

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

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UERC (Compliance Audit) Regulations, 2015

Statement of Objects and Reasons

The Uttarakhand Electricity Regulatory Commission is vested with the authority to notify Regulations under Section 181(1) of the Electricity Act, 2003 (herein "the Act"). The Commission had issued the draft UERC (Compliance Audit) Regulations, 2014 on 28.11.2014 which dealt with the procedure for Compliance audit, the requirements of Consultant/ Auditor and the manner in which the expenses of audit would be recovered.

Comments/objections/suggestions on the same were sought from the stakeholders till 29.12.2014. Comments have been received on the draft UERC (Compliance Audit) Regulations, 2014 from UJVN Ltd. and UPCL which are dealt herein under alongwith the Commission's view on the same:

1. Regulation 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 there under, 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.

UPCL's Comments:

Consumers complaints, reports might be in their own interests which might be not covered under non-compliance of Act, Rules, Regulations and Orders and directives issued by the Commission but reflect the entities working, so this should be: "Areas to be audited could also be identified through third party complaints for example, customer complaints, reports, applications etc. which comes under the scope as defined in Point 3.1.

Such Complaints must be submitted on Affidavit by the Complainant

Commission's View:

The suggestion is rejected as the audit for verifying the compliance of the Act/Rules/Regulations shall be done not on the basis of a complaint but if such complaints make a prima-facie case of non-compliance of Act/Rules/Regulations or directions issued by the Commission. The suggestion of submitting a complaint on an affidavit is rejected because the complaint may not specify the need of an audit but through such complaints the Commission may identify the areas necessitating compliance audit. Also, the UERC (Guidelines for Appointment of Members and Procedure to be followed by the Forum for Redressal of Grievances of the Consumers) 2007 has defined Complaint as the letter or application filed with the Forum seeking redressal of grievances. This has been kept as such so that even the small consumers are not deterred from filing of complaint accompanied by affidavit and that they get an opportunity to file their grievance before the Forum in the form of a letter also. Accordingly, the same would apply in filing of third party complaint before the Commission also.

Therefore, the Commission is rejecting the submission made by UPCL in this regard.

2. Regulation 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.

UJVN Ltd's comments:

In case of complaint of third party, the regulated entity is not found guilty of non-compliance of any applicable Act/Rules & Regulations or Orders and Directions of the Commission; all costs related to such audit may be considered to be borne by the Complainant.

UPCL's Comment:

The time limit of 30 days as mentioned in Regulation 5(1) should not be specified.

The Draft SERC compliance regulation for the regulated entities as well as Kerala State Compliance Audit Regulation 2012, there is no such condition as mentioned in Regulation 5(2). If the regulated is being penalized for non-compliance of the Act and rules, the payment of audit fees in such cases will be a double financial implication on the entity. So the expenses incurred on compliance audit shall be allowed as expenses to the regulated entity.

Commission's view:

The Comment of UJVNLtd. is rejected as in a situation when the regulated entity is not found guilty, the expenses are allowed to be recovered as a part of their A&G expenses in the true up of the relevant year, or as an increase in trading margin in case of electricity traders or as recovery of special one-time charge in case of license exemption holders.

Moreover, third party complaints act as a medium to identify problem areas in the utilities and areas for audit as mentioned in Regulation 5. It may be a third party complaint on any issue, which may trigger an audit. Hence the suggestion made by UJVN Ltd. may act as a deterrent for a small consumer in filing any complaint before the Commission or bringing out such issues before the Commission.

Therefore recovering the expenses as proposed regulation 6 is not being modified.

The time limit of 30 days is specified so that the utilities make the payment towards the cost related to the audit within the period specified. Further, the amount of such audits may not be so high that utilities would require more time. However, in case of practical difficulties the utilities are free to approach the Commission and seek relaxation.

The Commission in exercise of the powers conferred on it under the Electricity Act to frame regulations has proposed the expenses to be borne by the regulated entities in addition to any penalty which may be imposed for any non-compliance by it to ensure discipline and efficiency in their working so that they remain vigilant of their duties, obligations and responsibilities cast upon them under the Act and Regulations.

On the default of any regulated entity leading to non compliance, it would be unjust to pass through the expenses to the consumers.

Accordingly, the suggestions made by UPCL and UJVN Ltd. in this regard are considered and rejected.

3. Regulation 6.1: Methodology

“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.”

UPCL's Comment:

Manner of investigation should also be mentioned in the said Draft Regulation. The word 'Reasonable advance notice' is not sufficient in the interest of the justice so this should be read as follows, “provided, that the regulated entity shall be given a reasonable advance notice with the consent of the unit head, in writing of such inspection and/or investigation.”

Commission's View:

The suggestion of incorporating the manner of investigation is being rejected as the same shall not be feasible or practicable as every investigation would be different and accordingly, the manner of carrying out any investigation would also vary from one investigation to the other. Accordingly, it would not be practicable to specify any generic principles for

investigation.

The suggestion of obtaining a written consent of the unit head before audit would defeat the whole purpose/intent of the regulation for checking compliance as the discretion of allowing inspection would be on the unit head.

The Commission has adequate powers in this regard-requisitioning of any public record (Section 94(d) of Act), powers of entry and seizure (Section 96 of Act) and delegation (Section 97 of the Act). The persons conducting audit at the instructions of the Commission shall act with the requisite authority delegated by the Commission.

The term 'reasonable Advance Notice' is for making available the records or for ensuring the presence of the designated officers for the area under compliance.

Therefore the suggestion is rejected.