

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION
Vidyut Aayog Bhawan, Block No. 37, SDA Complex, Kasumpti, Shimla-09

CORAM: Hon'ble Sh. Devendra Kumar Sharma, Chairman
Hon'ble Sh. Yashwant Singh Chogal, Member (Law)
Hon'ble Sh. Shashi Kant Joshi, Member

Date of order: 27.01.2023

In the matter of finalization of the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) (Sixth Amendment), Regulations, 2022.

ORDER

The Himachal Pradesh Electricity Regulatory Commission (hereinafter referred as "the Commission") made the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 (hereinafter referred as "RE Tariff Regulations, 2017"), published in the Rajpatra, Himachal Pradesh, dated 23rd November, 2017 as amended from time to time (hereinafter referred as "RE Tariff Regulations, 2017").

2. The Ministry of Power, Government of India under Section 176 of the Electricity Act, 2003 has framed the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 (hereinafter to be referred as 'Electricity LPS Rules, 2022') and made applicable from the date of publication in the Official Gazette. The said Rules were published in the Gazette of India: Extraordinary on 3rd June, 2022.
3. The Ministry of Power has issued a clarification on 13th September, 2022 on the Electricity LPS Rules, 2022 that any Regulations framed by the Central Electricity Authority (CEA) or by the Appropriate Commission have to be in accordance with the Electricity Act, 2003 and Rules made thereunder. In case of any conflict between the Rules and Regulations, the provisions of Rules shall prevail.
4. Taking the above into consideration, the Commission has issued the draft HPERC (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) (Sixth Amendment) Regulations, 2022 on 28.11.2022 and published the same in the Rajpatra, Himachal Pradesh on 01.12. 2022.
5. As required under Sub-section (3) of the Section 181 of the Act, the Commission invited public objections and suggestions by way of insertion a

public notice in two News papers i.e. “Indian Express” and “Divya Himachal” on 07.12.2022 under Rule (3) of Electricity (Procedure of Previous Publication) Rules, 2005 and the full text of the draft amendment Regulations was made available on the Commission’s website: www.hperc.org. The last date for filing objections/suggestions was 02.01.2023. The public hearing in the matter was also held on 07.01.2023.

6. The Commission, vide letter dated 12.12.2022 requested the major stakeholders, including Small Hydro Project Developers Associations, State Government, Directorate of Energy, HIMURJA and Distribution Licensee to send their objections/ suggestions as per the aforesaid public notice.
7. The Commission has received comments/suggestions from the stakeholder(s) on the draft amendment Regulations i.e. the Himachal Pradesh State Electricity Board (HPSEBL) and the Himachal Pradesh Power Corporation Limited (HPPCL).
The Himachal Pradesh Power Corporation Limited vide letter No. HPPCL/ SoP/HPERC-Com/2022-14347-49 dated 28.12.2022 has submitted that objections/suggestions on the proposed amendment may be treated as Nil.
8. A Public hearing in the matter was held on 07.01.2023. The Chief Engineer (Comm.), HPSEBL represented the Distribution Licensee in the said public hearing and reiterated the written submissions already made by the Distribution Licensee .

9. **Consideration of written submissions of the stakeholder i.e. HPSEBL and Commission’s analysis/view.-**

The analysis on the suggestions of HPSEBL which have been considered to be relevant to the finalization of the amendment Regulations discussed in following para-9.1:-

9.1 **Comment/suggestion:-**

- (a) The HPSEBL has submitted that as per the proviso under Rule 3 of Electricity LPS Rules, 2022, *“the rate, at which Late Payment Surcharge shall be payable, shall not be higher than the rate of Late Payment Surcharge specified in the agreement, if any”*, whereas the draft amendment Regulations nowhere provide for the same. Hence, the same may be included appropriately in the proposed amendment Regulations.

Commission’s View:-

The Power Purchase Agreements (PPAs)/Contracts approved by the Commission after 3rd June, 2022 are to be aligned with the Electricity LPS Rules, 2022. As elaborated in para-3 above, the Ministry has already issued clarification as far as applicability of Rules are concerned vide reference No 23/22/2019-R&R (Part-4) dated 4th August, 2022 and with reference No 23/22/2019-R&R (Part-4-A) dated 13th September, 2022.

