

Electricity Regulation Commission Act, 2074

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Part-2

Nepal Government

Ministry of Law, Justice and Parliamentary Affairs

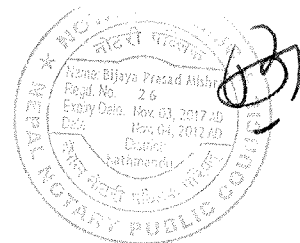
The following Act enacted by the Legislature- Parliament as per the Sub-article (1) of Article 296 of the Constitution of Nepal, has been published for the notice of the general public.

Act No. 13 of the year 2074 (2017)

Act enacted for the provision of Electricity Regulation Commission

Preamble: Whereas it is expedient to make provision of Electricity Regulation Commission in order to maintain balance between the demand and supply of electricity by making the generation of electricity, transmission, distribution or business simplified, regular, systematic and transparent, to regulate the electricity tariff, to protect the right and interest of the electricity consumers, in order to make the electricity service reliable, available to all, qualitative and secured one,

Now, therefore, the Legislature Parliament has enacted this Act as per Sub-article (1) of Article 296 of the Constitution of Nepal.



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Chapter-1

Preliminary

1. **Short Title and Commencement:** (1) The title of this Act shall be "**Electricity Regulation Commission Act, 2017.**"

(2) This Act shall commence since 91st day of the certification.
- 2) **Definition:** Unless the subject or context otherwise requires, in this Act:
 - (A) "**Chairperson**" refers to the Chairperson of the commission
 - (B) "**Licensed Person**" refers to the person or corporate body licensed under the prevalent law so as to generate, transmit, distribute or trade the electricity.
 - (C) "**Commission**" refers to the Electricity Regulation Commission established under section 3.
 - (D) "**Consumer**" refers to the person or institution consuming the electricity.
 - (E) "**Prescribed or as prescribed**" refers to prescribed or as prescribed in the rules made under this Act.
 - (F) "**Ministry**" refers to the Ministry of Energy.
 - (G) "**Tariff**" refers to the electricity charge, tariff, fee and other amount payable to the licensed person by the consumer for the consumption of the electricity service.
 - (H) "**Electricity**" refers to the electricity generated by water, mineral oil, coal, gas, solar, wind, atomic, biological items or any other sources.



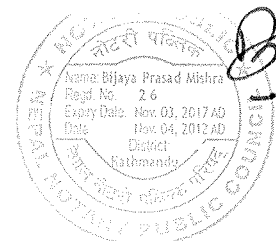
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- (I) **"Secretary"** refers to the employee working as the secretary of commission under section 32.
- (J) **"Member"** refers to the member of the commission and the term refers to the chairperson as well.

Chapter-2

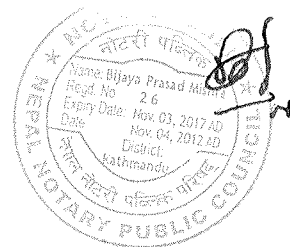
Establishment and Formation of the Commission

3. **Establishment of the Commission:** (1) The Electricity Regulation Commission has been established as a regulatory body so as to regulate the generation, transmission, distribution or the business of electricity.
- (2) The central office of the Commission shall be located at Kathmandu Valley and the Commission may open the branch office in the other places of Nepal as per necessity.
4. **The Commission to be autonomous and a corporate body:** (1) The commission shall be an autonomous and a corporate body with the perpetual succession .
- (2) A separate seal shall be there for the work and activities of the commission.
- (3) The commission may acquire, consume, sell or manage otherwise the movable and immovable property as an individual.
- (4) The commission may sue in its own name as a person and the commission may also be sued in its name.



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- (B) Having obtained the permanent residential permission of the foreign nation.
- (C) Having been punished under corruption, rape, human trafficking and transportation, transaction of narcotic drugs, money laundering, misuse of passport, crime of abduction or the other criminal offence with the moral turpitude.
- (D) Being fallen under blacklist under the prevalent law or not passed at least three years after being released from such list.
- (E) He/she himself or his/her joint family member has been involved as the promoter, managerial level, shareholder or director, auditor or advisor in any company or the subsidiary company of such company, firm associated with the electricity generation, transmission or business or the period of at least three years has not elapsed after being separate from such status.
- Explanation:* For the purpose of this part "Shareholder" refers to the person having at least one percent share of the concerned company.
- (F) The period of three years has not been elapsed after being inflicted punishment on the offence of the electricity generation, transmission, distribution or business.
- (G) Incumbent employee of Nepal Government, Provincial Government or local level or the corporate body owned by Nepal Government, Provincial Government or local level or the licensed person.
- (H) Fallen to insolvency by being unable to pay the loan of creditor.



