

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION

SHIMLA

NOTIFICATION

Shimla, the 1st November, 2013

No. HPERC/F(5)(3)(1)(Gen).- WHEREAS the Himachal Pradesh Electricity Regulatory Commission has framed the HPERC (Terms and Conditions for Determination of Hydro Generation Tariff) Regulations, 2011;

AND WHEREAS the Himachal Pradesh Electricity Regulatory Commission is making an exercise to determine the tariff for hydro generation system of the generators for the next control period starting from 1st April, 2014;

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, and after previous publication, the Himachal Pradesh Electricity Regulatory Commission makes the following amendments in the HPERC (Terms and Conditions for Determination of Hydro Generation Tariff) Regulations, 2011 published in the Rajpatra, Himachal Pradesh, dated 2nd April, 2011, namely:-

REGULATIONS

Short title, commencement and application - (1) These regulations shall be called the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Hydro Generation Tariff) (Second Amendment) Regulations, 2013.

(2) These regulations shall come into force from the date of their publication in the Rajpatra, Himachal Pradesh and shall be applicable for the tariff orders to be issued for the control periods commencing with effect from 1st April, 2014 and thereafter.

1. 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 called the "said regulations") -

(a) after clause (2), the following clause (2-a) shall be inserted, namely:-

“(2-a) **“aggregate revenue requirement”** or “ARR” means the costs pertaining to hydro generating stations which are permitted, in accordance with these regulations, to be recovered from the tariffs and charges determined by the Commission;”.

(b) in clause (4) the words “annual performance review” wherever appearing, the words “mid-term performance review” shall be substituted.

(c) In clauses (19) and (20), for the figures “01.04.2011”, the words “first year of the control period” shall be substituted.

(d) after clause (23), the following clause (23-a) shall be inserted, namely:-

“(23-a) **“mid-term performance review”** or **“MPR”** means the review of performance of the generator undertaken by the Commission for the year after the middle year of the control period and this includes the True Up of the previous control period and True Up of previous years of the control period;”.

(e) in clause (24) for the figures “01.04.2011”, the figure and words “1st April of the first year of control period” shall be substituted.

(f) for clause (25) the following clause (25) shall be substituted, namely:-

“(25) **“Normative Annual Plant Availability Factor”** or **“NAPAF”** in relation to a generating station means the availability factor as specified in the regulation on ‘Operational Norms’;”.

2. **Substitution of regulation 9** – For regulation 9 of the said regulations, the following regulation 9 shall be substituted, namely:-

“9. True Up

(1) The true up across various controllable parameters shall be conducted by the Commission, for the previous years for which the actual/audited accounts are made available by the generator, at the times and as per principles stated below: -

(A) at the times -

- (i) for the previous years of the previous control period:- along with the petition for determination of ARR cum generation tariff for the control period;
- (ii) for the previous years of the control period and for the previous control period:- along with the mid-term performance review during the control period; and
- (iii) for the control period true up:- along with the mid-term performance review of the next control period;

(B) as per principles -

- (i) the Commission shall review actual capital investment vis-à-vis approved capital investment;
- (ii) depreciation and financing cost, which includes cost of debt including working capital (interest), cost of equity (return) shall be trued up on the basis of actual/audited information and prudence check by the Commission; and
- (iii) any surplus and deficit on account of O&M expenses shall be to the account of the generating company and shall not be trued up in ARR.

- (2) The gain or loss on account of other controllable factors, unless otherwise specifically provided by the Commission shall be to the account of the generating company.
- (3) Notwithstanding anything contained in these regulations, the gains or losses in the controllable items of ARR on account of force majeure, change in law and change in taxes and duties shall be passed on as an additional charge or rebate in ARR over such period as may be laid down in the order of the Commission.”

3. Amendment of regulation 10 - In regulation 10 of the said regulations, for the words “Short Term Prime Lending Rate of the State Bank of India” the words and figures “Base Rate of the State Bank of India plus 350 basis points” shall be substituted.

4. Amendment of regulation 11 – In sub-regulation (2) of regulation 11 of the said regulations, in the Eighth Proviso for the figures “01.04.2011” the words “the starting of the first year of the control period” shall be substituted.

5. Amendment of regulation 14 – At the end of sub-regulation (3) of regulation 14 of the said regulations, the following proviso shall be inserted, namely:-

“Provided that variations in capital cost of such Renovation and Modernization works on account of cost overruns beyond the value at which the works and/ or supplier are awarded to EPC contractors/ Suppliers, 100% of the variation shall be considered as part of the capital cost of the project if such can be attributed to a force majeure event or any other reason beyond the control of the generator and if such cannot be attributed to any reason beyond the control of the generator, then 50% of variation shall be considered as part of the capital cost of the project.”

