

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA

Notification

Shimla, the 1st August, 2018

No. HPERC/428.- WHEREAS 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;

AND WHEREAS the State Government vide Notification No.MPP(F)-2/2005-X dated 15.05.2018 has amended the Hydro Power Policy, 2006 and has advised the Commission under section 108 of Electricity Act, 2003 to modify the regulation 11 of the RE Tariff Regulations, 2017, to enable all small hydro project developers to be eligible for signing the Power Purchase Agreement(s) under the new regulations and to amend the RE Tariff Regulations, 2017 incorporating aforesaid policy amendments;

AND WHEREAS the Commission, after considering the provisions of amended Hydro Policy,2006 and the advice given under section 108 of Electricity Act, 2003, finds it appropriate to modify the provisions of regulation 11 of the RE Tariff Regulations, 2017. Accordingly, the Commission proposes to make the following amendments in RE Tariff Regulations, 2017;

NOW, THEREFORE, in exercise of the powers conferred under sub-section (1) of section 61, sub-section(1) of section 62, clauses (a), (b) and (e) of sub-section (1) of section 86 and clause (zd) of sub-section (2) of section 181, of the Electricity Act, 2003 (36 of 2003), read with section 21 of the General Clauses Act,1897 (10 of 1897), and all other powers enabling it in this behalf, the Commission proposes to amend the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) Regulations, 2017 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, the draft amendment regulations are hereby published for the information of all the persons likely to be affected thereby; and notice is hereby given that the said draft amendment regulations 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, together with any objections or suggestions which may within the aforesaid period be received in respect thereto.

The text of the aforesaid draft amendment regulations alongwith the copy of the State Government notification amending the Hydro Power Policy, 2006 and the

State Government advisory issued under section 108 of the Electricity Act, 2003 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 the Himachal Pradesh Electricity Regulatory Commission (Promotion of Generation from the Renewable Energy Sources and Terms and Conditions for Tariff Determination) (Second 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 1.-** In sub-regulation (2) of Regulation 1 of 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 “the said regulations”) for the words and figures “unless reviewed earlier or extended by the Commission, shall remain in force till 31st March, 2019 or the date of commencement of renewable energy regulations framed by the Commission, whichever is earlier.” the words and figure “shall remain in force till the same are reviewed, amended and repealed by the Commission” shall be substituted.
- 3. Amendment of regulation 2.-** In sub-regulation (1) of regulation 2 of the said regulations-
 - (i)** for clause (f) the following clause shall be substituted, namely:-

“(f) **‘Control period or review period** means the respective periods during which the norms for determination of tariff as specified or fixed under these Regulations from time to time shall remain valid;”;
 - (ii)** after clause (h) the following clause (hh) shall be inserted, namely:-

“(hh) **‘Government Designated Agency/ Designated Agency’** means the agency designated by the State Government for certifying the zero date, based on the detailed guidelines to be issued by the State Government, for the Small Hydro Projects (SHPs) allotted by the Government;”;
 - (iii)** after clause(x), the following clause (xx) shall be inserted, namely:-

“(xx) **‘Scheduled COD’** means the outer date by which the renewable energy generator is expected to commence operation of the project, after obtaining requisite approvals and such date shall be determined in accordance with the provisions of Regulation 14-A;”;
 - (iv)** after clause (ad) the following clause (ae) shall be inserted, namely:-

“(ae) **‘Zero date’** means the date as may be defined by the State Government in the State Hydro Policy.”;

4. Amendment of regulation 3.- In sub-regulation (2) of regulation 3 of the said regulations-

- (a) in sub-clause (i) for the words “(i) where long term agreements for disposal/use of energy”, the words “ (i) where agreements for disposal/use of energy, whether on long term basis or under REC mechanism or otherwise,” shall be substituted;
- (b) in clause (ii) for the word “Projects”, the words “Small Hydro Projects” shall be substituted; and
- (c) after clause (iii), the following clause (iv) shall be added, namely:-
“(iv) where the renewable energy generator, implementing the small hydro project, has commenced the operation of its project, prior to the date of commencement of these Regulations.”

5. Amendment of regulation 8.- In sub-regulation (2) of regulation 8 of the said regulations-

(i) after the word, figure and sign i.e. regulation 13 appearing in sub-section (2), the words and sign “and the certification of the zero date by the State Government or the Designated Agency,” shall be inserted; and

(ii) in proviso for the words “a power purchase agreement to achieve the financial closure of the project, the parties may file joint petition for approval of the proposed power purchase agreement before the financial closure”, the words “in principle approval for sale of power to the distribution licensee to achieve the financial closure, the parties may file a joint petition for such approval.” shall be substituted

6. Amendment of regulation 9.- For sub-regulation (1) of regulation 9 of the said regulations, the following shall be substituted, namely:-

“(1) The Commission shall fix the durations of the control period(s) for the respective Renewable Energy Technologies under these regulations from time to time:

Provided that the first control period for the small hydro projects under these Regulations shall start from the 1st October, 2017 and shall end on the 31st March, 2020:

Provided further that the technology specific parameters for the renewable energy sources, other than small hydro projects, may be fixed for such durations and reviewed at such intervals, as the Commission may find appropriate in accordance with Regulation 18.”