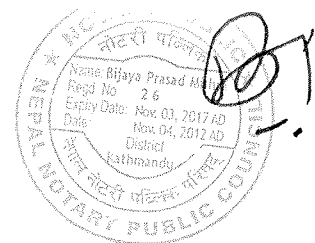
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- (I) Member or officer-bearer of any political party.

7. **Appointment of Chairperson and Member:** (1) Nepal Government shall appointment chairperson and member of the commission on the recommendation of the following committee.

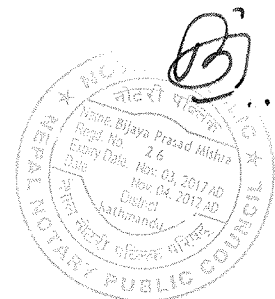
- (A) Secretary, Ministry-Convener
- (B) Electricity Expert, nominated by the Ministry-Member
- (C) Gazetted First class Officer assigned by the Ministry- Member Secretary
- (2) The Committee under sub-section (1) shall publish notice, granting at least 15 days to the desirous candidates so as to submit curriculum vitae along with the application, for the purpose of making recommendation.
- (3) The Committee under sub-section (1) shall recommend the name of the qualified candidate out of the applying candidates under sub-section (2) within 21 days of the expiry of the applying period to Nepal Government. In making recommendation as such the names for different subjects shall be applied for members under clause (B) of section 5 for the members.

Provided that, in case the adequate number of candidtae is not available for the different subjects, more than one persons of the same subject may also be recommended.



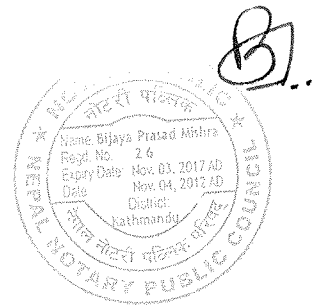
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- (4) The meeting of the committee under sub-section (1) shall be chaired by the convener of such committee and the quorum is deemed fulfilled by the attendance of the convener and a member.
- (5) The opinion of majority shall be held valid in the meeting of the committee under sub-section (1) and the decisive vote shall be casted by the chairperson upon the occurrence of tie.
- (6) The basis, process and other procedures of the meeting to recommend the candidate for chairperson and member shall be as prescribed by the committee *per se*.
- (7) The meeting allowance of the convener and member of the committee under sub-section (1) shall be as prescribed by the Ministry of Finance.
8. **Tenure:** The tenure of the chairperson and member shall be of five years and he/she may be appointed for one more term.
9. **May be removed from post:** (1) Nepal Government may form an investigation committee to investigate the matter in case the chairperson or any other member lacks work competence or bears bad conduct or he/she is found out not performed postal obligation.
- (2) The Investigation Committee pursuant to sub-section (1) shall furnish its report to Nepal Government investigating the alleged chairperson or member.



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- (3) The Investigation Committee pursuant to sub-section (1) shall grant reasonable opportunity of defense to the alleged chairperson or member while initiating investigation.
- (4) Nepal Government shall remove the chairperson or member in case the Investigation Committee pursuant to sub-section (1), recommends for the removal of the chairperson or member.
- (5) Upon commencing the investigation proceedings under this section the chairperson or member as such shall not perform his/her postal works until the finalization of the investigation as such.
- (6) The recommendation and other facilities of the chairperson or member under sub-section (1) shall be as prescribed by Nepal Government.
10. **The post to be held vacant:** In any of the following circumstances the post of chairperson or member shall be held vacant.
- (A) Approval of resignation submitted by him/her from the post before Nepal Government.
- (B) In case he/she lacks or does not retain qualification under Section 5.
- (C) In case his/her tenure expired under Section 8.
- (D) In case he/she is removed by Nepal Government under section 9.
- (E) In case he/she dies.
11. **Meeting of the Commission:** (1) The meeting of the commission shall take place at least once a month.



