the Secretary or any designated officer of the Commission and by the applicant.
- (i) "Dispose of" or "Disposal" means the sale, gift, lease, licence, loan, security, mortgage, charge or grant of any other encumbrance or permitting of any encumbrance to subsist or any other disposal to another party including affiliate.
- (j) "Effective date" means the date following the day on which the Roll Out period ends.
- (k) "Grid Code" means the grid codes formulated under the provisions of the Act.
- (l) "Licensee" shall mean and include the said Licensee and their legally permitted assigns in terms of the Act and Regulation;
- (m) "Major incident / accident" means an incident or accident associated with the area of supply in the licensee's area which results in a significant interruption of services, substantial damage to equipment, or loss of life or significant injury to a human being, with the technical characteristics of significant interruption, substantial damage, significant injury as has been directed in any Grid Code or any Rules or Regulations framed under the Act or as may be directed by the Commission.

- (n) "Non-core activities" means an activity which is not essential to, part of, related to or reasonably incidental to the business for which licence has been given.
- (o) "Operational control" means possessing the authority over any asset, undertaking, service lines or equipment to take operational decisions such as commissioning, up-gradation, operation and or utilization thereof.
- (p) "Other business" or "Separate business" means each of the business other than for which licence has been given and any other business taken separately from one another.
- (q) "Regulations" means the regulations issued by the Commission under Section 181 of the Act.
- (r) Subsidiary shall have the same meaning as in the Companies Act, 1956.
- (s) Words and expression used and not defined in this Regulation shall have the meaning as defined in the Act or any other Regulation made under the Act.

6. Interpretation

In this licence, unless the context otherwise requires:

- (a) heading are for convenience only and do not affect the interpretation of this licence;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender includes any gender;
- (d) a reference to terms of an offer or agreement is to all terms, conditions and provisions of the offer or agreement;
- (e) a reference to any statute, regulation, order, ordinance or by-law includes all statutes, regulations, orders, ordinances or by-laws varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, rules, orders, ordinances or by-laws issued under that statute;
- (f) a reference to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document;

- (g) a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns;
- (h) an event, which is required under this licence to occur on or by a stipulated day, which is not a business day of the Commission, may occur on or by the next business day;
- (i) a period of time:
 - 1) which dates from a given day or the day of the act or event is to be calculated exclusive of that day; or
 - 2) which commences on a given day or the day of the act or event is to be calculated inclusive of that day.

Breaking up of streets, railway and tramways

7. The licensee is required to abide by the rules made by the State Government in accordance with Section 67 of the Act and till such rules are formulated, provisions of Section 12 to 18 of the Indian Electricity Act, 1910 and rules made thereunder will continue to be followed by the licensee subject to the provisions of Section 185(2)(b) of the Act.

Appointment of Officers/Staff by Licencee

8. The licensee shall employ suitable Electrical Engineers for looking into engineering aspects of the utility possessing recognized degree or diploma in Electrical Engineering from a recognized university or college or qualifications equivalent to such degree or diploma and with sufficient practical experience. Similarly the licencee shall employ suitable professional and other staff in adequate number. The Commission may direct the employment of suitable Engineers and other professionals with such qualifications and experience which it may consider appropriate.

Directions of the Commission

- 9. (a) The licensee shall always comply with the directions issued by the Commission from time to time and shall act in accordance with the terms of its licence except where the licensee obtains the prior approval of the Commission for any deviation of such directions and terms.
 - (b) The licensee shall always follow the provisions of the Act and the Rules and Regulations made thereunder.
 - (c) The terms and conditions specified in this licence are subject to additions, modifications or amendments as may be made by the Commission in accordance with the Act or Regulation made thereunder.
 - (d) If any clause / condition of this licence becomes inapplicable or otherwise ceases to be effective, that clause / condition shall be deemed to be deleted from the licence from that date and the remaining portion of the licence shall continue in full force and effect.

