

BANGLADESH



GAZETTE

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S.R.O.No- 228/Law/2003— The Government, in exercise of the powers conferred by section 65 of the Bangladesh Energy Regulatory Commission Act, 2003, is pleased to publish the following English translation of the Act, to be called the Authentic English Text of the Act, and it shall be effective from the date on which the Act comes into force under sub-section (2) of section 1 of the Act.

Act No 13 of 2003

An Act to make provisions for the establishment of an independent and impartial regulatory commission for the energy sector

WHEREAS it is expedient to make provisions for the establishment of an independent and impartial regulatory commission to create an atmosphere conducive to private investment in the generation of electricity, and transmission, transportation and marketing of gas resources and petroleum products, to ensure transparency in the management, operation and tariff determination in these sectors; to protect consumers' interest and to promote the creation of a competitive market;

It is hereby enacted as follows —

CHAPTER - 1 **Preliminary**

1. Short title and commencement—

(1) This Act shall be called the Bangladesh Energy Regulatory Commission Act, 2003.

(2) It shall come into force on such date as the Government may, by Gazette notification, appoint.

2. Definitions—

In this Act, unless there is anything repugnant in the subject or context-

- (a) “undertaking” means any entity relating to generation of electricity, transmission, transportation, storage, distribution or any installation for supply of energy or part of it;
- (b) “energy” means the electricity, gas and petroleum product;
- (c) “energy audit” means verification, monitoring and analysis of machinery, appliances and the processes of utilization of energy entity and determination of its efficiency;
- (d) “employee” means staff and officers of the Commission;
- (e) "Commission" means the “Bangladesh Energy Regulatory Commission” established under this Act;
- (f) “gas” means natural gas, natural liquid gas (NLG), liquefied natural gas (LNG), compressed natural gas (CNG), synthetic natural gas, or such mixture of natural hydrocarbon, which transforms into gaseous elements at ambient pressure and heat;
- (g) "gas system operation" means storage, transmission or supply of gas;
- (h) "Chairman" means Chairman of the Commission and it shall also include the Member who may act as Chairman;
- (i) "tariff" means the schedule of rates for energy supply and special services connected therewith;
- (j) "DESA Act" means the Dhaka Power Supply Authority Act, 1990 (Act 36 of 1990);
- (k) "Code of Civil Procedure" means Code of Civil Procedure, 1908 (Act V of 1908);
- (l) "prescribed" means prescribed by rules or regulations;
- (m) "Rural Electrification Act" means the Rural Electrification Board Ordinance, 1977 (Ord. No. LI of 1977);
- (n) “Inspector” means a designated employee or officer or any other person appointed by the Commission for the purpose of inspection;
- (o) “pipeline” means pipelines approved for gas supply including compressors, communication instrument, meters, pressure controllers, pumps, valves and other appliances required to operate those pipelines;

- (p) "Petroleum Act" means Bangladesh Petroleum Act 1974 (Act LXIX of 1974);
- (q) "petroleum products" means processed or unprocessed liquid or mixture of solid hydrocarbon and petroleum byproducts such as lubricant and petroleum solvent but shall not include natural gas;
- (r) "petroleum operations" means production, development, exploration, processing, refining or marketing of petroleum;
- (s) "regulation " means regulations framed under this Act.
- (t) "natural gas" means hydrocarbon found in natural state, hydrocarbon mix or liquid, vaporous or gas found in combination with followings, which may or may not contain one or more non-organic substances, such as:-
 - hydrogen sulfide;
 - (i) nitrogen;
 - (ii) helium;
 - (iii) carbon dioxide;
- (u) "Electricity Act" means the Electricity Act, 1910 (Act IX of 1910);
- (v) "electricity industry" means persons or assets, associated with the generation, transmission, distribution or supply of electricity; power system activities and matters supplementary and connected therewith;
- (w) "rules" means rules framed under this Act;
- (x) "individual" means and includes company, association or group of persons whether statutory or not;
- (y) "consumer" means a person who receives energy supplied by licensee in the premises or installation, owned or possessed, under relevant laws, rules, regulations, bylaws or any document which has the force of law;
- (z) "Ministry" means the Ministry of Power, Energy and Mineral Resources;
- (aa) "Presidential Order" means the Bangladesh Water and Power Development Boards Order, 1972 (P.O. No.59 of 72);
- (bb) "licencee" means an individual who has received a licence under this Act for generation of electricity, transmission, marketing, distribution, storage and supply of energy;

- (cc) "licence" means any licence issued under this Act;
- (dd) "Member" means any Member of the Commission and it shall include the Chairman;
- (ee) "Government Authority" means the Power Development Board established by the Presidential Order, the Rural Electrification Board established under the Rural Electrification Act, the Dhaka Power Supply Authority established under the DESA Act, and any other organization fully owned by the Government;
- (ff) "local authority" means the local government authority constituted under a statute for the fulfillment of the purpose of article 59 of the Constitution.

3. Overriding effect of the Act—

Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall prevail.