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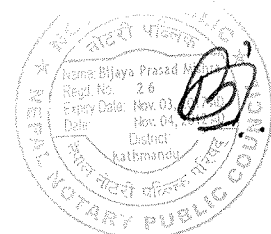
- (2) The meeting of the commission shall be taken place at the date, time and place as prescribed by the chairperson and by the senior member in case the post of chairperson falls vacant.

Provided that, in case at least two persons make written request to call the meeting of the commission, the chairperson or in his/her absence the senior member shall call the meeting of the commission within seven days.

- (3) Prior to at least 24 hours of the meeting of the Commission the Secretary shall provide list of subject of discussion to the members.
- (4) The chairperson shall chair the meeting of the commission and senior member shall chair in his/ her absence.

Explanation: For the purpose of this section "Senior Member" refers to the member placed in the advance of the appointment row.

- (5) The quorum of the meeting of the commission shall be deemed to have been fulfilled by the attendance of three members.
- (6) The majority opinion shall be held valid for the meeting of the commission and the chairperson shall cast the decisive vote on occurrence of tie.
- (7) In the meeting of the commission the expert of the concerned subject may be called as per necessity.
- (8) There shall be separate minute for the record of decision of the



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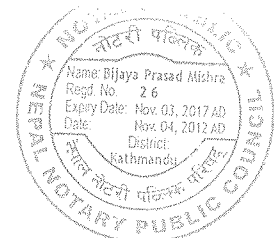
Commission wherein each decision shall be recorded in such minute and all the attending members shall sign up in the said minute.

- (9) The other procedures of the meeting of the commission shall be determined by the commission *per se*.

Chapter-6**Function, duties and authority of the commission**

12. To manage the technician: For the regulation with regards to generation, transmission, distribution or business of electricity the commission shall carry up the following works for the technical management:

- A. To form, execute and monitor the Grid Code and Distribution Code for the electricity service.
- B. To set standard and implement the operation and repair/maintenance of the electricity service.
- C. In order to maintain standard and security level of the National Electricity System, formulate and implement the essential criteria.
- D. Prescribe the obligation of the operator of electricity system and monitor the implementation.
- E. To prescribe the condition to shut down electricity service, its basis and priority.
- F. For the purpose of internal demand and supply of electricity service formulate the minimum cost extension work plan and implement or cause to implement.



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13. Determination of Tariff and Regulation of Electricity Purchase and Sale:

(1) The commission may work as follows for the determination of tariff and regulation of electricity purchase and sale:

A. In consideration of the operation cost, depreciation calculation rate, payment of principal and interest, repair and maintenance expenses, electricity structure construction, reconstruction, restoration and share investment related annual dividend and condition and basis of electricity tariff rate determination, prescribe the tariff payable by the consumers.

B. Until the wholesale market is established for the purchase and sell of the electricity prescribe the purchase/sale rate and process thereof to be carried out among the licensed persons for distribution and licensed person for generation or licensed person business or the corporate body established by Nepal Government.

C. To grant consent to the licensed persons for the purchase and sale of the generated electricity.

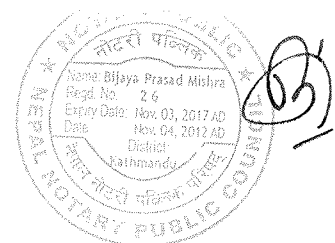
D. To identify and implement the essential resolution so as to minimize the electricity tariff.

E. To prescribe transmission and distribution charge (Wheeling charge).

F. To prescribe surcharge for the particular period of time over the related matter of electricity services in the special circumstance.

(2) The commission shall determine the tariff under sub-section (1) within 60 days of the receipt of the entire documents.

(3) The commission shall publish out notice in the National newspaper following the determination of the tariff under sub-section (1).



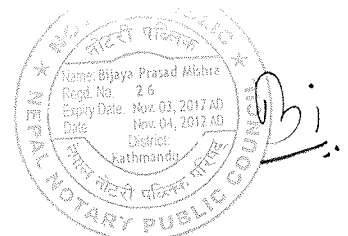
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(4) No redetermination of the electricity tariff shall be there within one year following the determination of tariff under this section.