6. Amendment of regulation 19 – In regulation 19 of the said regulations, for the words and figure “Short Term Prime Lending Rate of the State Bank of India as on the 1st April of the relevant year” the words and figures “average Base Rate of State Bank of India for the last six months prior to the filing of the MYT petition plus 350 basis points” shall be substituted.

7. Amendment of regulation 21 – In regulation 21 of the said regulations -

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

“(2) The rate of return on equity shall be computed by grossing up the base rate with the normal tax rate as per latest available audited accounts of the generating company:

Provided that in line with the provisions of the relevant Finance Acts of the respective year, the return on equity with respect to the actual tax rate applicable to the generating company during the years of the control period shall be trued up separately for each year during the mid-term performance review and at the end of the control period along with the tariff petition filed for the next control period. ”

(b) in illustration (ii) to sub-regulation (3), for the figures and symbol “33.22%”, the figures and symbol “32.99%” shall be substituted.

8. **Substitution of regulation 22** – For regulation 22 of the said regulations, the following regulation 22 shall be substituted, namely:-

“22. Operation and Maintenance (O&M) Expenses

(1) Operation and Maintenance (O&M) expenses shall comprise of the following:-

(a) salaries, wages, pension contribution and other employee costs;

(b) administrative and general costs;

(c) repairs and maintenance; and

(d) other miscellaneous expenses including insurance costs, statutory levies and taxes (except corporate income tax).

(2) Operation and maintenance expenses, for the existing generating stations which have been in operation for 3 years or more as on 31 March 2013, shall be derived on the basis of actual operation and maintenance expenses for the years 2010-11 to 2012-13, 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 3 years as on 31 March 2013, 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 1.4.2013, 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).

(5) Post, determination of base O&M Expenses for the generator/generating company in sub-regulation (2), the O&M expenses for the n^{th} year and also for the year immediately preceding the control period, shall be approved based on the formula given below:-

$$O\&M_n = R\&M_n + EMP_n + A\&G_n:$$

Where –

‘O&M_n’ – Operation and Maintenance expenses for the n^{th} year;

‘EMP_n’ – Employee Costs for the n^{th} year;

‘R&M_n’ – Repair and Maintenance costs for the n^{th} year;

‘A&G_n’ – Administrative and General Costs for the nth year; and -

‘EMP_n’ = [(EMP_{n-1}) x (1+G_n) x (CPI_{inflation})] + Provision_(Emp)

‘A&G_n’ = [(A&G_{n-1}) x (WPI_{inflation})] + Provision_(A&G)

‘R&M_n’ = K x (GFA_{n-1}) x (WPI_{inflation}); and -

EMP_{n-1} – Employee Cost of the generator for the (n-1)th year; (employee cost for the base year would be adjusted for provisions for expenses beyond the control of the licensee and one time expected expenses, such as recovery/ adjustment of terminal benefits, implication of pay revisions, arrears and interim relief);

‘Provision_(Emp)’- Provision for expenses beyond control of the Generating company and expected one-time expenses as specified above;

A&G_{n-1} – Administrative and General Costs of the generator/generating company for the (n-1)th year;

Provision_(A&G): Cost for initiatives or other one-time expenses as proposed by the generating company and approved by the Commission after prudence check;

‘K’ is a constant to be specified by the Commission: % Value of K for each year of the control period shall be determined by the Commission in the MYT Tariff order based on generator/generating company’s filing, benchmarking of repair and maintenance expenses, approved repair and maintenance expenses vis-à-vis GFA approved by the Commission in past and any other factor considered appropriate by the Commission;

CPI_{inflation} – is the average increase in the Consumer Price Index (CPI) for the three years immediately preceding the base year;

WPI_{inflation} – is the average increase in the Wholesale Price Index (CPI) for the three years immediately preceding the base year;

GFA_{n-1} – Gross Fixed Asset of the generator/generating company for the (n-1)th year;

G_n is a growth factor for the nth year: Value of G_n shall be determined by the Commission in the MYT tariff order for meeting the additional manpower requirement based on generator/generating company’s filings, benchmarking, approved cost by the Commission in past and any other factor that the Commission feels appropriate. The Commission may also determine the appropriate level of employees and provide a roadmap for rationalization of employees during the control period:

Provided that repair and maintenance expenses determined shall be utilized towards repair and maintenance works only.