Prior consent for certain actions

- 10. The licensee or its affiliate shall do the following activities only with the prior written consent in addition to the other activities for which the licencee is required to obtain the prior approval of the Commission in terms of the provisions of the Act/Regulations made by the Commission thereunder and or terms and conditions of the licencee.
 - a) Purchase or import or otherwise acquire electricity under this licence from any person, other than a Generating Company or any other licencee under the Act through and by an economical and efficient manner under a transparent procurement process and following the guidelines or orders given by the Commission and also subject to provisions of the Act, Rules, Regulations and Codes.

- b) Sale or otherwise dispose of electricity to any person, other than pursuant to this licence.
- c) Own or hold any beneficial interest in any generating company or generating set in the area of supply except in a manner which is incidental to the supply business.
- d) Own or hold any beneficial interest in any supplier, other than a person who supplies electricity pursuant to a general exemption granted by the Commission or in any facilities used or supply in the area of supply other than for the purpose of supply business.
- e) Making any loans to, or issuing any guarantee for any obligation of any person which is beyond the normal area of business activities of the licensee.
 - Loan to the employees pursuant to the terms of services and advances to the suppliers etc. in the ordinary course of business are excluded from the requirement to seek such approval
- f) In case an affiliate or subsidiary company is to provide any goods or services to the licensee in connection with normal business then no prior approval is required if following conditions are fulfilled.
 - a) The transaction will be on an arms-length basis;
 - b) the price and quality of the goods is reasonably determined keeping in view the market conditions; and
 - c) the normal business requirement of the licensee.
 - Notwithstanding anything-contained hereinabove under this clause, nothing will be applicable if the purchase has been made through normal competitive bidding in a transparent manner.
- g) Delegating any of its function to a franchisee or any other person (except its employees in normal course).
- h) Acquire a licence or the undertaking of, or acquire controlling interest in the business of transmission, distribution or trading of electricity of any other licensee or persons, where such business or undertaking is situated in the State of West Bengal.
- Assign or transfer this licence or undertaking or any material part thereof, which is integral to its Licensed Business.

- j) Show any preference to a consumer in conduct of its Licensed Business other than in accordance with the provisions of the Electricity Act, the Regulation made thereunder or conditions of licence.
- k) Where such prior permission is required, the licensee shall file a suitable application to the Commission disclosing relevant facts on that behalf. The Commission may within 30 days of the filing application allow the arrangement subject to such terms and conditions as is considered appropriate or reject the same for reasons recorded in writing in support of the order.

Activities of the Licensee for which prior intimation to be given to the Commission

- 11. a) The licensee shall not commence any new provision of services to third parties for the transmission of electricity through its distribution system, without informing the Commission at least 7 days prior to commencement of the proposed arrangement. However, the Commission may relax period of notice in emergent circumstances requiring remedial action in the interest of the operations or the system.
 - b) The licensee may engage in any non-core activities or other business subject to the provisions of the Act and regulations made thereunder, only so long such activity is likely to result in the gainful employment of the assets and infrastructure of the licensee and subject to the following conditions:
 - a) The business and the conduct thereof by the licensee is not prejudiced and / or adversely affected in any manner.
 - b) The licensee shall prepare and keep, in respect of non-core activity or other business, separate accounting records as would be required to be kept in respect of such activity, as if it were carried on by a separate company, so that the revenues, cost, assets, liabilities, reserves and provisions or any expense, or reasonably attributed to, each such activity are separately identifiable in the books of licensee from those of any other business in which the licensee is engaged as per the licence. The expenses revenue etc. of such non-core activities shall also be got separately audited.

- c) The licensee may also undertake certain activities on a common / shared basis involving sharing of infrastructure, facilities, personnel and costs provided that
 - a) the costs shall be suitably allocated in a reasonably manner between the licensee and the other business and separate accounts shall be maintained for such allocable cost by each of them, and
 - b) such activities shall be undertaken for the efficient and economical conduct of the Licensed Business, and
 - c) the activities so undertaken are in the interest of the consumers and does not collude with the other business of the licensees and the licensee shall not collude with any other licensee or any other party or for any of its other business in any way which is detrimental to the interests of the consumers.
- d) The licensee shall also comply with such guidelines and directions as the Commission may give in this regard.