14. To maintain Competition and Protect the Interest of the Consumers:

The commission shall, in order to maintain competition in the electricity market and protect the interest of the consumers, carry up the following activities:

- A) For the protection of the interest of the consumers, identify, implement or cause to implement the essential resolution.
- B) To maintain competitive environment over the purchase and sale rate of the electricity.
- C) In order to initiate for competition among the licensed person over the electricity tariff indentify essential resolution and cause to implement the same.
- D) To make provision so as not to make syndicate over the electricity rate.
- E) To prescribe the process for the establishment, operation and purchase and sell of the wholesale of the electricity.
- F) Make essential criteria for the merger of the licensed persons each other, to purchase 50% or more shares solely or in collusion of its own subsidiary company, sell of plant, acquisition or take over.
- G) To grant consent for the merger of the licensed person each other, sell of plant and acquisition or take over.
- H) To prescribe conditions to follow for the electricity trade and monitor the same on regular basis.



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I) In order to maintain standard of electricity placed outside the transmission line, examine or cause to examine from time to time.

15. To enhance the Organizational Capacity: The Commission shall, enhancing the organizational capacity of the licensed persons, in order to maintain the corporate governance, carry up the following functions:

A) To prescribe the standard and basis for the evaluation of the working capacity of the licensed person.

B) To frame and implement the code of conduct so as to make the work and activity of the licensed person to be dignified one.

C) To encourage the licensed person for the electricity, market promotion, extension and diversification.

D) To formulate and implement the standards so as to integrate the internal control, account system and auditing method of the licensed person.

E) To prescribe the subject for the information by the director, office bearer and other office bearers of the licensed corporate body to such organization and cause to comply with the same.

F) To make surprise check of the account system of the licensed person as per necessity.

G) In order to maintain good governance in the works and activities of the licensed person give essential directives to fix the standards.

16. To make Policy Suggestion and Recommendation: For the policy reform to make the electricity generation, transmission, distribution or business related



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provisions reliable and effective one the commission shall give essential advice and suggestion to Nepal Government.

17. To Investigate and Inspect: (1) The commission may investigate and Inspect or cause to same as per necessity whether or not the licensed person has performed works under this Act, Rules, Bylaws, Directives or standards made under this Act, prevalent other laws or the conditions prescribed while granting approval.

(2) In the course of investigation and inspection as per the Sub-section (1) the account, record, particulars etc. may be sought with the licensed person or the field based investigation and inspection may be carried forward.

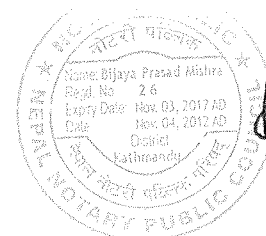
(3) The office bearer or employee carrying of the investigation and inspection under Sub-section (1) or (2) shall prepare the report and submit to the commission and the commission may give essential order and directive to the concerned licensed person based on such report.

(4) In case the licensed person does not perform the order and directives issued under Sub-section (3) the commission may impose fine to the licensed person under Sub-section (1) of Section 19.

18. To Resolve Dispute: (1) The commission shall have authority to resolve dispute in the following matters:

A) Dispute relating to electricity among the licensed persons.

B) The matter of compensation claim mentioning that the decision reached by the licensed person is not satisfying or his/her work has extended grievances.



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(2) Over the issue of the dispute or subjects under Sub-section (1) the licensed person or consumer may lodge complaint to the commission and the commission shall start hearing and decide the matter within 90 days.

(3) In the course of action and settlement of the complaint presented to the commission, the commission shall have authority to carry out following works as the code under the prevalent law:

A) To call any person before the commission and have the statement or information.

B) To inquire witness.

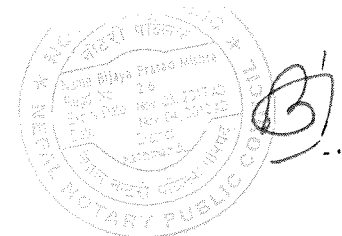
C) Order to submit any written documents based to anybody of the Nepal Government, Provincial Government or Local level or the public organization.

D) To / cause to hold filed based inspection and order to submit objective proofs.

(4) The person dissatisfied under Sub-section (2) may file appeal before the High Court, Patan within 35 days of the decision as such.