CHAPTER – 2 Establishment of the Commission

4. Establishment of the Commission—

- (1) A Commission to be called the Bangladesh Energy Regulatory Commission shall be established as soon as this Act comes into force.
- (2) The Commission shall be a statutory body and it shall have perpetual succession and a common seal with power to acquire and hold moveable and immoveable properties, to transfer such property subject to the provisions of this Act and may, by the said name, sue and be sued.

5. Office of the Commission, etc.—

- (1) The head office of the Commission shall be situated in Dhaka.
- (2) The Commission may, in case of necessity, set up its branch office at any place within Bangladesh.

6. Constitution of the Commission, etc.—

- (1) The Commission shall consist of a Chairman and four Members.
- (2) The Chairman and the Members shall be appointed by the President on the basis of the proposal of the Ministry and they shall be full-time officers of the Commission.

(3) The Chairman and two Members shall have to be appointed as soon as the Act comes into force and after one year from such appointment the rest two members shall have to be appointed.

(4) The Chairman shall be the Chief Executive of the Commission.

7. Qualifications and disqualifications of Members, etc.—

(1) The candidates for the post of Chairman and Members of the Commission shall have the following qualifications and experiences:

(a) at least engineering graduates in the fields of mineral resources, electricity, natural gas, or petroleum products;

(b) at least post graduate degree from a recognized university in the fields of geology, law, economics, accounting science, business administration, management, finance and marketing, statistics and public administration; and

(c) at least twenty years practical work experiences in the filed as at items (a) or (b).

(1a) One Member shall be appointed from mineral resources, natural gas or petroleum products subjects; and another Member shall be appointed from the electricity subject; and for appointment to the posts of the remaining three members, not more than one from any one of the subjects mentioned in item (b) of sub clause (1) shall be considered.

(2) A person shall not be qualified for appointment as a Member or Chairman if he is--

(a) not a citizen of Bangladesh;

(b) declared a loan defaulter by a bank or any financial institution;

(c) declared insolvent by a competent Court;

(d) has been convicted for a criminal offence involving moral turpitude, sentenced to imprisonment for a term not less than two years or more and a period of five years has elapsed since his release.

(2)(a) Persons employed in the Government services may apply for the post of Chairman or Member subject to fulfillment of the other conditions in the Act, submitting application through the proper channel; however in case of final selection for appointment, the concerned official can only join in selected post after severing lien with the Government services.

(3) Persons having business interest in any matter within the scope of the Commission shall not be eligible for appointment to the post of Member or Chairman.

(4) On being appointed as Chairman or Member, he cannot engage himself in a business in energy sector either in his own name or in the name of any other person.

Explanation: Financial Institution as mentioned in paragraph (b) means any financial institution as defined in the Financial Institutions Act, 1993 (Act No. 27 of 1993).

8. Tenure of office, resignation, etc. of the Chairman and Members—

(1) The Chairman and Members shall hold office for a period of 3 (three) years from the date of assumption of office and shall be eligible for reappointment for another term only:

Provided that any Member on attainment of the age limit to be prescribed by rules, shall not be eligible for appointment or to continue in the said post.

(2) The Chairman or a Member even before the completion of the tenure as prescribed under sub-section (I) may resign from the post by giving one month's notice in writing under his hand addressed to the President.

(3) If the post of the Chairman falls vacant or if he fails to discharge his duties due to absence, illness, or for any other reason, a Member appointed for that purpose by the President shall act as the Chairman, until the Chairman resumes his duties or newly appointed Chairman joins in the vacant post.

9. Actions and proceedings not to be void due to the vacancy in the position of Member—

Vacancy in the post of Members shall not render any action or proceeding of the Commission illegal and no question can be raised as to its legality.

10. Status, pay and allowances, etc. of the Members—

Status, pay and allowances, seniority and other terms of Chairman and Members shall be determined by the prescribed rules:

Provided that until such rules are framed, status, pay and allowances and other terms of service of Chairman and Members shall be determined by the Government:

Further provided that status, pay and allowances and other terms of service of Chairman or any Member shall not be varied after his appointment in a manner that may be disadvantageous for him.

11. Removal of Member—

(1) Subject to the provision of sub-section (2), the President may remove any Member of the Commission if he:

- (a) is physically or mentally incapable of performing duty or refuses to perform duties;
- (b) fails or refuses to perform duties for more than 3 months without valid reason;
- (c) becomes ineligible under section 7 (2) (3) and (4) to continue as a Member;
- (d) engages himself in such activities which are detrimental to the Commission ;
- (e) conducts himself in such a way or misuses his position which is detrimental to the objective of this Act or hampers public interest.

(2) If a Member is found ineligible to hold his post for reasons mentioned in sub-section (1), the President shall form an enquiry committee consisting of one Judge of the Supreme Court to look into the reasons and the time limit for submission of the report by the said committee shall also be mentioned in that order.

(3) The enquiry committee formed under sub-section (2) to investigate against a Member, shall submit its report to the President stating therein specific information and reasons as to whether the allegations have been proved and whether the Member ought to be removed, and the President, as far as possible, shall take action according to the recommendations of the said report.

