

The Gujarat Electricity Supply Undertakings (Acquisition) Act, 1969

GUJARAT

India

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Act 7 of 1969

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1. [Amended by Gujarat Electricity Supply Undertakings (Acquisition) (Amendment) Act, 1969 (Act 17 of 1969) on 14 October 1969]

The Gujarat Electricity Supply Undertakings (Acquisition) Act, 1969Gujarat Act No. 7 of 1969(First published, after having received the assent of the Governor in the "Gujarat Government Gazette" on the 8th May, 1969.)An Act to provide for the acquisition of undertakings, other than those belonging to and under the control of the State Electricity Board, engaged in the business of supplying electricity to the public.It is hereby enacted in the Twentieth Year of the Republic of India as follows:-

1. Short title, extent and commencement.

(1)This Act may be called the Gujarat Electricity Supply Undertakings (Acquisition) Act, 1969.(2)It extends to the whole of the State of Gujarat.(3)It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Definitions.

- In this Act, unless the context otherwise requires-(1)"accredited representative" means the representative appointed or deemed to have been appointed under section 7;(2)"appointed day" means the date of the coming into force of this Act;(3)"document" in relation to an undertaking includes its books;(4)"Electricity Act" means the Indian Electricity Act, 1910 (IX of 1910);(5)"Electricity Supply Act" means the Electricity (Supply) Act, 1948 (LIV of 1948);(6)"fixed assets" includes works, spare parts, stores, tools, motor and other vehicles, office equipment and furnitures;(7)"licensee" means a person licensed under Part 11 of the Electricity Act, to supply

electrical energy or a person who has obtained sanction under section 28 of that Act to engage in the business of supplying electricity and, in relation to an undertaking which has vested in the State Government under section 1, the person, who was the licensee at the time the undertaking vested in the State Government or his successor-in-interest;(8)"prescribed" means prescribed by rules made under this Act;(9)"vesting date" means in relation to an undertaking the date fixed under sub-section (1) of section 1 as the date on which the undertaking shall vest in the State Government;(10)"works" includes electric supply lines and any lands, buildings, machinery or apparatus required to supply energy and to carry into effect the objects of a licence or sanction for the supply of electricity, granted under the Electricity Act;(11)words and expressions used but not defined in this Act shall have the meanings respectively assigned to them in the Electricity Act or the rules made thereunder.

3. Application of Act.

(1)This Act shall apply to all undertakings of licensees including under-takings in respect of which notice for compulsory purchase has been served under section 6 of the Electricity Act.[***]
[Sub-section (2) and Explanation deleted by Gujarat No. 17 of 1969, dated 30th October 1969 (w.e.f. 01-08-1970).]

4. Power of State Government to take over any undertaking.

(1)The State Government may, if in its opinion public interest so requires, by order in writing, declare in respect of the undertaking of any licensee that it shall vest in the State Government on the date specified therein, such date not being earlier than four months from the date of the declaration:Provided that the State Government may, from time to time, postpone such date, so however that the postponed date shall not be later than one year from the date originally fixed:Provided further that except with the previous approval of the Government of India, no such declaration shall be made in respect of any undertaking which has, with the consent of the Government of India, raised any loan or in respect of which a guarantee has been given by the Government of India and the loan or any part thereof is still outstanding or the guarantee is still in operation at the time of making such declaration.(2)Every order under sub-section (1) shall be served on the licensee in the prescribed manner and shall also be published in such manner as the State Government thinks fit.(3)[Where an order under sub-section (1) is made in respect of an undertaking of a licensee to whom notice has been served under section 6 of the Electricity Act prior to the making of such order, such notice shall lapse and be of no effect upon the making of such order.] [Sub-section (3) added by Gujarat No. 17 of 1969, dated 30th October 1969 (w.e.f. 01-08-1970).]