- (6) O&M expenses determined in sub-regulations (3) and (4), shall be escalated for subsequent years to arrive at the O&M expenses for the control period by

applying the Escalation factor (EF_k) for a particular year (K^{th} year) which shall be calculated using the following formula:

$$EF_k = 0.20 \times WPI_{Inflation} + 0.80 \times CPI_{Inflation}$$

Provided that, out of the O&M expenses so determined based on the above regulations, at least 30% shall be spent towards repair and maintenance activities:

Provided further that, the impact of pay revision (including arrears) shall be allowed on actual during the mid-term performance review or at the end of the control period as per audited /unaudited accounts, subject to prudence check and any other factor considered appropriate by the Commission.”

9. Amendment of regulation 26 – In sub-regulation (7) of regulation 26 of the said regulations, for the words “eighty paise” wherever these occur, the words “one rupee fifteen [D]paise” shall be substituted.

10. Amendment of regulation 33 – In regulation 33 of the said regulations, after the words “provisions of” the words, alphabets, figures and brackets “the regulations framed by the Central Electricity Authority (CEA) under section 177 (c) and” shall be inserted.

11. Substitution of regulation 34 – For regulation 34 of the said regulations, the following regulation 34 shall be substituted, namely:-

“34. Safety Standards

The generating company shall develop a safety manual and comply with regulations framed in this regard by the Central Electricity Authority (CEA) under section 53 and section 177 (2) (b) of the Act.”

12. Substitution of regulation 35 – For regulation 35 of the said regulations, the following regulation 35 shall be substituted, namely:-

“35. Multi-Year Fillings for the control period

(1) “For the Approval of the Commission, the multi-year ARR and tariff filing for each year of the control period consistent with the business plan, shall be done by the petitioner generator not less than 120 days before the commencement of the first year of the control period or such other date as may be directed by the Commission, in such form and in such manner as may be laid down by the Commission by an order and also as per the provisions of the Conduct of Business Regulations.

(2) The applicant shall also submit the multi-year ARR and tariff filing in electronic format to the Commission.”

13. Amendment of regulation 36 – In sub-regulation (1) of Regulation 36 of the said regulations, for the figure and words “on 1st April of”, the word “during” shall be substituted.

14. Substitution of regulation 37 – For regulation 37 of the said regulations, the following regulation 37 shall be substituted, namely:-

“ 37. Aggregate Revenue Requirement (Multi-year and MPR) and tariff filing during the control period

- (1) The generator /generating company shall file not less than 120 days before the commencement of the first year of the control period or such other date as may be directed by the Commission, an application for approval of multi-year Aggregate Revenue Requirement (ARR) and determination of tariff for each year of the control period.
- (2) To address any mid-term changes on account of unexpected outcomes, the Commission shall undertake mid-term performance review of generating company's performance for the year after the mid year of the control period;
- (3) The generation company shall make a petition / application for mid-term performance review on the controllable / uncontrollable factors not less 120 days before the commencement of the year after the mid year of the control period as per principles laid down as follows:-
 - (a) In the mid-term performance review, the Commission shall make a comparison of the actual performance and expected revenue from tariff and charges vis-à-vis that approved in the first year of the Control period and the generation company shall submit to the Commission all information together with audited account statements, extracts of books of account and such other details in such form and in such manner as may be laid down by the Commission by an order and also as per the provisions of the Conduct of Business Regulations. The mid-term performance review shall comprise of the following:-
 - (i) true-up of previous control period;
 - (ii) true-up of previous years of control period for which audited accounts are made available by the generator company;
 - (iii) review of ARR for the balance years of the control period in case of any major change in uncontrollable and/ or controllable parameters;
 - (iv) review of generation tariff on account of modification in ARR for the balance years of the control period.
- (4) The generator/generation company shall furnish to the Commission, such additional information, particulars and documents as the Commission may require from time to time after such filing of revenue calculations and tariff proposals.
- (5) The generator/generation company shall publish, for the information of the public, the contents of the application in an abridged form in such manner as the Commission may direct and shall host the complete copy of the filing on its website and shall also provide copies of the documents filed with the Commission to any person at a price not exceeding normal photocopying charges.

Provided that the during the MPR, the Commission may revise the trajectories for various controllable parameters for the remaining period of the control period and this shall be deemed to give consequential effect to the ARR approved in the first year of the control period.”

- 15. Amendment of regulation 43** – For regulation 43 of the said regulations, the following regulation 43 shall be substituted, namely:-

“43. Tax on Income

In view of pre tax return on equity, tax on the income streams of the generating company shall not be recovered from the beneficiaries:

Provided that the deferred tax liability, excluding Fringe Benefit Tax, for the period up to end of previous control period, whenever it materializes, shall be recoverable directly from the beneficiaries and the long-term customers.”

By Order of the Commission

--sd--

Secretary