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BIHAR ELECTRICITY REGULATORY COMMISSION

NOTIFICATION

The 2nd April, 2018

No. Case No. SMP-32/2017-02— In exercise of powers conferred by section 181 of the Electricity Act, 2003 (36 of 2003), and other provisions enabling it in this behalf, and after previous publication, the Bihar Electricity Regulatory Commission hereby makes the following regulations.

1. SHORT TITLE, COMMENCEMENT AND EXTENT

- 1.1. These regulations may be called the **Bihar Electricity Regulatory Commission (Audit of Compliance) Regulations, 2018.**
- 1.2. These regulations shall extend to the whole of the State of Bihar.
- 1.3. These regulations shall come into force from the date of their publication in the Official Gazette of the State of Bihar.

2. DEFINITIONS AND INTERPRETATIONS

- 2.1 In these regulations, unless the context otherwise requires:
 - (a) ‘**Act**’ means the Electricity Act, 2003 (36 of 2003);
 - (b) “**Regulated Entities**” mean distribution licensees, generation companies, transmission licensees, Electricity Traders, and State Load Dispatch Centres;

- 2.2 Words and expressions used and not defined in these regulations but defined in the Act shall have the meanings assigned to them in the Act;

3. COMPLIANCE AUDITS

- 3.1 The Commission may, at any time, conduct audits of regulated entities for verifying their compliance with the Act, rules, regulations made thereunder, orders and directions issued by the Commission.
- 3.2 The Commission may, by order, empanel consultants / auditors in fair and transparent manner by inviting bids clearly specifying the term of reference to assist the Commission in the discharge of these functions on the terms and conditions as deemed fit.
- 3.3. The Commission may either appoint consultants/ auditors empanelled with it for an audit or go through the process of fresh selection, if required for a specific need.
- 3.4 The Commission may also consider the single source selection of consultants/ auditors where it is appropriate for reasons to be recorded in writing.
- 3.5 The Commission before initiating an audit will frame the terms of reference which will detail out the specific outputs that are to be provided by the Consultant / Auditor in relation to the task, the timeframe in which the task has to be completed and other terms relevant to the task.
- 3.6 The Commission shall assign, through an Order, the specific task of audit to the consultant / auditor based on the terms of reference framed by it before the audit of the regulated entity starts.

4. REQUIREMENTS OF CONSULTANT / AUDITOR

Consultants / auditors shall provide professional, objective, and impartial advice and at all times hold the Commission's interests paramount, without any consideration for future work, and that in providing advice they avoid conflicts with other assignments and their own corporate interests. Consultants / auditors shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of being unable to carry out the assignment in the best interest of the Commission. Without limitation on the generality of the foregoing, Consultants / auditors shall be engaged keeping in view the circumstances set forth below:

- (i) A consultant or an auditor engaged for a particular audit must not hold office or have a commercial or any other interest in the regulated entity for a period of three (3) years preceding the engagement by the Commission.

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- (ii) While conducting an audit, the consultant or auditor would be expected to do so honestly, fairly, professionally, independently and objectively and exercise a standard of skill, care and diligence that would be reasonable to expect of a person who is skilled, and who has substantial experience, in the provision of services the same as or similar to those to be provided by the auditor.
 - (iii) The selected consultant or auditor would be required to provide a written declaration to the Commission that he has no conflict of interest while performing the tasks and functions assigned to him under these regulations nor by its nature, may be in conflict with another assignment of the consultant or auditor.
 - (iv) Depending upon the requirement of the specific task, the Commission may specify in the terms of reference, minimum educational qualification and length of experience in the relevant field of the Consultant / Auditor.

Provided that minimum length of experience in the relative field shall not be less than 5 (five) years.

- (v) The remuneration / fee payable to the Consultant / Auditor may be specified by the Commission in the Terms of Reference.

5. EXPENSES

- (i) All expenses of, and incidental to, any audit made under these regulations, as per the terms of reference, shall be paid to the auditor/consultant by the Commission, and such expenses shall be defrayed by the regulated entity in favour of the Commission_within 60 days of the claim made by the Commission. The Commission may, at its own discretion, decide to claim the said expenses, partially or fully, before the start or during various stages of the audit exercise. If the payment in favour of the Commission is not made within the due date, the regulated entity shall be liable to pay an interest at the rate of one and quarter percent (1.25%) per month from the date of claim.
- (ii) The regulated entity shall be permitted to claim the said expenses as follows–
 - (a) Distribution licensees or transmission licensees may claim the said expenses as pass through in annual revenue requirement;
 - (b) Generation companies may claim the said expenses while filing application for determination of tariff;
 - (c) Electricity Traders may claim the said expenses as increase in trading margin with the approval of Commission.