(4) President shall not remove any Member under this section without giving him reasonable opportunity to defend himself in respect of the proposed removal.

(5) If an enquiry committee is formed under sub-section (2), President, on consideration of the relevant circumstances, may order the Member not to perform his duties and the Member shall obey it.

(6) The enquiry committee shall be deemed to be appointed under the Commission of Enquiry Act, 1956 (VI of 1956) and subject to the provisions

of this Act, the provisions of the said Act shall be applicable for the enquiry committee.

(7) Any person removed under this section shall not be reappointed as a Member or in any other position of the Commission, the Government, or Government organization.

12. Commission's meeting—

(1) Subject to other provisions of this section, the Commission, may determine the procedures of its meetings by the regulations.

(2) The meetings of the Commission will be held on such time and at such place determined by the Chairman.

(3) The Chairman shall preside over all the meetings.

(4) The presence of three Members including the Chairman shall form the quorum of the meeting.

(5) The decision of the meeting of the Commission shall be taken by a majority of votes of the Members present and in case of equality, the President shall have the second or casting vote.

(6) Two (2) Members may request the Chairman in writing to arrange a meeting to discuss or for making a decision on any specific issue and the Chairman shall convene a meeting within seven (7) days upon receipt of such a request.

13. Appointment of Secretary, officers and staff, etc. of the Commission—

(1) The Commission, for the purpose of carrying out its functions effectively, can appoint required number of officers and employees including its Secretary.

(2) The procedure of appointment and terms of service of officials and employees of the Commission shall be determined by regulation.

(3) Until the regulation is made, the Government may appoint a Secretary on deputation for the Commission.

14. Committee—

The Commission may, in case of necessity of assistance to perform duties, constitute required number of committees comprising of one or more than one of its Members, officers and employees or any other person and the terms of

reference and proceedings of such committees shall be determined by the Commission.

15. Appointment of employee to the Commission on deputation—

(1) The Commission may appoint on deputation any officer or employee of the Government, or any statutory body, subject to consent of his controlling authority.

(2) Persons appointed under sub-section (I), shall remain employed under same rules relating to discipline and control as are applicable to the employees of the Commission, but in case of imposition of penalty, the matter shall be sent together with relevant facts to the controlling authority of the said person for taking necessary action.

16. Employment outside Commission—

(1) A Member of the Commission, without the written permission of Government and any employee, without the written permission of the Commission shall not engage himself or continue in any profitable pursuit outside the Commission.

(2) Any Member or employee of the Commission shall not engage himself in or carry on any activity, which may, in the opinion of the Government or Commission, create or have an adverse effect in the discharge of his duties.

CHAPTER – 3
Financial matters of the Commission

17. Funds of the Commission—

(1) There shall be a fund to be called “Bangladesh Energy Regulatory Commission Fund” and money, as mentioned below shall be deposited in the fund, such as:-

- (a) grant from the Government or statutory body;
- (b) loans borrowed by the Commission;
- (c) fees and charges deposited under this Act; and
- (d) money received from any other source.

(2) The amount of the Fund shall be maintained in the name of the Commission in any scheduled Bank determined by the Commission, and procedure for withdrawal of money from the Bank is to be specified by regulation.

(3) The pay and allowances etc. of Members and employees shall be paid and all other expenditures of the Commission shall be borne out of this Fund.

(4) After meeting all expenses any remaining unspent money of the Revenue budget shall be deposited to the consolidated fund.

Explanation:- Scheduled Bank means Scheduled Bank as defined in Article 2 (J) of Bangladesh Bank Order, 1972 (P. O. 127 of 1972).

18. Authority to receive loan—

The Commission may, in order to perform its functions, under this Act, receive necessary loan and repay the same, but prior approval of the Government shall be necessary to receive any foreign loan.

19. Annual budget statement—

Every year, the Commission shall for the next financial year, submit to the Government annual budget statement within the time specified by the Government and in such statement the estimated amount to be required from the Government for that financial year shall be mentioned, and before commencement of that financial year, the Government shall on the basis of that statement allocate the necessary budget.

20. Accounting and Audit—

(1) The Commission shall maintain proper accounts of all money received and spent by it, and subject to the general circular by the Government in this behalf, the Commission may determine the process for such maintenance of accounts by regulation, however, such account must accurately and properly reflect the financial position of the Commission.

(2) The Commission within 60 (sixty) days of the expiry of every financial year, shall prepare its annual-accounts and financial statement subject to any general circular of the Government, and getting them audited by a Chartered Accountant firm registered under Bangladesh Chartered Accountants of Order, 1973 (P. O. No. 2/1973) and make arrangement for sending such statements to the Ministry within next 60 (sixty) days for the purpose of laying those before the Parliament and the Ministry shall, as soon as possible, cause the statements along with the report be laid before the Parliament.

(3) Apart from the audit as mentioned in sub-section (2), the Commission, as a statutory public authority within the meaning of the Comptroller and Auditor- General (Additional Functions) Acts, 1974 (XXIV of 1974) shall be under the jurisdiction of the Comptroller & Auditor General.