(5) Notwithstanding any matter contained in Sub-section (1), in case a separate provision is made in the agreement so as to resolve the dispute among the licensed person for the electricity generation, transmission, distribution or business, the matter shall be dealt accordingly.

19. To Impose Fine: (1) The commission may impose fine ranging up to five hundred thousand rupees to the licensed person not following order or directives under Sub-section (3) of Section 37 or the decision under Sub-section (2) of Section 18 or not complying with any matter under the Act or Rule made under this Act obstructing or cause to obstruct electricity without serving prior notice.



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(2) The amount of fine under Sub-section (1) shall be deposited in the reserve fund of the Nepal Government.

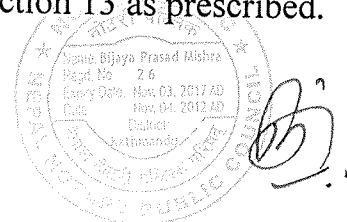
(3) The amount deposited as the fine under Sub-section (1) shall not be inducted as the expenses or investment of the licensed person for the determination of the tariff.

(4) The licensed person dissatisfied over the imposed fine under Sub-section (1) may file appeal before the High Court, Patan within 35 days of the decision of such fine.

20. To collect Service Charge: The commission may collect service charge as prescribed with the licensed person in the following matters:

- A) For the approval of Grid Code.
- B) To prescribe the wholesale purchase rate of electricity.
- C) To grant electricity purchase agreement.
- D) In the determination of the transmission and distribution charge (Wheel Charge, other charge or fee.
- E) To grant consent for the merger of the licensed person each other, sale of plant, acquisition or take over.
- F) To resolve dispute under Section 18. Provided that no charge is payable for the complaint of the house hold consumer.
- G) The other matters prescribed by the commission.

21. To Organize the Public Hearing: (1) The commission shall organize the public hearing prior to the determination of tariff under Section 13 as prescribed.



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(2) The commission may also make provision of public hearing for the other subject related to its works and functions as per necessity.

(3) The commission shall maintain the record of the public hearing carried under Sub-section (1) or (2).

22. Provision Relating to Revision: (1) In case any person or organization finds it essential to revise the decision of the commission the application for revision may be submitted before the commission within 15 days of receipt of information of such decision along with the essential documents.

Provided that, this provision shall not be applicable for the decision to impose fine made by the commission under Section 19.

(2) In case the application is filed under Sub-section (1) the commission shall decide within 15 days so as to /not to maintain the earlier decision.

(3) In case the commission decides for the amendment of the earlier decision under Sub-section (2) the order shall be issued not to implement the earlier decision.

(4) Notwithstanding any matter contained in the other parts of this Act, in case information is obtained from any source that the licensed person has submitted the fake documents or concealed any documents or that the further document has been obtained the commission may again decide over such matters.

Chapter-7

Function, Duties and Facilites of the Chairperson and Members

23. Function Duties and Authority of the Chairperson: A) The chairperson shall have following Function, Duties and Authority.



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- (2) The remuneration, facility and other condition of service of chairperson and members shall be as prescribed.
- (3) Until the provision is made as per the sub-section (2) the remuneration and other facilities of the chairperson shall be as prescribed by Nepal Government.
- (4) In case the chairperson and member has made any decision while working in the commission over the related issue of the licensed person he/ she shall not involve with the licensed person in any way for a year being retired from the commission.

Explanation: For the purpose of this section "Involved" means circumstance to work as the director, employee, expert or consultant being permanent, temporary, contract or agreement.

26. To swear the oath: Prior to hold the office the chairperson shall, before the Minister of Energy and the member shall, before the chairperson swear the oath of office and secretary in line with the format of the schedule.

27. To inform: (1) The chairperson and member shall serve the following matters in writing within 30 days of the appointment over the following matters to the commission

- a. Description of occupation, employment or business and details of the office thereof, of the involvement prior to the appointment to be chairperson or member.
- b. Whether or not oneself or family member being shareholder of any licensed person and the description of the member of shares upon being



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- (3) The Chairperson, member and employee, Auditor, Advisor representative of the commission or the person, firm or company working with the commission entering agreement, while working commission shall not take or extend benefit, facility, privilege or advantage of any kind by self or to one's own family or any others.
- (4) If anyone does any work contrary to sub-section (1), (2) or (3) the action shall be initiated pursuant to the prevalent law concluding that he/she has not performed the duties matching with the designation.

