

**THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION**  
SHIMLA-171 002

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**ORDER**  
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The Himachal Pradesh Electricity Regulatory Commission (hereinafter referred as “the Commission”) in pursuance to Section 3, Section 61(h) and Section 86(1) (e) of the Electricity Act, 2003, read with Sub-regulation (1) of regulation 6 of the Himachal Pradesh Electricity Regulatory Commission (Power Procurement from Renewal Sources and Co-generation by Distribution Licensee) Regulations, 2007, issued an order on Small Hydro Power Project Tariff and other related issues on December 18<sup>th</sup> 2007 determining the levelised tariff for purchase of energy from Small Hydro Power Projects (including 5 MW capacity) (hereinafter referred to as “the SHP Order”).

2. Paras 4.82, 4.83, 4.84 & 4.85 of the SHP order read as under : -

**“Royalty Power/Free Power:**

4.82 *The quantum of royalty power /free power to the State is a policy decision and may vary from year to year. Prior to 2006, Hydro Policy of Himachal Pradesh stipulated that no royalty for first 15 years of operation and 10% royalty was payable thereafter. The new hydro policy of Himachal Pradesh notified that there shall be no royalty for first 12 years, 12% after 12 years and till 30 years and 18% royalty payments thereafter.*

4.83 *Since royalty payment is a policy decision of Government of Himachal Pradesh and is not under the jurisdiction of the Commission, hence the Commission decides that any change in existing value of royalty payments by the State Government, shall be treated as an uncontrollable element and treated as a pass through in tariff payable to IPPs. However royalty, as per GoHP Hydro Policy 2006 has been considered while determining the tariff.*

**Taxes**

4.84 *Tax holiday benefit in the Income Tax in the form of exemption over a period of 10 years under Section 80IA of the Income Tax Act has been considered. However Minimum Alternate Tax (MAT) @ 11.22% (inclusive of surcharge and cess) under Section 115JB has been provided for in the tariff. Thereafter Income Tax at the rate of 33.66% (inclusive of surcharge and cess ) has been considered.*

4.85 *Any change in the aforesaid taxes or any statutory taxes, duties, cess or other kind of imposition(s) including tax on generation of electricity whatsoever imposed/charged by State/Central Government and/or any other local bodies/authorities on generation of electricity, after the date of signing of the power purchase agreement, shall be a pass through and shall be reimbursed by the board to the generator on the quantum of net saleable energy.*

3. Subsequent to the issuance of the SHP Order there have been material changes in the statutory provisions in relation to taxes and royalty (on free power) as under :

**a) Minimum Alternate Tax (MAT) and Income Tax**

Effective MAT rate of 11.22% considered in the SHP Order has now been enhanced to effective rate of 16.995% including cess w.e.f. financial year 2009-2010 by notification of Govt. of India. Also the effective Income Tax rate of 33.66% considered in the SHP Order has now been enhanced to 33.99% w.e.f. financial year 2007-08 on account of increase in cess from 2% to 3%.

**b) Royalty**

The Govt of H.P from time to time has increased the royalty through various notifications such as No. MPP(NES)-F(2)-44/2006 dated 1.7.2008, No. MPP(NES)-F(2)-4/2005-III-Loose dated 12.11.2008, No. (NES) F(2)-65/2008 dated 29.1.2009, NES-F(10)-4/2006-I dated 3.2.2009 and No. MPP-F(1)-2/2005- V dated 30.11.2009 .

4. In view of the facts as set out in the preceding paras of this order it has become necessary to make the consequential order. Now, therefore, the Commission, in exercise of the power vested in it under sections 3, section 61(h) and section 86(1) (e) of the Electricity Act, 2003, read with sub-regulation (1) of regulation 6 of the Himachal Pradesh Electricity Regulatory Commission (Power Procurement from Renewal Sources and Co-generation by Distribution Licensees) Regulations, 2007, hereby makes the following orders to supplement the SHP order as under:-

**a) Minimum Alternate Tax (MAT) and Income Tax :**

(i) Any change in the MAT from the one considered in the SHP order, in the first ten years of generation of the project, shall be payable by the respective party as per the following formula. -

$$(27 \times \text{revised effective MAT rate}) - (27 \times 0.1122) \text{ lacs}$$

whereas

27 is the return on equity in lacs per MW considered in the SHP order

0.1122 is the effective MAT rate considered in the SHP order

**Illustration:-**

Considering effective MAT rate from first April 2009 as 16.995%

Then, in April 2010 the additional tax payable by the board to the IPP, if its project is within 10 years of its operation, shall be as under:-

$$(27 \times 0.16995) - (27 \times 0.1122) \text{ lacs} = 4.589 - 3.029 = \mathbf{1.56 \text{ lacs}}$$

(ii) Any change in the Income Tax from the one considered in the SHP order, from the eleventh year of generation of the project, shall be payable by the respective party as per the following formula. -

(27 x revised effective Income Tax rate )-(27x0.3366) lacs  
whereas

27 is the return on equity in lacs per MW considered in the SHP order.

0.3366 is the effective Income Tax rate considered in the SHP order.

The adjustments on account of change in the rates of MAT and Income Tax shall be made at the end of each financial year as per above formulae.

Illustration:-

Considering effective IT rate from first April 2007 as 33.99%

Then, in April 2008 the additional tax payable by the board to the IPP, if its project is in 11<sup>th</sup> year of its operation, shall be as under:-

$$(27 \times 0.3399) - (27 \times 0.3366) \text{ lacs} = 9.177 - 9.088 = \mathbf{0.09 \text{ lacs}}$$

**b) Royalty :**

$$\begin{array}{l} \text{Rate payable for the} \\ \text{month for the} \\ \text{saleable Energy} \\ \text{(Rs/kWh)} \end{array} = 2.95 \times \frac{(100\% - \% \text{Royalty as per model calculation for the month})^*}{(100\% - \% \text{Royalty levied for the month})^{**}}$$

\* The rate of Rs 2.95/kWh has been worked out by adopting the royalty structure specified in the GoHP Hydro Policy 2006, which is given as under, and the adjustments shall be made with reference to the same.

For the first 12 years of operation = 0 %

For the next 18 years of operation = 12%

For next 10 Years of operation = 18%

\*\* This shall not include the additional royalty levied, if any, on account of curtailment of waiver period due to delay in commissioning of Project as per provisions of Implementation Agreement.

Illustration:-

If the royalty of a particular projects changes to 13% in any month of the 13<sup>th</sup> year of its commercial operation date then the applicable tariff from that month onward on the saleable energy shall be, as per the order, calculated as under:

$$2.95 \times \frac{100\% - 12\%}{100\% - 13\%} = 2.95 \times \frac{88\%}{87\%} = \mathbf{Rs 2.98/unit}$$

The adjustments on account of change in royalty shall be made at the end of each financial year by taking into account the quantum of saleable energy and the applicable per unit rate for each month of that financial year as per the above formula.

**Shimla:**

**Dated:10<sup>th</sup> Feb.,2010.**

**(Yogesh Khanna)  
Chairman**