21. Report—

The Commission shall, within 90 days of expiry of every financial year, send to the Ministry a report in respect of the functions performed by the Commission during the previous financial year, and the Ministry shall, as soon as possible, cause it to be laid before the Parliament.

CHAPTER – 4

Functions, Powers and Proceedings of the Commission

22. Functions of the Commission—

Subject to the provisions of this Act, functions of Commission shall be as follows:-

- (a) to determine efficiency and standard of the machinery and appliances of the institutions using energy and to ensure through energy audit the verification, monitoring, analysis of the energy and the economy use and enhancement of the efficiency of the use of energy;
- (b) to ensure efficient use, quality services, determine tariff and safety enhancement of electricity generation and transmission, marketing, supply, storage and distribution of energy;
- (c) to issue, cancel, amend and determine conditions of licences, exemption of licences and to determine the conditions to be followed by such exempted persons;
- (d) to approve schemes on the basis of overall program of the licensee and to take decision in this regard taking into consideration the load forecast and financial status;
- (e) to collect, review, maintain and publish statistics of energy;
- (f) to frame codes and standards and make enforcement of those compulsory with a view to ensuring quality of service;
- (g) to develop uniform methods of accounting for all licensees;
- (h) to encourage to create a congenial atmosphere to promote competition amongst the licensees;
- (i) to extend co-operation and advice to the Government, if necessary, regarding electricity generation, transmission, marketing, supply distribution and storage of energy;

- (j) to resolve disputes between the licencees, and between licencees and consumers, and refer those to arbitration if considered necessary;
- (k) to ensure appropriate remedy for consumer disputes, dishonest business practices or monopoly;
- (l) to ensure control of environmental standard of energy under existing laws; and
- (m) to perform any incidental functions if considered appropriate by the Commission for the fulfillment of the objectives of this Act for electricity generation and energy transmission, marketing, supply, storage, efficient use, quality of services, tariff fixation and safety improvement.

23. Investigation power—

(1) Commission shall have all those powers for the purposes of an investigation or proceedings, which are exercised by a Civil Court at the time of trial under the Code of Civil Procedure, such as: –

- (a) to summon a witness and ensure his presence and examination of the witness on oath;
- (b) to detect and present any important document which may be submitted as a document or evidence;
- (c) to collect evidence through an affidavit;
- (d) to call for public record from any court or office;
- (e) to adjourn hearing;
- (f) to ensure presence and absence of the parties; and
- (g) to review the Commission's decisions, directives or orders.

(2) The Commission may pass any interim order relating to any proceeding or hearing conducted before it.

(3) If the Commission is satisfied to the effect that for achieving objectives of this Act or for the sake of discharging duties under this Act, examination of any book, accounts or deed, is necessary relating to power generation, and purchase, production, transmission, distribution supply or use of energy, or activities of such undertaking, or matters otherwise connected, but the same is lying under the custody or control of any person, in that case, Commission may direct the said person to present the book, account or deed to any officer of the Commission for that purpose and may order examination and direct the

said person to supply the information within his control to discharge duties under this Act.

(4) If the Commission, during an investigation, or any proceeding under this Act, has reasons to believe to the effect that any book or account involving interest of the unit or person under investigation, presentation of which shall be necessary for investigation, but the same is being destroyed, partially destructed, altered, tampered or concealed or likely to be done so, in that case, the Commission, by an order in writing, empower its officer to enter, investigate and confiscate, as if he is exercising powers of an Inspector appointed under the Companies Act, 1994 (Act No.18 of 1994).

(5) Notwithstanding anything contained in any other law for the time being in force, the Commission, by a general or special order, may ask for information on the following matters from any person or licensee for the sake of discharging its duties under this Act, such as:-

- (a) matter related to power generation, and transmission, distribution, purchase, supply and use of energy;
- (b) any other matter prescribed by regulation.

(6) The Commission may, if necessary discuss related issues with such person or persons who may be affected by the decision of the Commission.

(7) Notwithstanding the provisions of the Electricity Act, the Commission, by an order in writing, may delegate to a licensee who is engaged in power generation, transmission, distribution or supply of energy, such powers as are vested under Telegraph Authority for construction and installation of Telegraph line under the Telegraph Act, 1885 (XIII of 1885) subject to the fulfillment of conditions mentioned in the order.

(8) Notwithstanding anything contained in any other law for the time being in force, the Commission may, by an order in writing, with the conditions mentioned therein, delegate such authority to a licensee engaged in transmission, storage, distribution or supply of gas as are provided to that effect under the Natural Gas Safety Rules, 1991.

CHAPTER -5

Relationship between the Government and the Commission

24. Powers of the Government for the Energy Sector—

(1) The Government shall have the power of giving policy directives for the development and overall planning in energy sector.

(2) The Government, if necessary, shall issue any policy directive in consultation with the Commission.

(3) The Government shall make policies providing therein the scope for overall planning and coordination for the sake of development of energy sector giving priority to the need of energy for different socio-economic classes, and areas, and to achieve desired level of economic growth, and for conservation of energy as future sources of power.