- (d) State Load Despatch Centre may claim the said expenses as pass through in its annual budget approval.

6. METHODOLOGY

- 6.1 The consultant / auditor may, at any time, and shall, on being directed to do so by the Commission, cause an inspection to be made, by one or more of his officers, of any regulated entity and his books of account, registers and other documents in its custody, and to investigate into the affairs of the regulated entity in a manner as deemed fit by the Commission.

Provided that the regulated entity shall be given a reasonable advance notice not less than 15 days in writing of such inspection and / or investigation.

- 6.2 It shall be the duty of every regulated entity, to produce before the consultant / auditor, all such books of account, registers and other documents and to furnish him with any statement and information relating to the affairs of the regulated entity, as the said consultant / auditor may require of him within such time as the said consultant / auditor may intimate in writing in this behalf.

- 6.3 The consultant / auditor shall collect sufficient amount of evidence to document the work performed and to serve as the basis for the conclusions reached during the course of the audit. The information gathered will be generally through:

- a) Data Requests - The primary method of obtaining data shall be through data requests to the concerned regulated entity. The data obtained through data requests could include financial and operational information, procedures manuals, organization charts, reports, email and voice mail records, and studies. The data may be obtained either electronically or as paper documents (depending upon the requirement).
- b) Site Visits – The consultant / auditor shall conduct Site visits to ensure accurate interpretation of the information provided by the concerned regulated entity. The consultant / auditor shall inter alia collect materials on-site, observe processes, and offer an opportunity to conduct face-to-face interviews, as relevant to the audit.
- c) Interviews – The consultant / auditor may conduct interviews in person and over the phone.
- d) As the data are collected from the regulated entity under audit, the consultant / auditor shall compile and analyze the data. The consultant / auditor shall analyze information gathered from multiple sources, including

filings made before the Commission by such regulated entity, as well as from public records. Advanced analysis may require the creation of complex spreadsheets and databases, and the use of sampling to test for potential non-compliance of the Act, rules, regulations made thereunder, orders and directions issued by the Commission.

- e) Third party complaints - Areas of non-compliance may also be identified through third party complaints, for example, customer complaints.

6.4 The consultant / auditor will be required to provide full reports to the Commission, which shall contain, as a minimum:

- a) a description of the reporting scope and methodology, which should include all matters specified in the terms of reference;
- b) a description of the systems and procedures that have been established to comply with regulatory obligations, including the identification of relevant documentation and responsible positions;
- c) a discussion of how compliance is managed, addressing generic compliance issues and any specific issues identified for that report;
- d) details of any non-compliance identified and the actions being undertaken by the regulated entity to rectify them, and an assessment of the adequacy of the actions.

6.5(a) The Commission may share the preliminary report with the regulated entity for their comments. The Regulated entity shall submit their comments, if any within 15 days. On receipt of such comments, if any, the Consultant/ Auditor, after due discussion and consultation with the Commission on the comments of the regulated entity shall finalize and submit the report to the Commission.

(b) The report shall include a statement, signed by the auditor, which states that:

- i) the terms of reference have been complied with by the consultant / auditor in making findings and in preparing the report; and
- ii) the report reflects the professional opinion of the auditor.

6.6 The consultant / auditor shall also supply to the regulated entity a copy of his report as referred above.

7. COMPLIANCE OF AUDIT REPORT

- i) The Commission, on the basis of report under these regulations, if satisfied that the regulated entity has made false information, of not complied or contravened any of the orders or provisions of the Act or regulations made

under the Act, shall by an order in writing give such directions as may be necessary for the purpose of securing compliance of such defects.

- ii) The Commission, before issuing any direction under (i) above, shall:-
 - a) Serve a notice in the manner as may be specified to the concern regulated entity;
 - b) Publish the notice in the manner as may be specified for the purpose of bringing the matters to the attention of persons affected or likely to be affected.
 - c) Consider suggestions and objections from the concerned regulated entity and the persons affected or likely to be affected.

8. ORDERS AND PRACTICE DIRECTIONS

- i) Subject to the provisions of the Act, the Commission may from time to time issue orders, and practice directions in regard to the implementation of these Regulations.
- ii) Notwithstanding anything contained in these Regulations, the Commission may also initiate proceedings u/s 142 of the Act for non compliance of any or all provisions of these Regulations.

9. POWER TO REMOVE DIFFICULTIES

If any difficulty arises in giving effect to any of the provisions of these regulations, the Commission may, by general or special order, take suitable action, not being inconsistent with the Act, which appears to the Commission to be necessary or expedient for the purpose of removing the difficulties.

10. POWER TO AMEND

The Commission may at any time, amend any provisions of these regulations.

By the order of the Commission,

Parmanand Singh,
Secretary