Accordingly, the proposed amendment Regulations are made applicable retrospectively w.e.f 3rd June, 2022. All the PPAs/Contracts approved on 3rd June, 2022 and thereafter are required to be aligned with the Electricity LPS Rules, 2022 and these amendment Regulations, 2023.

Thus, taking the above into consideration, the issue raised by the HPSEBL has not much relevance, since all Power Purchase Agreements approved on or after 3rd June, 2022 are to be aligned with the Electricity LPS Rules, 2022 and these proposed amendment Regulations. Moreover, the proposed LPS is lower than the existing LPS provision provided in the RE Tariff Regulations, 2017. In view of above, the Commission however directs the Distribution Licensee and the concerned RE generators that in order to incorporate the provisions of these amendment Regulations, the Joint Petition be filed, by 31st March, 2023, for approval of the Supplementary PPA or for modification of the approval accorded by the Commission, as the case may be, in cases where approvals for the Power Purchase Agreements have been granted by the Commission on or after 3rd June, 2022.

(b) Comment/suggestion:-

The 2nd proviso of draft amendment Regulations 31-BB provides that in case of non-payment of outstanding dues by the default trigger date, the obligation of the Renewable Energy Generator to supply power shall be reduced to 75% of the contracted power to Distribution Licensee and balance 25% of contracted power may be sold by the renewable energy generator through the power exchanges. The 3rd proviso of the above Regulation provides that if the Distribution Licensee does not establish payment Security Mechanism or continues to default in payment of outstanding dues for a period of thirty days then the renewable energy generator shall be entitled to sell 100% of the contracted power through Power Exchanges.

With above submissions, the HPSEBL sought clarification submitting that as per the definition, the Default Trigger Date shall be the date that falls one month after the due date in case of non-payment of dues. Both the above mentioned provisos provide for the obligation of Renewable Energy Generator to supply power to Distribution Licensee in the event of non-payment of dues till 30 days reckoned from the due date, which seems ambiguous as well as contrary to each other. Hence, the same may be clarified, please.

Commission's View:-

The Due Date is forty five (45) days from the date of presentation of bill by Renewable Energy Generator and Default Trigger Date, in case of non-payment of bills/dues, is one month after the Due Date of Payment or two

and half months after the presentation of bills by the renewable energy generator i.e. forty five (45) days+ one (1) month whichever is later for commencement of Sale of Power by the RE generator to the extent of 25% of the contracted power through the Power Exchanges. However, in case the Distribution Licensee does not establish Payment Security Mechanism or continues to default in payment of outstanding dues for a period of 30 days after the commencement of sale of power to the extent of 25% then the renewable energy generator is entitled to sell 100% of the contracted power through Power Exchanges.

The Commission agrees to the suggestion of the HPSEBL and decides to redraft the provision of the Regulation for more clarity. The Commission also decides to incorporate suitable provisions to deal with the situations where the Renewable Energy Generators may suffer financial losses on account of sale of such power in the market and also for providing that the selling price to be considered for adjustment shall not be less than the price of such power in the Green Day Ahead Market.

(c) **Comment/suggestion:-**

The HPSEBL has also commented that the Electricity Rules, 2022 has defined the term ‘Outstanding Dues’ which has been used in these Rules as well as in the draft amendment Regulations, whereas, the same has not been defined in the draft amendment Regulations. Hence, the said term may also be defined in the RE Tariff Regulations (Sixth Amendment).

Commission’s View:-

The Commission agrees to the suggestion of HPSEBL and decides to define the ‘Outstanding Dues’ as under:-

“‘Outstanding Dues’ means the dues (payment of bills) of a renewable energy generator, not stayed by a competent court or Tribunal or dispute resolution agency as designated in the Power Purchase Agreement, which remains unpaid by the Licensee beyond the Due Date.”

The draft amendment Regulations with changes/modifications are finalized and approved as such and be notified as the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) (Sixth Amendment), Regulations, 2023, accordingly.

Sd/-

(Shashi Kant Joshi)
Member

Sd/

(Yashwant Singh Chogal)
Member (Law)

Sd/-

(Devendra Kumar Sharma)
(Chairman)