25. Emergency power to control energy use—

Government may prohibit the use of energy and make rules relating to distribution for the definite marginal users, to meet the unexpected shortfall, or the emergency condition in respect of availability of energy, but the Government in making such rule, shall ensure that the licencees and others will not be affected.

26. Settlement of Disputes—

In case of difference of opinion or dispute arising out of matters mentioned in the Act, the Government shall discuss the matter with the Commission, and if it appears necessary, Government shall resolve the difference of opinion, or the dispute with the assistance of experienced professionals.

CHAPTER – 6 Licence

27. Licence—

(1) No person shall engage himself in the following business unless he is empowered by a licence or exempted from having it under this Act or any other Act, such as:-

- (a) power generation;
- (b) energy transmission;
- (c) energy distribution and marketing;
- (d) energy supply; and
- (e) energy storage.

(2) All persons empowered under Electricity Act, Presidential Order, Rural Electrification Act, DESA Act, Bangladesh Petroleum Act, or rules made thereunder for the power generation, and transmission, storage, supply and distribution of energy shall be treated as licencees under this Act and provisions of this Act shall be applicable to them.

(3) The private companies, with whom agreements have been executed between the companies and the Government or any of its agencies, immediately before this Act comes into force shall be treated as licencees for the generation of power and for the supply, transmission, distribution, storage and supply of energy along with the bulk energy under this Act, and notwithstanding anything contrary is contained in this section, the concerned conditions of the agreement shall be applicable to those cases.

(4) If a question or difference of opinion exists whether a person is engaged in power generation, and transmission, storage, distribution and supply under sub-section (1), the Commission's decision on the issue shall be final.

(5) The Commission may order any person who is not a licencee or not empowered by any other way. to disconnect or stop the operation of machineries relating to power generation, transmission, storage, marketing, supply or distribution of energy.

28. Issuance of licence by the Commission—

Licence may be issued to any person for the following purposes in a procedure prescribed by the Commission, such as:-

- (a) for power generation;
- (b) for energy transmission;
- (c) for distribution and marketing of energy;
- (d) for supply of energy; and
- (e) for storage of energy.

29. Exemption from the requirement of licence —

(1) Commission may, make regulations for giving exemption from the requirement of licence subject to the fulfillment of the specified conditions:

Provided that any person who is exempted by the Commission shall have to observe those conditions which a licencee shall have to observe under the licence, or this Act, or the regulation, unless contrary is mentioned in the order of exemption.

(2) Exemption under this section may be given to a person for a specified period.

(3) Commission may revoke the exemption at any time recording reasons in writing.

30. Renewal, revision and cancellation of licence—

Licence can be renewed, cancelled and revised by a process prescribed by regulation.

31. General duties and powers of the licensee. –

(1) Every licensee shall make arrangement for the efficient, co-ordinated, cost-effective production, transmission and supply of energy.

(2) Every licensee shall maintain international standard and working method at the time of discharging his duties relating to energy operation, maintenance and safety.

32. Restrictions to the licensee—

(1) No licence without having prior permission in writing from the Commission shall acquire any undertaking by purchase or any other means:

Provided that before making an application for such consent licensee shall serve 30 (thirty) day's notice to the Commission and if the licence is for distribution and supply, in that case, to each of the concerned local authorities.

(2) No licensee, without the prior permission from the Commission shall sell, mortgage, lease, exchange or transfer by any other means his undertaking or any part of it.

(3) Unless clearly prohibited by the condition of licence or by the general or special order of the Commission, any licensee can enter into contract for purchasing energy.

33. Annual accounts of licensee—

Every licensee shall prepare annual audit report of the undertaking and each of the business unit, in the form prescribed by the Commission, before the date specified by the Commission for this purpose and the same or an extract of a specific portion of it shall have to be published in a manner prescribed by the Commission.

CHAPTER – 7 Tariff

34. Tariff—

(1) Notwithstanding anything contained in any other law for the time being in force, the price of power generation in wholesale, bulk and retail, and the supply of energy at the level of end-user, shall be determined in accordance with the policy and methodology made by the Commission in consultation with the Government:

Provided that this shall not be applicable in those cases, the tariff of which were determined by the agreement executed between the private company and the Government or by any of its agency before this Act comes into force.

(2) At the time of making the policy, the Commission shall take into consideration the following matters, such as:

- (a) Electricity Act, Presidential Order, Rural Electrification Act and DESA Act;
- (b) to harmonize the tariff with the cost of production, transmission, marketing, distribution, supply and storage of energy;
- (c) efficiency, least cost, excellent service, excellent investment;
- (d) consumers' interest;
- (e) power generation, and transmission, distribution and supply of energy on commercial basis;
- (f) development of national energy systems planning ; and
- (g) other matters considered necessary by the Commission for the fulfillment of the objectives of this Act.

(3) Commission by regulation shall make methodology for determination of tariff.

(4) Commission shall determine tariff after giving hearing to licencees and others who have interest in it.

(5) Tariff determined by the Commission shall not be revised more than once in a fiscal year, unless there is change in the prices of energy including any other changes.

