

THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION
SHIMLA

NOTIFICATION

Shimla, the 08th October, 2018

No. HPERC-F(1)-2/2018- Whereas section 61 of the Electricity Act, 2003 (36 of 2003), provides that the Appropriate Commission shall specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the National Tariff Policy formulated under the said Act;

AND WHEREAS the Himachal Pradesh Electricity Regulatory Commission has framed the HPERC (Terms and Conditions for Determination of Hydro Generation Tariff) Regulations, 2011 and has determined tariff for generating companies for the 2nd and 3rd MYT Control Periods from 2011 to 2014 and 2014 to 2019;

AND WHEREAS it has become necessary-

- (a) to review the existing provisions to align them with the change in the National Tariff Policy, 2016, change in methodologies of the central Commission, the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Sharing of Cost of Terminal Benefits of Personnel of Erstwhile Himachal Pradesh State Electricity Board and Successor Entities) Regulations, 2015, the Himachal Pradesh Electricity Regulatory Commission (Reporting System on Power Regulatory Accounting) Regulations, 2014,
- (b) to review the norms of operations of the Utilities like linking Interest on Working Capital with Marginal Cost of Funds based Lending Rate instead of base rate,
- (c) to address certain gaps and discrepancies in the regulations;

AND WHEREAS the Himachal Pradesh Electricity Regulatory Commission is making an exercise to determine the tariff for generating companies for the next control period starting from 1st April 2019, and keeping in view the regulatory developments after making of the aforesaid regulations and also the experience gained over the period, the National Tariff Policy and methodologies of the Central Commission, amongst others, it has also felt necessary to amend/ modify the existing regulations;

NOW, THEREFORE, in exercise of the powers conferred by clauses (zd), (ze) and (zf) of sub-section (2) of section 181, read with sections 61, 62 and 86, of the Electricity Act, 2003 (36 of 2003) and all other powers enabling it in this behalf the Commission proposes to amend the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Hydro Generation Tariff) Regulations, 2011 and, as required by sub-section (3) of section 181 of the said Act and rule 3 of the Electricity (Procedure for Previous Publication) Rules, 2005 publishes the draft amendment regulations for the information of all

the persons likely to be affected thereby; and notice is hereby given that the said draft amendment regulations, together with any objections or suggestions which may, within the aforesaid period, be received in respect thereto, will be taken into consideration after the expiry of twenty one (21) days from the date of publication of this notification in the Rajpatra, Himachal Pradesh;

The text of the aforesaid draft amendment is available on the website of the Commission i.e. <http://www.hperc.org>.

The objections or suggestions in this behalf should be addressed to the Secretary, Himachal Pradesh Electricity Regulatory Commission, Vidyut Aayog Bhawan, Block-37, SDA Complex, Kasumpti-171009(HP).

DRAFT REGULATIONS

1. Short title and commencement.- (1) These regulations may be called Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Hydro Generation Tariff) (Third Amendment) Regulations, 2018.

(2) These regulations shall come into force from the date of their publication in the Rajpatra, Himachal Pradesh

2. Amendment of regulation 3.- In regulation 3 of the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Hydro Generation Tariff) Regulations, 2011 (hereinafter referred as “the said regulations”),-

(a) the existing clause (1) shall be renumbered as clause (1-a) and before the renumbered clause (1-a), the following clause (1) shall be inserted, namely:-

“(1) “**accounting statements**” shall mean for each financial year, the balance sheet, the profit and loss statement, the cash flow statement and the report of the statutory auditors together with notes thereto: ”;

(b) for clause (10), the following clause (10) shall be substituted, namely:-

“(10) “**change in law**” shall mean the occurrence of any of the following events:

- (i) enactment, bringing into effect or promulgation of any new Indian law, or
- (ii) adoption, amendment, modification, repeal or re-enactment of any existing Indian law, or
- (iii) change in interpretation or application of any Indian law by a competent Court, Tribunal or Indian Governmental Instrumentality, which is the final authority under law for such interpretation or application, or

- (iv) change by any competent statutory authority in any condition or covenant of any consent or clearances or approval or licence available or obtained for the project, or
- (iv) coming into force or change in any bilateral or multilateral agreement/treaty between the Government of India and any other Sovereign Government having implication for the Generating Station regulated under these regulations; ” ;

(c) after clause (21), the following clause (21-a) shall be inserted, namely:-

“(21-a) **“force majeure event”** shall mean, with respect to any party, any event or circumstance or combination of events or circumstances including those stated below, which is not within the reasonable control of, and is not due to an act of omission or commission of that party and which, by the exercise of reasonable care and diligence, could not have been avoided, and without limiting the generality of the foregoing, would include the following events:

- (i) acts of God including lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, geological surprises, or exceptionally adverse weather conditions, or
- (ii) any act of war, invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action, or
- (iii) industry-wide strikes and labour disturbances having a nationwide impact in India;”;

(d) clause (23-a) shall be renumbered as clause (23-b) and before renumbered clause(23-b), the following clause (23-a) shall be inserted, namely:-

“(23-a) **“MCLR”** shall mean One Year Marginal Cost of Funds based Lending Rate;”;

(e) after clause (28), the following clause (28-a) shall be inserted, namely:-

“(28-a) **“prudence check”** shall mean scrutiny of the reasonableness of expenditure incurred or proposed to be incurred, financing plan, use of efficient technology, cost and time over-run and such other factors as may be considered appropriate by the Commission for determination of tariff;”;

(f) for clause (38), the following clause (38) shall be substituted, namely:-

“(38) the words and expressions occurring in these regulations and not defined herein but defined in the Act or Grid Code or State Grid Code shall bear the same meanings as respectively assigned to them in the Act or Grid Code or State Grid Code and the words and expressions used herein but not specifically defined herein or in the Act or Grid Code or State Grid Code shall have the meanings generally assigned to them in the electricity industry.”