5. Vesting of the undertaking or its assets.

- Where an ordinary order under subsection (1) of section 4 is made in respect of an undertaking of a licensee, all property belonging to such undertaking including fixed assets, cash securities, investments, documents and the like and all its rights, its assets, liabilities and obligations as on the vesting date shall vest or shall be deemed to have vested in the State Government, free from any

debt, mortgage or similar obligations of the licensee or attaching to the undertaking: Provided that any such debt, mortgage or similar obligations shall attach to the amount of compensation payable to the licensee under section 6 in substitution for the undertaking: Provided further that liabilities and obligations not incurred in a bona fide manner shall not vest in the State Government-(ii) in so far as they are in excess of the value on the vesting date of the corresponding assets, if any, vesting or deemed to have vested in the State Government; or (ii) where there are no corresponding assets which vest or are deemed to have vested in the State Government. Explanation. - For the purposes of this section, "undertaking" includes every business carried on by the licensee, the funds of which form part of the funds of the licensee

6. Compensation payable to a licensee.

(1) Where an undertaking of a licensee has vested in the State Government by an order under section 1 there shall be paid to such licensee a compensation which shall be equal to the market value of the undertaking as on the vesting date. (2) The market value of an undertaking for the purpose of sub-section (1) shall be deemed to be the value as determined in accordance with the provisions of sub-section (2) of section 7A of the Electricity Act: Provided that there shall be added to such value such percentage, if any, not exceeding twenty per centum of that value, as may be specified in the licence on account of compulsory acquisition. (3) In the case of all undertakings which vest in the State Government under this Act, the licence granted or the sanction given for the supply of electricity shall be deemed to have been terminated on the vesting date and all the rights, liabilities and obligations of the licensee under any agreement to supply electricity entered into before that date shall devolve on the State Government: Provided that where any such agreement is not in conformity with the rates and conditions of supply approved by the State Government and in force on the vesting date; the agreement shall be voidable at the option of the State Government. (4) In respect of any undertaking to which section 4 applies it shall be lawful for the State Government after removing any obstruction that may be or might have been offered to take possession of the entire undertaking or, as the case may be, of the fixed assets and of all documents relating to the undertaking which the State Government may require, for carrying it on.

7. Appointment of sole representative.

(1) Every licensee may, within three months of the receipt of an order under sub-section (1) of section 4, intimating the vesting date, appoint an individual who may be the managing agent or a director or a managing director or a manager or an officer of the licensee or any other individual to act as his sole and accredited representative in connection with the handing over of the undertaking or the fixed assets, as the case may be, to the State Government and performing on behalf of the licensee the functions hereinafter specified. (2) Where the licensee is a company as defined in the Companies Act, 1956 (1 of 1956) the appointment of the accredited representative shall be made by the shareholders of the company at a meeting specially convened for the purpose. (3) Where the accredited representative resigns or dies or becomes incapable of acting or is in the opinion of the State Government, incompetent or dishonest or where the appointment of such representative is set aside or declared void by competent authority, the State Government shall call upon the licensee to appoint, within six weeks another individual as his accredited representative. (4) The remuneration

of, and the expenditure incurred by, the accredited representative shall be payable from the compensation payable under this Act and shall have priority over all other debts and liabilities.(5)All assurances conveyed, and all statements made, by such representative (inclusive of a representative whose appointment is subsequently set aside or declared void by competent authority) shall be binding on the licensee.(6)Where the licensee does not appoint an individual to act as his sole and accredited representative under sub-section (1) or sub-section (3) the functions hereinafter assigned to the accredited representatives shall be performed by the licensee; and all references in the rest of this Act to the accredited representative shall be construed as references to the licensee and any reference to a period of time to be reckoned from the date of appointment of the accredited representative shall, in such a case, be reckoned from the last date on which such accredited representative could have been appointed.

8. Effect of transactions not bona fide.

- Where the State Government is of opinion that any licensee has on or after the appointed day disposed of any fixed asset whether by way of sale, exchange, gift, lease or otherwise or incurred capital expenditure otherwise than in the normal course of events with a view to benefit unduly the licensee or some other person and thereby caused loss to the State Government as succeeding owners of the undertaking, the State Government shall be entitled to deduct from the compensation, payable to the licensee under this Act, an amount which it considers to be the loss sustained by it: Provided that notice of the intention to make such deduction shall be or shall have been given to the licensee within one year from the vesting date.

9. Deductions from the compensations.

- The State Government shall be entitled to deduct the following sums from the compensation payable under this Act to a licensee:-(a)the amount, if any, already paid in advance by way of compensation;(b)the amount, if any, specified in section 8;(c)the amount due, if any, from the licensee to the Gujarat Electricity Board for energy supplied by the Gujarat Electricity Board before the vesting date;(d)all other amounts and arrears of interest, if any thereon due from the licensee to the State Government, except loans and arrears from interest, if any, thereon;(e)the amount, if any, equivalent to the loss sustained by the State Government by reason of any property or rights belonging to the undertaking not having been handed over to the State Government, the amount of such loss being deemed to be the market value on the vesting date of such property or right together with any income which might have been realised by the State Government if the property or rights had been handed over on the vesting date.