(6) A licencee may submit to the Commission proposal for revision of tariff along with detailed information and the Commission after hearing the intending parties may publish notification containing its decision within 90 days of receiving the proposal along with all information for tariff revision and shall instruct the licencee to publicize relevant information.

CHAPTER– 8

Commission's power to issue order and implement its decision

35. Interim or Final Order—

If the Commission is satisfied that, any licencee is violating or likely to violate any relevant condition, the Commission shall, in order to ensure compliance with such condition, issue interim or final order.

36. Emergency Provision—

In consideration of objectives of this Act and the necessity of providing uninterrupted supply of energy to the consumers, subject to the approval of the Government, the Commission, shall be authorized to order any licensee for vesting any undertaking of the licensee, its properties, along with its interests, rights, duties of management and control, to any other person or authority till the completion of investigation and issuance of interim or final order for the preservation of the object as required under this Act and in the interest of safe and uninterrupted supply of energy to the consumers, no question can be raised against such order, but before giving such order, Commission shall provide opportunity to the licensee for hearing in accordance with the provisions of this Act.

37. Implementation of Interim and Final Order—

(1) Without affecting any provision of this Act, all orders and instructions, be it interim or final, shall be implemented in such a way, as if the same is a decree of a Civil Court.

(2) Commission, at the time of passing interim or final order, may order the violator to pay compensation to a person who suffered loss for his work.

CHAPTER – 9 Flow of Information

38. Information regarding quality of work—

Commission may collect necessary information in a process prescribed by regulation.

39. Restrictions on publishing information—

(1) Subject to the provision of this Act, and without the consent of the concerned person, Commission shall not divulge any secret information collected under this Act regarding any special business or person during the conduct of the business.

(2) Restriction under sub-section (1) shall not be applicable to information in the following cases, such as:-

- (a) information relating to smooth functioning and determination of tariff by the Commission;
- (b) information relating to assistance in the functions of the Government under this Act;

- (c) information relating to the assistance in the functioning of the Comptroller and Auditor- General under this Act;
- (d) information relating to an investigation about any criminal offence or any criminal proceedings;
- (e) information supplied to any person authorized under Bankruptcy Act, 1997 (Act No. 10 of 1997) for discharging his obligations; and
- (f) information directly related to any civil proceedings that has been filed under this Act or any other Act.

CHAPTER - 10

Arbitration - Settlement and Appeal

40. Arbitration - Settlement by the Commission—

(1) Notwithstanding anything contained in the Arbitration Act, 2001 (Act No. 1 of 2001) or any other Act, any dispute arising between the licencees, or licencees and consumers, shall be referred to the Commission for its settlement:

Provided that a contract, executed between the Government or any of its agency and a private company, in respect of energy, immediate before this Act comes into force, the conditions of the said contract shall be applicable for the settlement of the disputes.

(2) Commission as an arbitrator may, suemoto, take steps and award adjudication of a dispute or appoint arbitrator for settlement of dispute.

(3) Methods and procedures for the said settlement shall be specified by regulations.

(4) Arbitrator appointed by the Commission shall submit its award to the Commission and Commission may pass an appropriate order, as follows, on the basis of it:-

- (a) approval and implementation of the award;
- (b) cancellation or amendment of the award; or
- (c) sending of the award for review of the arbitrator.

(5) Award or order given by the Commission shall be deemed to be the final.

(6) Award or order given by the Commission shall be implemented in such a way as if it is a decree of a Civil Court.

(7) At any time during the continuation of the proceedings under this part or any time before its commencement, Commission may make any such interim order which may be considered as appropriate by it.

41. Appeal against the decision of Inspector—

Notwithstanding anything contained in the Electricity Act or Petroleum Act or rules made thereunder, appeal may be filed to the Commission against any decision of the Electricity or Petroleum Inspector.

CHAPTER –11 Offence and Penalty

42. Penalty—

If any person violates provisions of this Act, rules, or regulations, he shall be liable to be sentenced with imprisonment for a term not exceeding 3(three) years or with fine not less than Taka 5,000 (five thousand) or with both, and in case of continuation of the offence he shall be fined with an amount not exceeding Taka 3000 (three thousand) for each day of continuation.

43. Penalty and fine for violation of Order—

If any licensee or a person, without a valid reason, refuses or fails to abide by any order or directive given by the Commission under this Act, then-

- (a) the Commission may impose upon such person administrative fines prescribed by regulation and such fines shall be liable to be realized as Government dues; or
- (b) it will be treated as an offence and for such offence the said person shall be liable to be sentenced with imprisonment for a term not exceeding 3 (three) months or with fine not less than Taka 2000 (two thousand) or with both; and in case of continuation of the offence he shall be liable to be fined with an amount not exceeding Taka 500 (five hundred) for each day.

44. Penalty for stealing energy—

(1) If any consumer steals electricity or goods of electricity of any licensee, or abets the stealing or involves himself in such acts, he shall be punished under the Electricity Act, 1910 (Act No. IX of 1910).