29. Should not participate in the issue of conflicting interests: (1) While the Commission has discussion or makes decision on any issue that has financial interest, personal interest or business interest of the chairman or member or any member of his/her family, the member as such shall notify the Commission before commencing the meeting over such mater of possible interest conflict.

(2) Such chairman or member should not participate in the meeting wherein the matter under sub-section (1) to be discussed.

(3) In case any decision is reached against sub-section (1) or (2) such a decision shall not be executed against the person deserving the interest as such.

30. Professional Conduct to be followed up: (1) Chairperson Member or employee or advisor of the commission in staying with the post or post-retirement of the post shall comply with the prescribed code of conduct.

(2) Chairperson, Member or Employee or Advisor shall always keep the interest of the commission in paramount while working with such status.



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Chapter-5

Employees of the Commission

31. Provision relating to Employees: (1) In order to undertake the works of the commission there shall be employees in the commission in such a number that is approved by Nepal Government.

(2) The Commission shall appoint employees as per the provision in the Rules.

(3) Notwithstanding any matter contained in sub-section (2) the commission may appoint required expert employees for the performance of the work in contract.

(4) Notwithstanding any matter contained in this Section, until the employees are appointed in the Commission, the Ministry may deploy any employee of Nepal Government defining period to work in the Commission.

32. Secretary of the Commission: The senior most employee of the commission shall work as the secretary of the commission.

Chapter-6

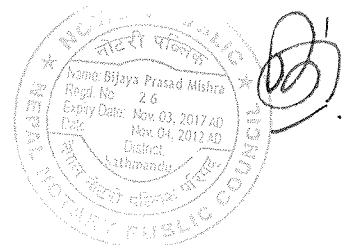
Fund and Audit

33. Fund: (1) There shall be a separate fund of the Commission with the following amount.

(a) Amounts received from Nepal Government.

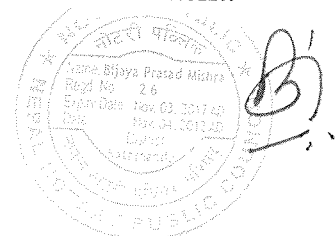
(b) Amounts received from any individual or association/ organization.

(c) Amounts received from any foreign government, individual or international association/organization.



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- (d) Amount collected from the licensed trader person comprising of maximum one percent of the annual gross income derived from the electricity business as prescribed by the Commission.
- (e) Amount collected from the licensed trader person to export electricity using the national grid comprising of maximum one percent of the wheeling fee that he/she received as prescribed by the Commission.
- (f) Amount of service charge received under section 20.
- (g) Amount received from the other resources.
- (2) Prior to obtaining amount in accordance with clause (C) of sub-section (1) the Commission shall obtain approval of the Ministry of Finance.
- (3) The amount of the fund under sub-section (1) shall be deposited in any commercial bank of "A" class approved by Nepal Rastra Bank by opening account.
- (4) The entire expenses under sub-section (1) shall be borne from the amount of the fund under sub-section (1).
- (5) In case the amount of the fund is insufficient for the operation of the works of the commission the Ministry of Finance shall make available the essential amount.
- (6) In case there has been excess deposit of amount in the fund than that is prescribed, the excess amount as such shall be deposited to the reserve fund of Nepal Government.
- (7) The operation of account of the fund under sub-section (1) shall be as prescribed.
- 34. Accounts and Audit:** (1) The accounts of the Commission shall be maintained in accordance with the prevalent specimen followed by Nepal Government.



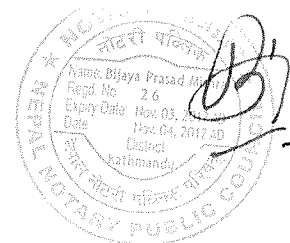
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- (2) The Commissions shall maintain the internal control system as prescribed and execute the audit of the income and expenses.
- (3) The audit of the Authority shall be performed by the Auditor General.
- (4) The Government of Nepal may, if it so desires, inspect or cause to inspect the documents relating to the accounts, book of records of the Commission, at any time.