10. Repayment of debentures, etc.

- Notwithstanding anything to the contrary in any contract or agreement or in any law for the time being in force, all loans, debentures, mortgages and the like outstanding against the licensee on the vesting date may be repaid by the State Government or the licensee, although the time for their repayment may or might not have arrived.

11. Arbitration.

(1)Where any dispute arises or is pending between the accredited representative and the State Government in respect of any of the matters specified below or such other matter as may be prescribed, it shall be determined by an arbitrator appointed by the State Government who shall be a District judge or a person who is a retired High Court Judge or a retired District Judge:-(a)the amount of the compensation payable in respect of the undertaking as a whole or any component part thereof;(b)whether any property, belonging, or any right, liability or obligation attaching, to the undertaking vests in the State Government;(c)whether any fixed assets form part of the undertaking;(d)whether any agreement to supply electricity entered into by the licensee, prior to the vesting date is of the nature referred to in the proviso to subsection (3) of section 6;(e)whether the State Government is entitled to deduct any sum under section 8 or section 9.(2)Subject to the provisions of this section, the provisions of the Arbitration Act, 1940 (X of 1940) shall apply to all arbitrations under this Act.(3)The arbitrator may, if he thinks it expedient to do so, call in the aid of one or more qualified assessors and hear the whole or any part of the reference with the aid of such assessor or assessors.

12. Termination for existing staff of licensees.

(1)Any agreement between the licensee and his managing agent, managing director, manager or secretaries and treasurers shall, notwithstanding anything to the contrary in such agreement, be deemed to have been terminated on the vesting date in so far as it relates to the undertaking; and the managing agent, managing director, manager, or, as the case may be, secretaries and treasurers shall not be entitled to any remuneration or commission for such period of the agreement as may remain unexpired on the vesting date but shall be entitled only to compensation as determined under sub-section (2).(2)Where the agreement was in force on the appointed day and continued to be in force until the vesting date, without having been renewed or replaced by a fresh agreement for a further period, the managing agent, managing director, manager, or, as the case may be, secretaries and treasurers shall, for such period of the agreement as may remain unexpired on the vesting date or for a period of two years, whichever is less, be entitled to compensation calculated at the following rate per annum, namely:-The average annual ordinary remuneration (including purchasing commission and office allowance) to which a managing agent of the licensee would have been entitled under paragraph XIII of the Sixth Schedule to the Electricity Supply Act during a period of two complete accounts years immediately preceding the vesting date.(3)Any amount payable to a managing agent, managing director, manager, or, as the case may be, secretaries and treasurers under sub-section (1) shall be payable from the compensation payable wider this Act.

13. Provisions for existing staff of licensees.

(1)Notwithstanding anything to the contrary in any contract or agreement or in any law for the time being in force, the following provisions shall apply in regard to the persons on the staff of the licensee immediately before the vesting date:-(1)Every such person shall be deemed to be retrenched from service on the vesting date and shall be entitled to-(a)one month's pay to be calculated from the vesting date, and(b)retrenchment compensation which shall be equivalent to fifteen days'

average pay for every completed year of continuous service or any part thereof in excess of six months.(2)Nothing in clause (1) shall prevent the State Government from retaining any such person in service on and after the vesting date and where any such person is retained in service, his services shall be governed by such rules as the State Government may, from time to time, make in this behalf:Provided that the terms and conditions of service of any person so retained in service shall not in any way be less favourable than those applicable to him immediately before the vesting date.

14. Inventory of assets and information in regard to documents maintained by the licensee.

(1)Every licensee shall, within three months from the date on which an order made under sub-section (1) of section 4 is served on him, or such further time as may be allowed by the State Government, prepare and hand over to them a complete inventory of all the assets belonging to his undertaking and of its documents.(2)The licensee shall also write up the accounts of his undertaking up to the licensee vesting date, get them audited, and submit them to the State Government within three months from that date or such further time as may be granted by the State Government.(3)The licensee shall also, within such time as may be specified by the State Government, furnish to them such information and particulars as may be required by the State Government in regard to the documents relating to the undertaking.(4)The licensee shall not destroy any document relating to the undertaking and shall hand over to the State Government on the vesting date all such documents as are necessary for ascertaining the assets of the undertaking, the rights, liabilities and obligations, attaching thereto or the terms of employment of the staff and for determining the compensation payable for the undertaking under this Act.(5)Where the documents aforesaid have been taken possession of by the State Government, the licensee or any person authorised in this behalf, shall have access to such documents at all reasonable times and shall also be entitled to take copies thereof or extracts therefrom.