(2) If any consumer steals gas or petroleum products or abets stealing or involves himself in such acts, he shall be liable to be sentenced to imprisonment

for a maximum term of 3 (three) years rigorous imprisonment or with fine of Taka 5000 (five thousand) or with both.

(3) Stealing under sub-section (2) shall mean one or more of the following matters separately or jointly:

- (a) if gas or petroleum product is used from anybody without proper approval or instructions of the licensee or in violation of the approved purpose of use, plan or program;
- (b) if gas or petroleum product is allowed for use without approved meter within the purview of this Act or rules made under this Act;
- (c) if a consumer violates the method, or manner of use of gas or petroleum products as specified by directives or methodology or under rules and regulations under this Act or by puncturing or making any change in a pipeline or through bypassing or tampering meter of a consumer; and
- (d) if wastage or misuse, unauthorized use or use beyond the contract or inconsistent use of gas or petroleum product is done or causes any thing to be done or abets in doing the same.

45. Penalty for obstruction of the construction during the installation or repair of electric line or gas pipeline, etc.—

If anybody obstructs any licensee or his authorized representative in the works of installation or repair of electricity line or gas pipeline or the construction or repair of associated equipment, installations, he shall be liable to be sentenced with imprisonment for a maximum term of 3 (three) years rigorous imprisonment or with fine not less than Taka 1,000 (one thousand) or with both.

46. Offence by a Company—

If an offence is committed by a Company under the Act, the Proprietor, Director, Manager, Secretary or any other officer of the Company who was responsible for the operation of the business at the time of commission of such offence, shall be deemed to be an offender unless he can prove that, the said offence was committed beyond his knowledge or he tried his level best to prevent the commission of the offence.

Explanation - In this section -

- (a) "Company" means any statutory public authority, trade organization, association or organization; and
- (b) in the case of business organization "Director" means any partner or member of the Board of Directors.

47. Cognizance of offence for trial—

No Court shall take cognizance of an offence under this Act for trial, except a written complaint by an officer who has been authorized by a general or special order in writing by the Commission.

48. Not to hamper proceeding under any other Act—

Proceedings or measures taken under this Act, rules or regulations shall be in addition to the measures taken under any other Act and shall not restrict such a measure.

49. Jurisdiction of cognizing Court—

Only a Magistrate of the 1st Class or a Metropolitan Magistrate can take cognizance of an offence under this Act on the basis of written report of an officer authorized by the Commission.

(2) If the said Court takes cognizance of an offence, it may exercise all powers in accordance with the Code of Criminal Procedure including service of summons or issue of warrant to make the case ready for trial.

50. Jurisdiction of trial Court—

Notwithstanding anything contained in the Code of Criminal Procedure, no Court lower than the Court of Sessions shall try an offence under this Act.

51. Filing of complaint and procedure of investigation—

(1) Commission may authorize an Inspector or any other officer for investigation of an offence under this Act.

(2) Inspector or the said officer, herein after called investigating officer, may start proceeding under this Act, on the basis of written complaint of any person or on any other information.

(3) An Investigating Officer of an offence, shall submit a primary report to an officer appointed for this purpose by the Commission and the said officer, after considering the relevant incident and the circumstances, shall give a decision within 7 (seven) days whether formal investigation or other recourse in accordance with the provisions of the Act or regulation shall be taken or any action at all be taken, and accordingly next step will be taken.

(4) An Investigating Officer in connection with an investigation of an offence may exercise the powers like an officer in charge of a police station under the Code of Criminal Procedure.

(5) After completion of the investigation, the Investigating Officer shall submit original copy of the investigation report and documents in support of it or attested copies of those to the Magistrate of the 1st class or Metropolitan Magistrate having jurisdiction and a copy of the same shall be kept in his office.

(6) Notwithstanding the provisions of sub-section (3) due to the necessity of the concerned offence and circumstances, the Investigating Officer under this sub-section can seize documents, things and equipments relating to the offence, even before receiving formal decision of investigation, provided he is satisfied that because of delay the said deed, things or equipment may be removed or destroyed and may arrest the person involved in the offence, if he thinks that the accused may abscond.

52. Application of Code of Criminal Procedure—

(1) Subject to this Act, rules and regulations made under it, Code of Criminal Procedure shall be applicable for the investigation, trial, appeal and all other incidental matters.

(2) A case started in the Court under this Act on the basis of the report of the Investigating Officer shall be treated as a case started on the basis the police report under the Code of Criminal Procedure.

53. Assistance to the Public Prosecutor by the Officer of the Commission—

In conducting a case under this Act, before the Court of Sessions, Public Prosecutor or concerned Additional or Assistant Public Prosecutor may be assisted by an officer so appointed by the Commission and the said officer being present in the Court may make submission.

CHAPTER -12

Receipt of Complaint of Consumer and disposal

54. Receipt of complaint of the consumers and their disposal—

(1) Every licensee shall make arrangements for necessary numbers of complaint centers to receive complaints or inconvenience of the consumers regarding energy, service or matters connected therewith and shall publish notices from time to time with information regarding the location of centers of communication.