Chapter-7

Miscellaneous

35. **To co-operate to the Commission:** All the concerned shall essentially co-operate to the Commission for the implementation of its work and activities as well as the decision.
36. **Sub-committee or Working Team may be formed:** (1) The Commission may form Sub-committee or working team as per necessity to carry up the performable works by the Commission under this Act.
- (2) The function, duties, authority and procedures and the facilities obtainable by the member of such sub-committee or working team formed under sub-section (1) shall be as prescribed by the Commission.
37. **Directives may be given:** In order to implement the works under this Act, the commission shall issue essential directives to the licensed person and the compliance of such directives shall be the duty of the concerned licensed person.



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- 38. Annual Report:** (1) The commission shall prepare report relating to the performed works and activities by itself within three months of the expiry of each fiscal year before the Ministry.
- (2) In addition to the other matters the report under sub-section (1), the program carried up by the Commission in the entire year, obtained amount, cost of program operation, achievements of the program and future improvements shall also be mentioned.
- (3) The commission shall publicly publish the report under sub-section (1) for the information to the general public.
- (4) The licensed person shall prepare report of the performed works and activities within three months every fiscal year along with the audit report before the Commission.
- (5) The Commission may give essential directives to the licensed person following the study of the annual report presented under sub-section (4).
- (6) The summary of the presented annual report under sub-section (4) shall be brought to public by the licensed person.
- 39. Delegation of Authority:** The commission delegate power out of the powers granted to it under this Act other than the power to prescribe tariff, merger of the licensed persons with each other, sale of plant, permission for acquisition or take over and dispute settlement to the sub-committees formed under section 36 or working team or the authorized officer employee.
- 40. Contact with Nepal Government:** Nepal Government may be contacted via the Ministry.



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41. Power to make Rules: Nepal Government may frame essential rules for the implementation of this Act.

42. To formulate Bylaw: (1) The Commission may formulate and implement the bylaw over the following matters subject to this Act and Rules made under this Act.

(A) Appointment, work, duties, authority, qualification, remuneration, facility and service condition of the employee.

(B) Complaint for the solution of dispute and action over such complaint and procedure for the settlement.

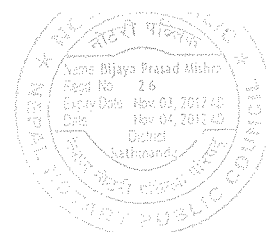
(C) Other matters for the internal work operation of the Commission.

(2) Notwithstanding any matters contained in Part (A) of Sub-section (1) the Commission shall have approval of the Ministry of Finance when the Commission forms bylaws for the appointment, remuneration, service condition and facilities as well as imposition of financial Liability to Nepal Government.

43. To formulate and implement Directives, Criteria or Code: The commission may formulate and implement Directives, Criteria or Code for the matters under its work, duties and authority not being contrary to this Act, Rule and bylaw and under this Act.

44. Amendment, Repeal and Saving: In the Electricity Act, 2049:

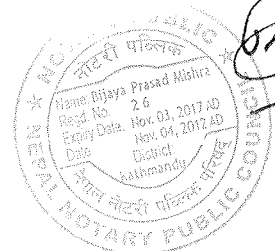
(1) In lieu of the words "pursuant to Section 17" the words "as per the prevalent Federal Laws relating to the Electricity Regulation Commission Law" have been placed.



Electricity Regulation Commission Act, 2074

(2) Section 17 and 18 have been repealed.

(3) The electricity tariff fixed under Section 17 and 18 shall be deemed to have been fixed under this Act.



Electricity Regulation Commission Act, 2074**Schedule****(Related with Section 26)****Oath**

I..... placing the God as witness/truth/loyalty swear the oath that on the capacity of Chairperson/Member of Electricity Regulation Commission, I shall comply with the responsibility and obligation without fear, favor, partiality agony of any one by being honest. During the performance of the one's own duty, I will not disclose the known matters while I have or have not been in post in any circumstance except the prevalent law requires to do so.

Date:

Signature:

Certification Date 2074/05/19 (04th September, 2017)Schedule-10

(Related to Sub Rule (5) of Rule 18)

Form of Translation Copy of Document

"The Translation copy is true and verified"

Signature:



Name: Bijaya Prasad Mishra

Date: 17th October, 2017

Certificate Number of the Notary Public: 26

Date of Expiry of Certificate: 3rd November 2017

Seal of the Notary Public

