



सत्यमेव जयते

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**Ex-parte:**

**Forum of Regulators (FOR)**

**..... Querist**

1. The Querist has been constituted by the Government of India in terms of section 166(2) of the Electricity Act, 2003. It is responsible for harmonization, coordination and ensuring uniformity of approach amongst the various Regulatory Commissions in the country. This provides for greater regulatory certainty and such harmonization is one of the important responsibilities of the Forum.
2. Electricity has socio-economic ramifications. The Electricity Act, 2003 contains various provisions for promotion of rural electrification. The Rural Electrification Policy of 2006 supports mechanisms for grid as well as off-grid solutions for the rural population.
3. The Querist carried out a study on 'Policy and Regulatory Interventions for Promotion of community level Off-Grid Projects'. It was emphasized that in areas remote from the grid and low population density, off-grid energy solutions seem most practical and economical. The objective behind the study was to explore the viable business models for development of off-grid renewable energy generation projects.
4. One of the recommendations of the study was to adopt business model for promotion of community level off-grid projects, based on the franchise concept. For implementation of this business model it is essential that necessary Regulations/guidelines be formulated and notified by the

State Commissions. The relevant provisions which have to be considered for the purpose are set out in the case for opinion and may be extracted here:

(a) Section 12 of the Act:

*"No person shall*

*(a) transmit electricity; or*

*(b) distribute electricity; or*

*(c) undertake trading in electricity,*

*unless he is authorized to do so by a licence issued under Section 14, or is exempt under Section 13. "*

(b) Section 13 the Act:

*"The Appropriate Commission may, on the recommendations, of the Appropriate Government, in accordance with the national policy formulated under Section 5 and in public interest, direct, by notification that subject to such conditions and restrictions, if any, and for such period or periods, as may be specified in the notification, the provisions of Section 12 shall not apply to any local authority, Panchayat Institution, users' association, co-operative societies, nongovernmental organizations, or franchisees "*

(c) Section 14 of the Act:

*"The Appropriate Commission may, on application made to it under section 15, grant any person licence to any person -*

*(a) to transmit electricity as a transmission licensee; or*

*(b) to distribute electricity as a distribution licensee; or*

*(c) to undertake trading in electricity as an electricity trader,*

*in any area which may be specified in the licence:*

*Provided "*

*Seventh and eighth proviso to Section 14 of the Act:*

*"Provided also that in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person, that person shall not be required to obtain any separate licence from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply:*

*Provided also that where a person intends to generate and distribute electricity in a rural area to be notified by the State Government, such person shall not require any licence for such generation and distribution of electricity, but he shall comply with the measures which may be specified by the Authority under Section 53"*

(d) Section 43 of the Act:

*"43. (1) Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:*

*Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commissioning or within such period as may be specified by the Appropriate Commission.*

*Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area. "*

(e) 53. Provisions relating to safety and electricity supply

1. The Authority may in consultation with the State Government, specify suitable measures for -
  - a. protecting the public (including the persons engaged in the generation, transmission or distribution or trading) from dangers arising from the generation, transmission or distribution or trading of electricity, or use of electricity supplied or installation, maintenance or use of any electric line or electrical plant;
  - b. eliminating or reducing the risks of personal injury to any person, or damage to property of any person or interference with use of such property ;
  - c. prohibiting the supply or transmission of electricity except by means of a system which conforms to the specification as may be specified;
  - d. giving notice in the specified form to the Appropriate Commission and the Electrical Inspector, of accidents and failures of supplies or transmissions of electricity;
  - e. keeping by a generating company or licensee the maps, plans and sections relating to supply or transmission of electricity;
  - f. inspection of maps, plans and sections by any person authorised by it or by Electrical Inspector or by any person on payment of specified fee;

- g. specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer for the purpose of eliminating or reducing a risk of personal injury or damage to property or interference with its use;

5. In this background, I shall deal with the queries:

- Q.1 Whether the universal service obligation of the distribution licensee for supply of electricity also applies for the rural area notified under eighth proviso to section 14 of the Act, despite the fact that there is no requirement of licence for generation and distribution of electricity in such area?

Ans: I assume the question to simpliciter cover a case governed by eighth proviso to section 14 which deals with a person who intends to generate and distribute electricity in a rural area to be notified by the State Government, since by reason of the eighth proviso, such a person does not require any licence for generation or distribution of electricity. Therefore, section 43, which deals with a universal service obligation of the distribution licensee, will have no obligation. Section 43(1) deals only with obligations placed on a distribution licensee. A person covered by the eighth proviso does not require to apply for or obtain a licence and as such is not a distribution licensee within the meaning of section 43. He would, however, have to comply with section 53 which, as quoted above, deals with provisions relating to safety and specifications of the system.

- Q.2 Whether the distribution licensee can appoint a franchisee for generation and distribution in such area?

AND

Q.3 Whether the State Commission can issue regulations or guidelines to facilitate the distribution licensee to undertake generation and distribution in such area through a franchisee?

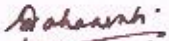
Ans: Yes. A "franchisee" is defined in section 2(27) as follows:

"franchisee" means a person authorised by a distribution licensee to distribute electricity on its behalf in a particular area within his area of supply."

Thus, a franchisee is a person authorized by the distribution licensee to distribute electricity on and under its behalf in a particular area within his area of supply. As such, the franchisee would be bound by the obligation of the distribution licensee and section 43 would squarely apply (unless there is an exemption under Section 13). The State Commission can certainly issue regulations or guidelines to facilitate the distribution of electricity by a distribution licensee in a notified area through a franchisee.

Q.4 Any other matter on which the Learned AG for India may wish to opine on.

Ans: I have nothing further to add.

  
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NEW DELHI