

KARNATAKA ELECTRICITY REGULATORY COMMISSION

No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru- 560 052

NOTIFICATION**KERC/01/ DDD/22-23/167, dated: 12.05.2022****Draft Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka (CoS) (Tenth Amendment), 2022.****Preamble:**

In exercise of the power conferred by Section 16 of the Electricity Act, 2003, (Central Act No 36 of 2003), the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka (CoS) was notified in the Karnataka Gazette on 17th June 2006 and subsequently Nine (9) amendments were issued from time to time.

The Additional Chief Secretary, Commerce and Industries Department, Government of Karnataka Vide his D.O. Letter No: KUM/DD-7/295/2021-22 dated: 12.01.2022 addressed to Additional Chief Secretary Energy with a copy to the Commission, has requested to consider amendment of KERC Regulations exempting the requirement of Occupancy Certificate (OC) for the industries, while providing the electricity supply connection.

The Additional Chief Secretary, Energy Department, Government of Karnataka Vide letter No: ENERGY/148/VSC/2022 dated:30.3.2022 has requested the Commission to verify as per the prevailing Rules and Act to provide the electricity connection for both residential and commercial buildings without insisting on Occupancy Certificate stating that the same was approved by the Government of Karnataka as per the proposal and recommendations made in the proceedings of the meeting held on 24.01.22 regarding Occupancy Certificate and service connections for buildings within BBMP limits by Urban Development Department.

In view of this, the Commission vide its letter dated: 31.03.2022 has directed the ACS, Energy Department, GoK to file a Petition before the Commission in the matter either by Energy Department or ESCOMs with proper justification.

Accordingly, Bangalore Electricity Supply Company Ltd., (BESCOM), a Distribution Licensee has filed a Petition vide OP 11 / 2022 and MESCOM & other ESCOMs have

filed a Petition vide OP No 12 / 2022 before the Commission under clause 46 of the Conditions of Supply of Electricity of the Distribution Licensees in the State of Karnataka, read with clause 11 of the KERC (General and Conduct of Proceedings), Regulations, 2000 for deletion of the Clauses 8.11, 9.07(4) and 4.10(6) (C) of CoS in respect of Occupancy Certificate.

In these Petitions, all the ESCOMs have prayed that prior to the introduction of the 6th, 7th and 9th Amendment to the CoS, mandating the production of Occupancy Certificate, the Distribution Licensees in the State of Karnataka were supplying electricity to their Consumers after obtaining the identity card, relevant proof of ownership and sanctioned plan as per the CoS.

Further, the ESCOMs in their Petitions have stated the following:

It is the responsibility of the concerned authorities such as Municipal Corporations and the Respondent Urban Development Department to monitor the possession of Occupancy Certificate. The onus of ensuring that the applicants possess occupancy certificate cannot be thrust upon the distribution licensees in the presence of Authorities that are responsible to monitor the same.

Section 43 of the Electricity Act, 2003, specifies that, it is the duty of the distribution licensee to supply electricity to the premises within one month of receipt of application requiring supply of electricity. The said Section further contemplates penalizing the distribution licensees, if they fail to supply electricity. Furthermore, Section 44 creates an exception to the duty to supply electricity, only if the distribution licensee is prevented from doing so on account of storms, cyclones or occurrences beyond its control. Wherefore, it is clear that the Electricity Act, 2003 creates a right in favor of the Applicants in availing electricity as a matter of right and creates a universal supply obligation on the distribution licensee.

Whereas, creating an obligation to produce the occupancy certificate to avail supply of electricity defeats the very purpose of the Section 43 and Section 44 of the Act. **It is the duty of distribution licensee to ensure that electricity is supplied on request and not to insist on the production of occupancy certificate, for the purpose of granting permanent electricity connection.**

The Occupancy Certificate is defined under the Karnataka Real Estate (Regulation and Development) Act, 2016 as hereunder:

“zf) **“occupancy certificate”** means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity”

The above mentioned definition, makes it explicitly clear that the occupancy certificate is merely a proof of occupancy in the premises, which could be proven even without an occupancy certificate through a rent receipt, registered lease deed or through other means. Further, this Commission in Complaint No. 01/2015, when the requirement of occupancy certificate was not in place, had affirmed the said position by stating:

“If the Applicant is unable to provide proof of occupancy” by way of a lease deed/rent paid receipt / power of attorney, his occupancy will be treated as ‘unauthorized’. In substance, the Applicant should obtain the consent of the Owner, in one or the other way, for occupying the premises; otherwise, the occupation of such person will be treated as unauthorized”

Wherefore, the Distribution licensee can service the installation in the absence of occupancy certificate and on mere production of relevant documents easily accessible to the consumers/proposed applicants.