Licence Term

12. The Licence shall come into force with effect from the date on which it is issued and shall remain in force as amended from time to time, unless revoked earlier by the Commission in accordance with the provisions of the Electricity Act and Regulation made thereunder and of this licence. The Commission shall at the request of the licensee, subject to the satisfactory performance by the licensee of its obligations under the licence, renew whole or part of this licence for such period (not less than 10 years) and on such terms and conditions, as the Commission may consider appropriate.

Compliance with Orders, Codes and Guidelines

- 13. In conduct of its business under the licence, the licensee shall comply with
 - a) the provisions of Electricity Act, 2003,theRegulations made thereunder, conditions in this licence and applicable provisions of Rules, Regulations,

Codes and Standards issued under the Electricity Act, 2003 or Rules and Regulations made thereunder within time and manner provided therein.

- b) Orders and directions of the Commission which are binding in nature.
- c) Any other Rules, Regulations or orders as are applicable and issued by a competent authority.
- d) All other applicable Indian Laws.
- 14. The licensee shall be bound to carry out its business under the licence on the basis of sound commercial principles, economical use of resources, efficient service to consumers and any other factor which the Commission may direct from time to time.

Mandate of the licensee

15. The licensee shall be entitled to undertake all activities necessary and relating to the conduct of Licensed Business subject to the provisions of the Act, Rules, Regulations and the Terms of the licence.

Obligation and duties of the licensee

- 16. (a) The licensee shall follow the provisions of the Act, Rules, Regulations, Codes, Standards made thereunder and terms and conditions of this licence.
 - (b) Without prejudice to the above,
 - (i)(a) The licensee shall follow the methodology, procedures and other directions including the tariff regulations and in other orders / regulations of the Commission as may be issued from time to time, while filing the revenue calculation. The amount that licensee is permitted to recover from its tariff in any financial year shall be the amount which the Commission has determined in accordance with the

- provisions of the Acts, Regulations and other orders of the Commission issued from time to time.
- (i)(b) The surcharge and additional surcharge collected under Section 42 of the Act shall be utilised in the manner specified or directed by the Commission.
- (i)(c) The special allocations and balances under consumer accounts or relating to consumers shall be dealt, invested and utilized as specified or directed by the Commission from time to time.
- (ii) The licensee shall always comply with the grievance handling procedure in terms of Section 42(5), 42(6) and 42(7).
- (iii) The licensee on the request of the consumer, to the extent that it is reasonably available to licensee, provide:
- (iii)(a) information on all services provided by the licensee including the information on the charges or alternate tariff schemes which may be available to the consumers;
- (iii)(b) other information which is permitted or which is required to be disclosed to the consumer as per the Act or Regulations or conditions of this licence;
- (iii)(c) a consumer charter detailing all the rights, entitlement and responsibilities of consumers and obligations of the licensee to consumers relating to supply of electricity including service levels/ parameters and its power relating to consumers and other aspects of their relationship as per the Act and other applicable Laws and the Regulations;
 - Provided the licensee is at liberty to charge reasonable cost of providing the information being requested unless the information requested is of general nature.
- (iv) The licensee must act ethically, fairly and honestly in all its dealing with the consumer.
- (v) The licensee shall provide to SLDC, RLDC and Central Electricity

 Authority and / or other licensees such information that may
 reasonably be required to perform their functions and exercise its

