

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Vidyut Niyamak Bhawan, Near I.S.B.T., P.O.-Majra, Dehradun-248171

Coram

Shri Subhash Kumar Chairman

Shri C.S. Sharma Member

Shri K.P. Singh Member

November....., 2014

Statement of Reasons for the Draft UERC (Compliance Audit) Regulations, 2014

The Commission proposes to lay down the methodology for conducting audit to test compliance of Act/Rules & Regulations made thereunder, orders and directions issued by the Commission, by the Regulated Entities. The draft Regulations also prescribe the qualification and method of recruitment of Auditor/Consultants to be appointed by the Commission for the purpose of such compliance audit.

Draft Regulations

No.....: In exercise of powers conferred by section 181 of the Electricity Act, 2003 (36 of 2003), and all other powers enabling it in this behalf, and after previous publication, the Uttarakhand Electricity Regulatory Commission hereby makes the following Regulations, namely:

1. Short Title, Extent And Commencement

- 1.1. These regulations may be called the Draft Uttarakhand Electricity Regulatory Commission (Compliance Audit) Regulations, 2014.
- 1.2. These regulations shall be applicable in the State of Uttarakhand.
- 1.3. These regulations shall come into force from the date of their publication in the Official Gazette.

2. Definitions and Interpretations

- 2.1. Unless the context otherwise requires, the words used in these Regulations shall have the following meaning:
 - a) 'Act' means the Electricity Act, 2003 (36 of 2003);

- b) **“Commission”** shall mean the Uttarakhand Electricity Regulatory Commission.
- c) **“Regulated Entities”** for the purpose of these Regulations shall mean those distribution licensees, generation companies, transmission licensees, License Exemption Holders including rural electric cooperatives and State Load Dispatch Centre operating in the State of Uttarakhand and those intra State Electricity traders who have been licensed by the Commission;

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, get audits of regulated entities conducted for verifying their compliance with the Act, rules, regulations made thereunder, orders and directions issued by the Commission.
- 3.2. Third party complaints - Areas to be audited could also be identified through third party complaints, for example, customer complaints, reports, applications etc.
- 3.3. The Commission may, by order, empanel consultants/auditors required to assist the Commission in the discharge of these functions on the terms and conditions as deemed fit. The Commission may either nominate consultants/auditors out of those 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 in exceptional cases where it is appropriate.
- 3.5. The Commission before initiating an audit shall frame the Terms of Reference which will detail the specific areas to be audited and outputs that are to be provided by the Consultant/Auditor, 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

- 4.1. Consultants/auditors shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients. 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 to be engaged for a particular audit must not have held office or worked or had commercial interest in the Regulated Entities for a period of five (5) years preceding the engagement by the Commission.
- (ii) The selected consultant or auditor would be required to furnish a written declaration to the Commission that there is no conflict of interest in performing the tasks being assigned with other assignments being performed by him.
- (iii) The prospective consultant/auditor, shall have proper and relevant qualifications to handle the specified job.
- (iv) Depending upon the requirement of the specific task the Commission may specify minimum educational qualification of the consultant/auditor.

Consultant/auditor could be a firm or a person.

5. Expenses

- (i) All expenses of, and incidental to, any audit made under these regulations shall be paid by the Commission and thereafter such expenses shall be defrayed by the regulated entity in favour of the Commission within thirty (30) days of the claim.
- (ii) The regulated entity shall be permitted to claim the said expenses as follows–
 - (a) Distribution licensees, transmission licensees, generating companies and SLDC to claim the said expenses as part of their Administrative & General expenses in the true up of relevant year;
 - (b) Electricity Traders may claim the said expenses as increase in trading margin with the approval of Commission.
 - (c) License exemption holders may be charged a special one time charge to recover expenses associated with the audit related to license exemption holder.

Provided however, in case as a result of compliance audit the Regulated entity is found guilty of non-compliance to the Act/Rules & Regulations made thereunder, orders and directions issued by the Commission and where such non-compliance results in imposition of penalty through proceedings under Section 142, all the costs related to such audit, shall be borne by the Regulated entity itself and shall not be permitted to be claimed as expenses.

6. Methodology

6.1. The consultant/auditor shall, on being directed to do so by the Commission, cause an inspection to be made of the regulated entity being audited and his books of account, registers and other documents, and to investigate into the affairs of that regulated entity in a manner as directed by the Commission.

Provided, that the regulated entity shall be given a reasonable advance notice 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.

(a) The information gathered will be generally through:

(i) 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).

(ii) 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.

(iii) Interviews - The consultant/auditor may conduct interviews in person and over the phone.

(b) As the data is 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 to test for the potential non-compliance of the Act, rules, regulations made thereunder, orders and directions issued by the

Commission.

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. The report shall include a statement, signed by the auditor, which states that:

- a) The Terms of Reference have been complied with by the consultant/auditor in making findings and in preparing the report; and
- b) The report reflects the professional opinion of the auditor.

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

6.7. On receipt of a report under these regulations, the Commission may, after giving an opportunity to the regulated entity, to make a representation in connection with the identified report, the Commission may by order in writing initiate appropriate action under the Act in the non-compliance or contravention, as the case may be.

7. 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.

8. Power to Amend

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

9. Orders and Practice Directions

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.

By order of the Commission

(Neeraj Sati)
Secretary