3. Insertion of regulation 9-A.– After regulation 9 of the said regulations, the following regulation 9-A shall be inserted, namely:-

“9-A. Carrying Cost.- The generating company, for the approved true-up of any year over and above that approved in the Tariff Order for that year, shall be entitled to a carrying cost at one (1) Year State Bank of India (SBI) MCLR / any replacement thereof as notified by RBI for the time being in effect applicable for one (1) Year period, as may be applicable as on 1st April of the relevant Year plus 300 basis points and for any true-up resulting in less than that approved in the Tariff Order for that year, the carrying cost shall be recovered at the same rate.”

4. Substitution of regulation 10.– For existing regulation 10 of the said regulations, the following regulation 10 shall be substituted, namely :-

“10. Refund of excess amount.- If a generating company recovers the charges exceeding the tariff determined by the Commission, the excess amount shall be refunded to beneficiaries, who have paid such excess charges, along with interest equivalent to the one (1) Year State Bank of India (SBI) MCLR / any replacement thereof as notified by RBI for the time being in effect applicable for one (1) Year period, as may be applicable as on 1st April of the Financial Year plus 300 basis points, without prejudice to any other liability to which such generating company may be subject:

Provided that such interest payable to any party shall not be allowed to be recovered through the Aggregate Revenue Requirement of the generating company:

Provided further that the generating company shall maintain separate details of such interest paid or payable by it, and shall submit them to the Commission along with its petition.”

5. Insertion of regulation 10-A, 10-B and 10-C.- After regulation 10 of the said regulations, the following regulations 10-A, 10-B and 10-C shall be inserted, namely:-

“10-A. Preparation of Accounting Manual and Regulatory Accounts.- The Generating Company shall prepare Accounting Manual and Regulatory Accounts as per the Himachal Pradesh Electricity Regulatory Commission (Reporting System on Power Regulatory Accounting) Regulations, 2014. The Utility shall submit the Regulatory Audited Accounts every year within seven months of the end of the Financial Accounting Year to the Commission.

10-B. Segregation of Accounts.- The generating company shall maintain separate accounts for each of its hydro power plants:

Provided that the generating company shall follow a reasonable basis for allocation of all joint and common costs between the power plants and shall submit the Accounting Statements, as approved by its board of directors, to the Commission alongwith its application for determination of tariff.

10-C. Consumer Contribution, Deposit Work, Grant and Capital Subsidy.-

(1). The works carried out by the generation company after obtaining the estimated cost from the users shall be classified as Deposit Works.

(2). Capital works undertaken by the generation company utilising grants received from the State and Central Governments, including funds under various schemes shall be classified under the category of Grants.

(3). The works carried out with any other grant of similar nature or such amount received without any obligation to return the same and with no interest costs attached to such subvention shall also be classified as works performed through consumer contribution, deposit work, capital subsidy or grant.

(4). The expenses on such capital expenditure shall be treated as follows:-

(a) normative O&M expenses as specified in these regulations shall be allowed. However, any departmental charges taken by the generating company against deposit works and which are executed departmentally shall be adjusted in the employee cost;

(b) the debt to equity ratio shall be considered in accordance with Regulation 16, after deducting the amount of financial support provided through consumer contribution, deposit work, capital subsidy or grant;

(c) depreciation to the extent of works performed through consumer contribution, deposit work, capital subsidy or grant shall not be allowed as specified in Regulation 20;

(d) provisions related to return on equity, as specified in Regulation 21, shall not be applicable to the extent of financial support provided through consumer contribution, deposit work, capital subsidy or grant;

(e) provisions related to interest and finance charges, as specified in Regulation 17, shall not be applicable to the extent of financial support provided through consumer contribution, deposit work, capital subsidy or grant.”