(2) Any consumer may submit his inconvenience or complaint to the said center over telephone or in writing.

(3) All complaints received from the consumer and the information regarding their settlement shall have to be recorded in writing in a register at that center.

(4) After receipt of any information or complaint regarding the inconvenience from the consumer, licensee shall settle it within 7 (seven) days and shall follow the code of practice made by the Commission in this regard.

(5) If the licensee, inspite of being informed by the consumer regarding his inconvenience or complain, fails to settle in due time and in due process, the said consumer may submit the matter in writing to the Commission for taking action.

(6) Commission shall pass necessary order not exceeding 7 (seven) days from the date of receipt of such application.

CHAPTER-13 **Miscellaneous**

55. Finality of the Commission's order—

The order or any decision given by the Commission under this Act, or rules or regulation made under it, shall be deemed to be the final.

56. Collection of fee, fine and charges—

Money payable as fee, fine or charge under this Act shall be liable to be realized as the public demand under the Public Demands Recovery Act, 1913 (Ben. Act III of 1913).

57. Expenditure of fine, penalty and charges—

Commission or Court that imposes fines or charges under this Act may make order for spending entire amount of the said collected money or any part of it, as the cost of the proceedings.

58. Power to make rules—

Government may, subject to the consultation with the Commission, make rules for the fulfillment of the objectives of this Act, and the same shall be published in the official Gazette.

59. Power to make regulations—

(1) Commission may, for the fulfillment of the objectives of this Act, , make regulation by publishing it in the official gazette.

(2) Without affecting the totality of the said power, regulations may be made, on any or all of the following heads:

- (a) convening of meeting of the Commission along with determination of venue, time of holding meeting, and other matters;
- (b) exercise of administrative powers and performance of functions of the Commission;
- (c) pay, allowances and conditions of services of the officers and employees of the Commission.
- (d) determination of functions of the licensee and persons exempted under this Act;
- (e) making of different codes and standards ;
- (f) powers, functions, duties and responsibilities of licensee;
- (g) purchase procedures and rules to be followed by the licensee;
- (h) methods of determination of revenue, tariff of the licensee;
- (i) Procedure for renewal, amendment and cancellation of licence
- (j) determination of procedure relating to maintenance of accounts and forms of the Commission;
- (k) procedure, conditions and other matters in respect of issuance of licence for the production, transmission, distribution, storage and supply of energy;
- (l) procedure determining supply of information by the licensee; and
- (m) policy for giving preference to the supply of energy produced at least cost.

(3) The Commission shall, for the regulation to be made under this section, make pre-publication of all the regulations soliciting objection or advice through it, and shall make regulation after consideration of the objection or advice received.

60. Delegation of powers—

Commission may, by order in writing, and subject to the conditions mentioned in the order, delegate all the powers of it to any Member, officer or to any other person.

61. Public servant—

Chairman, Members, officers and employees of the Commission shall be deemed to be public servants within the meaning of the term public servant as used in section 21 of the Penal Code, 1860 (Act XLV of 1860).

62. Indemnity in case of work done in good faith—

No case, either civil or criminal, or any other legal proceeding, shall lie against Chairman, Member, officer, employee or a person authorized by the Commission in respect of any deed done in good faith as a result of which any person either has suffered loss or likely to suffer loss.

63. Proceedings to be regarded as judicial proceedings—

All proceedings of the Commission shall be deemed as judicial proceedings within the meaning of Section 193 and 228 of the Penal Code, 1860 (XLV of 1860) and section 195 of Code of Criminal Procedure.

64. Appointment of Special or Metropolitan Magistrate—

The Government, may appoint Special or Metropolitan Magistrate, at the request of licensee, under section 14, section 18(3) and section 190(1) (a) to (c) of the Code of Criminal Procedure, 1898 (Act V of 1998) for quick disposal of cases relating to disconnection of gas or electricity connection of defaulting consumer.

65. Publication of Authentic English Text—

After this Act comes into force, the Government shall publish English translation of this Act in the official Gazette, which shall be called as the Authentic English Text:

Provided that in case of conflict between the Authentic English Text and the original Act in Bengali, the original Act shall prevail.

CHAPTER – 14
Transitional Provision

66. Provisions for issuance of licence during transitional period—

(1) Notwithstanding any thing contained in this Act, the Government shall have the powers for issuing provisional licence subject to the condition consistent with the provisions of this Act, for the production, transmission, storage, distribution and supply of energy for a period not exceeding twelve months from the date on which the Act comes into force, such as: -

(a) each of the temporary licence issued by the Government shall be submitted to the Commission, which the Commission shall consider as an application for licence under this Act;

(b) validity of each temporary licence shall be ceased on the date as to be determined by the Commission in the application mentioned in clause (a).

(2) Provisional licencees under the Government shall have the same power, right, and authority as those licencees under the Commission.

(3) Any provisional licencee under this section can apply same powers of a licencee under the Commission.

Kazi Rakibuddin Ahmed

Secretary

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Thursday, March 13, 2003

Dr. Md. Omar Farooq Khan

Secretary

Amendment:

Thursday, February 17, 2005