This Commission, in its Order dated 09.04.2015, in Complaint No. 01 of 2015 has held that:

“The supply of electricity to an occupant of a building, whose occupation may not be authorized under the Municipality Act and bye laws, serves a greater cause and does not amount to abetting any illegality.”

It is submitted by the Petitioner that the said judgment of this Commission is affirmed by the Hon'ble High Court of Karnataka in Order dated 05.09.2017 in WP No. 47730/2016.

For want of Occupancy Certificate, the ESCOMs in the State of Karnataka are losing out on several consumers. When the ESCOMs in the State of Karnataka deny the consumers of power supply for want of Occupancy Certificate, such consumers will resort to drawing power through open access. The existing consumers whose installations are not serviced for want of occupancy certificate will slowly shift to open access, which will ultimately cause severe financial strain to the ESCOMs.

It is imperative to note herein that the State of Karnataka is a power surplus state. The demand falls short of supply of power, which results in large amount of stranded power in the State. When the demand falls short of supply, the SLDC (State Load Dispatch Centre) ought to give back-down instruction to the power plants to decrease the generation and injection of power into the grid to ensure grid safety and security.

In case the requirement of occupancy certificate is dispensed with, the ESCOMs will be in a position to service a large number of consumers and thus supply a larger quantity of power. This will enable ESCOMs to use more energy from all its contracted generators and help in mitigating the back down instructions to the thermal stations.

Although, the said instructions by SLDC are given in the interest of grid security, the ESCOMs have to pay the conventional generators, fixed charges even for the energy that is not drawn, as the ESCOMs have entered into several power purchase agreements. The distribution companies have entered into long term PPAs with several thermal stations, which results in unavoidable payment of fixed charges which would consequentially increase the tariff for the exiting consumers.

This situation can be avoided by balancing the demand and supply of power. As power supply is not granted to new consumers for want of occupancy certificate, the demand in the State has further come down. If the requirement of occupancy certificate is dispensed with, the energy industry in the state will be benefited as the ESCOMs will not have to incur losses on account of payment of fixed charges due to backing down of thermal stations, as a result, such losses will not be passed onto to the consumers. Further, the generators are not likely to be backed down as much, as there will be demand for the excess generation in the state of Karnataka. In its Petition BESCO has submitted that non-servicing of installations for want of OC has resulted in revenue loss of around Rs. 108 Crores per annum.

In conclusion, the ESCOMs have stated that the proposed amendments to CoS will benefit the consumers at large, the ESCOMs and also the generators in the state.

Further, **Karnataka Small Scale Industries Association** (KASSIA) vide its letter No: KASSIA/KERC/2022/10383 dated:04.04.2022 has addressed a letter to the Hon'ble Chief Minister of Karnataka, with a copy to the Commission requesting the

Government to exempt the industries from providing Occupancy Certificate for obtaining the electricity supply connection.

The Commission has carefully considered the submissions made by the ESCOMs and in order to comply with the duty to supply electricity under Section 43 of the Electricity Act, read with clause 46 of CoS (Removal of Difficulty), has considered the request to amend the Conditions of Supply.

Under the above circumstances, in exercise of powers conferred by Section 16 of the Electricity Act,2003 (Act No: 36 of 2003) and the Clause 46 of CoS, the Commission has decided to issue the following draft amendments to clauses 9.07(4), 8.11 and 4.10(6)(C) of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka (CoS).

Accordingly, the following draft of the amendments to the CoS, are hereby notified, to invite comments / views / suggestions / objections from the stakeholders, general public and interested persons.

The Stakeholders, interested persons are requested to file their comments / views / suggestions / objections, if any, on the proposed amendments to the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, on or before 30th May,2022, **before the Secretary, KERC, # 16C-1, Millers Tank Bed Area, Vasanth Nagar, Bengaluru 560 052.**

Draft Amendments to the Conditions of Supply

1. Title and commencement. –

- a) This may be called as the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka (CoS) (Tenth Amendment), 2022.

It shall come into force from the date of its publication in the Official Gazette of the Karnataka State.

- b) It shall apply to all the Licensees engaged in the business of distribution of electricity and the consumers of electricity in the State of Karnataka.

2. Details of the Clauses as **Existing / as Proposed by ESCOMs/ amendments as proposed by the Commission, to the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka (CoS) are indicated as under:**