6. Amendment of regulation 13.- For existing sub- regulation (2) of regulation 13 of the said regulations, the following sub- regulation (2) shall be substituted, namely:-

“(2) The capital expenditure incurred on the following counts after the cut off date may, in its discretion, be admitted by the Commission, subject to prudence check:-

(a) liabilities to meet award of arbitration or for compliance of the order or decree of a court;

(b) change in law;

(c) any expenditure which has become necessary on account of damage caused by natural calamities (but not due to flooding of power house attributable to the negligence of the generating company) including due to geological reasons after adjusting for proceeds from any insurance scheme,

and expenditure incurred due to any additional work which has become necessary for successful and efficient plant operation:

(d) any expenses to be incurred on account of need for higher security and safety of the capital asset as advised or directed by appropriate Government agencies or statutory authorities responsible for national security/internal security;

(e) any liability for works executed prior to the Cut-off Date, after prudence check of the details of such undischarged liability, total estimated cost of package, reasons for such withholding of payment and release of such payments etc.;

(f) any liability for works admitted by the Commission after the Cut-off Date to the extent of discharge of such liabilities by actual payments;

(g) any additional capital expenditure, which has become necessary for efficient operation of the plant. The claim shall be substantiated with the technical justification duly supported by the documentary evidence like test results carried out by an independent agency in case of deterioration of assets, report of an independent agency in case of damage caused by natural calamities, obsolescence of technology etc.:

Provided that in any expenditure on acquiring the minor items or the assets like tools and tackles, furniture, air-conditioners, voltage stabilizers, refrigerators, coolers, fans, washing machines, heat convectors, mattresses, carpets etc. bought after the cut-off date shall not be considered for additional capitalisation for determination of tariff.”

7. Amendment of regulation 17.- In regulation 17 of the said regulations-

(a) for existing sub- regulation (2), the following sub- regulation (2) shall be substituted, namely:-

“(2) The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio at the beginning of each year applicable to the project:

Provided that if there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average rate of interest shall be considered:

Provided further that if the generating station, does not have actual loan, then the weighted average rate of interest of the generating company as a whole shall be considered:

Provided further that if the generating company does not have actual loan, then one (1) Year State Bank of India (SBI) MCLR / any replacement thereof as notified by RBI for the time being in effect applicable for one (1) Year period, as may be applicable as on 1st April of the relevant Year plus 200 basis points shall be considered as the rate of interest for the purpose of allowing the interest on the normative loan.”; and

(b) For existing sub- regulation (5), the following sub- regulation (5) shall be substituted, namely:-

“(5) The generating station shall make every effort to refinance the loan as long as it results in net benefit to the beneficiaries. The costs associated with such refinancing shall be borne by the beneficiaries and any benefit on account of refinancing of loan and interest on loan shall be shared between the beneficiaries and the generating company in the ratio of 2:1. Refinancing may also include restructuring of debt.”

8. Substitution of regulation 19.– For existing regulation 19 of the said regulations, the following regulation 19 shall be substituted, namely:-

“**19. Interest on Working Capital.**– Rate of interest on working capital to be computed as provided hereinafter in these regulations shall be on normative basis and shall be equal one (1) Year State Bank of India (SBI) MCLR / any replacement thereof as notified by RBI for the time being in effect applicable for one (1) Year period, as may be applicable as on 1st April of the Financial Year in which the Petition is filed plus 300 basis points. The interest on working capital shall be payable on normative basis notwithstanding that the generating company has not taken working capital loan from any outside agency or has exceeded the working capital loan based on the normative figures.”

9. Amendment of regulation 20. -For existing sub- regulation (2) of regulation 20 of the said regulations, the following sub- regulation (2) shall be substituted, namely:-

“(2) The salvage value of the asset shall be considered as 10% and depreciation shall be allowed up to maximum of 90% of the capital cost of the asset:

Provided that the salvage value for IT equipment and software shall be considered as NIL and 100% value of the assets shall be considered depreciable:

Provided also that in case of hydro generating stations, the salvage value shall be as provided in the agreement signed by the developers with the State Government for creation of the site:

Provided further that the capital cost of the assets of the hydro generating station for the purpose of computation of depreciable value shall correspond to the percentage of sale of electricity under long-term power purchase agreement at regulated tariff.”

10. Amendment of regulation 22.– In regulation 22 of the said regulations-

(a) for existing sub- regulations (2), (3) and (4), the following sub- regulations (2), (3) and (4) shall be substituted, namely:-

“(2) Operation and maintenance expenses, for the existing generating stations which have been in operation for 5 years or more as on 31 March 2018, shall be derived on

the basis of actual operation and maintenance expenses for the years 2013-14 to 2017-18, based on the audited balance sheets, excluding abnormal operation and maintenance expenses, if any, after prudence check by the Commission.

(3) In case of hydro generating stations, which have been in commercial operation for less than 5 years as on 31 March 2018, the Operation and maintenance expenses shall be fixed at 2% of the original project cost, excluding cost of rehabilitation and resettlement works, and shall be escalated in accordance with the escalation principles specified in sub-regulation (6).

(4) In case of the hydro generating stations declared under commercial operation on or after 1.4.2018, operation and maintenance expenses shall be fixed at 2% of the original project cost, excluding cost of rehabilitation and resettlement works, and shall be escalated in accordance with the escalation principles specified in sub-regulation (6).”; and

(b) at the end, the following sub-regulation (7) shall be added, namely:-

“(7) The generating company, wherever applicable, shall submit the detail of sharing of the terminal benefits including pension of its employees as per the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Sharing of Cost of Terminal Benefits of Personnel of the erstwhile Himachal Pradesh State Electricity Board and Successor Entities) Regulations, 2015.”

By order of the Commission

**Sd/-
Secretary**