15. Power of entry.

- Any officer or servant of the State Government authorised by the State Government in this behalf by general or special order may, at any time, after giving the licensee reasonable notice, enter upon any land or premises in his possession and make any survey, examination, or investigation, preliminary or incidental, to the purposes of this Act.

16. Penalties.

(1)Whoever, being required to furnish any information or make any statement under this Act, furnishes any information or makes any statement which he knows to be false, or whoever wilfully fails to hand over to the State Government any fixed asset belonging to the undertaking or wilfully suppresses or destroys any document, which is to be handed over to the State Government under sub-section (4) of section 14 shall be punishable with imprisonment for a term, which may extend to two years or with fine which may extend to twenty thousand rupees or with both and in the case of a continuing offence with an additional fine which may extend to five hundred rupees, for every day of

the period after the date of conviction during which the offence continues.(2)Whoever fails, without reasonable cause to comply with any of the provisions of this Act or the rules made thereunder, or any directions or order issued in pursuance thereof, shall, if the case be not governed by sub-section (1) be punishable with fine which may extend to twenty thousand rupees and in the case of a continuing offence, with an additional fine which may extend to five hundred rupees, for every day of the period after the date of conviction during which the offence continues.(3)Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898 (V of 1898) it shall be lawful for any Magistrate of the First Class specially empowered by the State Government in this behalf or for any Magistrate in the City of Ahmedabad to impose a sentence of fine exceeding two thousand rupees when awarding punishment under sub-section (1) or (2).(4)No Court shall take cognizance of an offence punishable under this section except with the previous sanction of the State Government or of an officer authorised by the State Government in this behalf.

17. Offences by companies or associations.

(1)Where a person committing any offence punishable under this Act, is a company as defined in the Companies Act, 1956 (I of 1956) or a firm or other association or body of persons, whether incorporated or not, every person who, at the time the offence was committed was in charge of, and was responsible to the company, firm, or association., or body of persons, as the case may be, for the conduct of its business as well as the company, firm or association or body of persons, as the case may be shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence took place without his knowledge or that he exercised all due diligence to prevent such offence.(2)Notwithstanding anything contained in sub-section (1) where an offence under this Act has been committed by a company or a firm and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any officer of the, company as defined in sub- section (30) of section 2 of the Companies Act, 1956 (I of 1956) or of any partner in the firm, such officer or partner, as the case may be shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

18. Protection of action taken under the Act.

- No suit, prosecution or other legal proceeding shall lie against the State Government or any officer or servant of the State Government, or against any person acting under the direction of the State Government or an officer or servant of the State Government or aiding or assisting the State Government or an officer or servant of the State Government, in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

19. Power to transfer undertaking to State Electricity Board.

(1)In the case of an undertaking, which vests in the State Government under this Act, it shall be lawful for the State Government to transfer the same to the State Electricity Board, if the State

Electricity Board is willing to accept such transfer. Such transfer shall be on such terms as may be mutually agreed upon.(2)On such transfer all rights and liabilities of the State Government in respect of the undertaking shall be the rights and liabilities of the State Electricity Board.

20. Power of Government to make rules.

(1)The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.(2)In particular and without prejudice to the generality of the foregoing power, such rules may be made-(a)for the whole or any part of the State of Gujarat,(b)to provide for all or any matters expressly required or allowed by this Act to be prescribed by rules.(3)The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.(4)All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made and shall be subject to rescission by the State Legislature or such modifications as the State Legislature may make during the session in which they are so laid, or the session immediately following.(5)Any rescission or modification so made by the State Legislature shall be published in the Official Gazette and shall thereupon take effect.

21. Effect of other laws.

(1)No provision of the Electricity Act or of the Electricity Supply Act or of the Bombay Provincial Municipal Corporations Act, 1949 (Bombay LIX of 1949), or of the Gujarat Municipalities Act, 1963 (Gujarat 34 of 1964), or of the Gujarat Panchayats Act, 1961 (Gujarat VI of 1962) or of any rule made under any of those Acts or of any instrument having effect by virtue of any of those Acts, or any rule made thereunder shall, in so far as it is inconsistent with any of the provisions of this Act, have any effect.(2)Save as otherwise provided in this Act, the provisions of this Act shall be in addition to, and not in derogation of, the Electricity Act and the Electricity Supply Act.