- power under the Act. The licensee shall always comply with the directions of RLDC, SLDC and CEA issued in accordance with the provisions of the Act.
- (vi) The licensee shall cooperate with generating companies, other licensees, other persons and SLDC for the efficient, secure and coordinated operating power system in the State of West Bengal in most economical manner.
- (vii) The licensee shall comply with the provisions of the State Grid Code, in so far as it applicable to it. The Commission may on reasonable grounds and after consultation with any affected generating companies and other licensees, issue directions relating to the obligations of the licensee under this condition in respect of such part of the grid code and to such extent as may be laid down in this directions which shall be followed by the licensee.
- (viii) The licensee shall perform its Licensed Business in most efficient, economical and on commercial principles and will always be subject to the provisions of the Act, Regulations made thereunder and / or other conditions of this licence.
- (ix) The licensee shall plan, operate, maintain and make all arrangements to ensure adequate systems capable of providing an efficient, secure, coordinated and economical system in his area of supply commensurate with the need of its business both existing and projected nearby future.
- (x) The licensee shall provide all the information, report, notice etc. to the Commission and other authorities in time and the manner as may be required under the Act, Rules, Regulations, Codes and Orders of the Commission.

Powers of the Licensee

17. Subject to the provisions of the Act, Regulations and the conditions of the licence, the licensee shall be vested with all powers and rights which are or can be made available by the Commission to a licensee under the Electricity Act, 2003 or regulations made thereunder and every other relevant and applicable law if it is not inconsistent with the provisions of the Act or Regulation made thereunder or terms of this licence.

Licence Fees

- 18. (a) The licensee shall pay to the Commission an annual licence fee and other annual fee and charges as fixed by the Commission from time to time for that financial year by 10th April of each year or such further period as may be allowed by the Commission.
 - (b) In case the licensee fails to pay to the Commission the full amount of fees and charges by the required date in the manner required then the licensee shall be liable to pay to the Commission simple interest on the outstanding amount at a rate equal to 18% compounded monthly for the period beginning on the day after the date on which the amount became due and ending on the date the payment is made and such interest shall not be allowed as expenditure as part of the revenue requirement;
 - (c) The licensee shall pay such other fees and charges in respect of the licence as may be directed by the Commission.
 - (d) The non-payment of the annual fee, other fees and charges of the licence in time means the licensee is in default of the conditions of the licence and the Commission may take suitable action in terms of the Act, Rules and Regulations made thereunder and the conditions of the licence.

Accounts of the Licensee

19. (a) The licensee shall prepare its accounts as per the requirements of the Companies Act or Act of its incorporation.

- (b) The licensee will also prepare its accounts as per the Electricity Act, if any, and directions of the Commission.
- (c) The licensee shall maintain its accounts for Licensed Business separate from the accounts for its other business or non-core activities.
- (d) The licensee shall keep separate accounts of the surcharge and additional surcharge collected under Section 42 of the Act.
- (e) The licensee shall get its accounts audited from the auditors to be appointed as per the Act of incorporation within due time. In case there is no provision of appointment of auditors as per the Act of incorporation, then the licensee may appoint auditor subject to the guidelines given by the Commission for which the licensee shall bring to the notice of the Commission sufficient in advance.

Information and Reporting to the Commission

20. The licensee shall provide all the necessary and required information to the Commission to enable it to monitor the licensee's compliance with the conditions of the licence or fulfillment of the provisions of the Act, or Regulations, Codes, Standards etc. made thereunder.

Independent Audit

- 21. The licensee shall, if so desired by the Commission, appoint with the approval of the Commission, an independent auditor from the firm of Chartered Accountants or any other agencies authorized to audit the accounts as per Companies Act to conduct audit of
 - a) its compliance with obligations under this licence, including obligations to comply with applicable codes, standards and guidelines, and or
 - b) the reliability and quality of information reported by the licensee to the Commission and the consistency of that information with the directions, and or

c) any other matter which Commission feels to be looked into by the independent auditor.

The scope of the audit shall be approved by the Commission.

Dispute Resolution

- 22. a) The licensee shall refer all disputes under the licence for determination by the Commission relating to interpretation of the licence and as to terms and conditions thereof.
 - b) All disputes or differences arising between the licensee and others and falling under Sections 86(f) and 158 of the Act shall be adjudicated by the Commission or its nominee agency in accordance with the provisions of the Electricity Act.
 - c) All disputes or differences between the licensee and the consumer shall be resolved as per the Guidelines for Establishment of Forum for Redressal of Grievances of Consumer and Ombudsman Regulation, 2003. Nothing contained in this Regulation will deem to take the right of the consumer which he has under any law for the time being in force or Section 142 or 143 or 173 or 175 of the Act.

Force Majeure, Fortuitous Events and Emergencies

23. a) The licensee shall not be liable for its total or partial failure to perform its obligations under this licence to the extent that such failure is a consequence of an event of Force Majeure and / or Fortuitous Event of such magnitude that with all reasonable efforts, the licensee can not or is not allowed to start its operations either fully or partially.

Explanation:

An event to "Force Majeure" and "Fortuitous Event" means any event or circumstance or combination of events or circumstances beyond the reasonable control of the licensee, which materially, adversely and substantially affect the performance of the licensee of its obligation pursuant to this licence.

- i) In the case of Force Majeure this will mean events / circumstances which could not have reasonably been prevented by the licensee, such as civil disturbances, armed conflict, act of foreign enemy, wars, terrorist activities, uprisings, insurrections, revolution.
- ii) In case of a Fortuitous Event, results from unforeseeable occurrences in nature such as earthquakes, typhoon and other natural disasters.
- b) Licensee's obligations under the licence shall be suspended to the extent and during the time that such Force Majeure and / or Fortuitous Event and / or its impairing impact on the licensee's ability to perform continues provided that the licensee has taken all reasonable steps to enable it to continue its obligation but has failed. Provided, further, that as a condition precedent for the suspension of the obligations, the licensee shall inform the Commission, with confirmation in writing, as soon as possible about the occurrence of any such event and the likely period during which the effect and occurrence of the event and the period during which the licensee's obligation will remain suspended partially and or fully.

Default and Revocation

- 24. a) Subject to the provisions of the Act and the Regulations made thereunder, the Commission may under any of the following circumstances exercise its option to revoke the Licence:
 - i) If the licensee requests in writing to the Commission that this licence may be revoked for the whole or any part of the area of supply, or

- ii) If the licensee willfully commits a material breach of any of the material terms of this licence and / or the Act or the Regulations made thereunder or the orders of the Commission.
- iii) If in the opinion of the Commission, the licensee is not in a position to discharge its duties and obligations imposed under the licence or the Act or regulations fully and efficiently due to its adverse financial position or any other reasons, or
- iv) If the licensee is adjudged bankrupt.
- On the occurrence of an event envisaged above except in sub-clause (a)(i), the Commission shall give not less than 90 days prior notice in writing to the licensee stating the grounds on which the licence is proposed to be revoked. During such period of 90 days, the licensee shall consult with Commission and the licensee shall take steps required for curing the default, which led to the issue of the notice by the Commission. The Commission shall duly consider any reasonable cause shown by the licensee within the above period of 90 days. The Commission shall revoke the licence after expiry of the 90 days period by an order in writing if the licensee continues to be in default, not having taken reasonable steps to remedy the default. The Commission shall record in the order, reasons for the revocation of the licence. The Commission shall fix a date on which the revocation shall take effect.
- c) The Commission may, instead of revoking the licence, permit it to remain in force subject to such terms and conditions including additional conditions as it may consider fit to impose and such terms and conditions imposed shall be binding and be observed by the licensee and be of like force and effect as if they were contained in the licence.

- d) If the Commission appoints an administrator to the licensee's business under the provisions of the Act, the administrator shall exercise its functions and powers in such a manner as may be directed by the Commission in the instrument of appointment. The licensee shall not be responsible for the acts and defaults of the administrator unless the licensee has not taken sufficient steps to enable the administrator to carry out its duty and functions and exercise its power as per the directions of the Commission.
- e) The Commission shall not revoke the licence where the licensee shows to the satisfaction of the Commission, that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his licence and if required by the Commission, makes the deposit or furnish the security, as may be required.
- f) The revocation of licence will be without prejudice to any penalty which may be imposed or prosecution proceeding which may be initiated under the Act.
- g) The suspension of licence and transfer / sale of the utility after the revocation of the licence shall be in accordance with the provisions of Section 19 to 23 of the Act.

Confidentiality

25. The information provided to the Commission by the licensee shall be considered public unless upon specific request by the licensee, the Commission decides that certain information is of a proprietary nature and that the public interest served by disclosure may harm the commercial interest of the licensee or does not otherwise prudent to disclose such information.

Assignment

26. Notwithstanding anything contained in this licence, no licensee shall at any time assign his licence, or part with his licence in any way or transfer his utility, or any

part thereof by sale, lease, merger, exchange or otherwise or part with the management control or stake without the prior approval of the Commission.

Communication

27. All communications relating to this licence shall be in writing and in the English language.

All communication is to be regarded as having been given by the sender and received by the addressee -

when delivered in person to the addressee either by hand, or by courier / mail or any other means to be directed by the Commission.

Competition

- 28. a) The Commission may grant licence to any person(s) for the same business as of the licensee including distribution of power in the same area of supply subject to the provisions of the Act. The licensee shall extend necessary cooperation as required to such person.
 - b) The 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 electrical industry.
 - c) The Commission may issue such direction as it considers appropriate, if such licensee enters into any agreement or abuse its dominant position or enters into a combination which is likely to cause or causes an adverse effect of competition in electrical industry and the licensee shall be bound to comply with such directions in the time and manner directed by the Commission.
 - d) The licensee shall arrange systems and other resources necessary for complying with conditions under this Regulation as per the directions of the Commission.

Disposal of Assets

- 29. a) The licensee shall not, in a single transaction, dispose or relinquish the operational control over any land, building or assets whose book value at the time of disposal exceeds Rs. 20 lakhs or estimated market value of Rs. 30 lakhs whichever is higher, without complying with the following conditions.
 - b) The licensee shall give to the Commission for its approval, prior written notice of not less than one month of its intension to dispose of or relinquish operational control over any asset covered by any condition. The notice will include all the relevant information regarding such disposal of the relinquishment and the notice will not be deemed to be received unless sufficient and complete information has been given. The licensee shall not divide, partition or split the assets or the costs thereof in order to circumventing the provisions of this clause.

The licensee may dispose of or relinquish operational control of the assets as indicated in the above notice if

- i) the Commission confirms in writing its approval to such a disposal subject to such conditions as the Commission may impose or
- ii)the Commission does not inform the licensee in writing of any objection to such disposal or relinquishment of operational control in the notice period referred to above and the transfer is effected by transparent and competitive bidding procedures.
- c) Notwithstanding contained anything above, the Commission may give a general consent for disposal or relinquishment of operational control over any asset as may be considered appropriate by the Commission with such direction as it may consider.

d) The licensee shall not create any charge, without obtaining the approval of the Commission on the assets which has been created out of the funds provided by the consumer or from consumer's fund or special allocations.

Investments in Capital Expenditure

- 30. a) The licensee shall not make any investment except in an economical and efficient manner and in accordance with the approved investment plan subject to the regulations.
 - b) The Commission may require from the licensee to submit a long term rolling plan not exceeding 5 years with details of investment schemes to be undertaken during the period for the approval of the Commission along with its break up in yearly investment schemes.
 - c) The licensee shall invite and finalize tenders for procurement of equipment, material and all services relating to major investments in capital items involving an investment of Rs. 5 crores or more, in accordance with the transparent tendering procedure. The limit of Rs. 5 crores or more may be enhanced or reduced by the Commission as it may consider appropriate.

Penalty for Contravention

31. The licensee shall be liable for action under the provisions of the Act, Rules, Regulations, Codes, Standards and Condition of licence in appropriate cases for contravening any one or more of the provisions of the licence including but not limiting to investigation, penalty, prosecution, revocation of licence, amendment of licence, appointment of administrator, sales of assets and or any other measure in accordance with the provisions of the Act, Rules, Regulations, Codes, Standards, etc. as the Commission may deem fit.