7. Omission of regulation 11.- The existing regulation 11 of the said regulations shall be omitted.

8. Amendment of regulation 13.- In sub-regulation (1) of regulation 13 of the said regulations the existing clause (i) shall be omitted; and in clause (ii) the words, brackets and figures “(ii) for the small hydro projects not

covered under preceding clause (i):” shall be omitted; and for clause (a) the following shall be substituted, namely:-

“(a) to be governed by the generic levelled tariff to be determined by the Commission, in accordance with the Regulation 14, in relation to the control period in which the scheduled COD of the project (as mentioned in the Power Purchase Agreement, or extended under the provision of Regulation 14-A) or the date of actual COD; whichever is earlier, falls;”;

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

“14. Generic levelled tariff.- (1)The Commission, from time to time and at such intervals as it may consider appropriate in line with the duration of respective control periods as per Regulation 9, shall-

- (i) specify the financial norms to be used for determination of tariffs for various RE technologies;
- (ii) specify the technological specific parameters for the small hydro projects; and
- (iii) fix the technological specific parameters for the various RE technologies, other than SHPs in accordance with Regulation 18:

Provided that the financial parameters for all the renewable energy technologies and the technological specific parameters for the SHPs already specified under Chapter-IV and Chapter-V respectively, shall remain in force upto 31.03.2020:

Provided further that the technological specific parameters already fixed by the Commission for Solar PV technology in respect of the financial years 2017-18 and 2018-19 shall also continue to be in force till the expiry of the respective periods for which the same were fixed.

(2) The Commission shall, within 90 days from the date on which the norms in relation to the respective control periods, are notified/fixed under these regulations, determine separate generic levelled tariffs and associated terms and conditions, for each category of small hydro projects, as mentioned in regulation 33, by taking into account the norms specified under these Regulations for the respective control periods:

Provided that in case of renewable energy technologies, other than small hydro projects, the Commission may fix the generic levelled tariffs in accordance with the Regulation 18:

Provided further that the generic levelled tariffs already determined for the SHPs, in relation to the first control periods under these Regulations, shall remain in force upto 31.03.2020:

Provided further that the generic levelled tariffs determined, for the solar PV technology in respect of the financial years 2017-18 and 2018-19 shall also remain in force until the expiry of the respective periods for which the same had been fixed.

(3) The tariff being normative, any shortfall or gain due to performance or any other reasons is to be borne/retained, as the case may be, by the renewable energy generator and no true up of any parameter, including additional capitalisation for whatsoever reasons, shall be taken up during the validity of the tariff except for the specific provisions in these Regulations.

(4) Where the parties have, as per the power purchase agreements executed by them, opted for generic levelled tariff or the same is otherwise applicable under regulation 16, the generic levelled tariff determined in relation to the control period under sub-regulation (2) shall be applicable for all the projects of that category for which the power purchase agreements are approved by the Commission in that control period.

10. Insertion of regulation 14-A.- After regulation 14 of the said regulations, the following regulation 14-A shall be substituted, namely:-

“14-A Determination of Scheduled COD:

- (1) Scheduled COD to be incorporated in the Power Purchase Agreement (PPA) shall be computed after allowing the estimated construction period, starting from the zero date certified by the State Government or the Designated Agency, as provided in construction schedule as per the technical concurrence issued by the State Government or its concerned agency, subject to maximum of four years.
- (2) The Scheduled COD incorporated in the Power Purchase Agreement (PPA) in accordance with the sub-regulation(1) shall be firm and final and shall not be extended for any reason except for the delays due to the reasons, which in the opinion of the Commission, either constitute force majeure or otherwise cannot be attributed to the renewable energy generator:

Provided that no extension in Scheduled COD shall be allowed if the project otherwise achieves actual COD within the Scheduled COD provided in the Power Purchase Agreement:

Provided further that the total maximum extension to be allowed in the Scheduled COD originally provided in the Power Purchase Agreement shall not exceed 18 months.

- (3) The Commission may, on receipt of petition from the renewable energy generator and after hearing the parties concerned and after duly assessing in prudent manner the criticality of each event of delay and its impact on the completion of project, based on PERT Charts to be submitted by the renewable energy generator to the distribution licensee from time to time during the construction period, determine the extent upto which the extension, if any, of Scheduled COD originally provided in the Power Purchase Agreement (PPA) is to be allowed as per the sub-regulation(2), and while doing so may consider the time over run as follows, namely:-
- (a) where, in the opinion of the Commission, the delay is due to factors entirely attributable to the renewable energy generator, no time over run shall be allowed;
 - (b) where, in the opinion of the Commission, the delay is due to force majeure, the Commission may allow the time over run to the extent it impacts the completion of the project under the critical path; and
 - (c) in a situation not covered under clauses (a) and (b), the Commission may allow the time over run, limited to the impact on the completion of the project under critical path with a further stipulation that the time over run to be allowed shall not exceed 50% of the time over run so determined:

Provided that the renewable energy generator shall be deemed to have subscribed to the requisite insurance policies covering the risks during construction stage and also to have stipulated provisions for the liquidated damages in the contracts, relating to the construction of the project, awarded by him, as per the prudent practices, and accordingly the Commission shall, while allowing the extension, if any, in the Scheduled COD, also determine the amount which is, or would have been, recoverable by him on account of such deemed provisions for insurance and liquidated damages and the extent to, as well as the manner in, which it has to be adjusted in tariff or otherwise.

- (4) The extension, if any, in the Scheduled COD allowed by the Commission as per the provisions of sub-regulation (3) shall be operative only for the limited purposes of tariff and the liquidated damages under the Power Purchase Agreement (PPA), but shall not apply for any other purposes.”

- 11. Amendment of regulation 15.-** In sub-regulation (1) of regulation 15 of the said regulations, for the signs, brackets, figures and the words “, for a project, other than the small hydro projects covered in sub-regulation (1) of regulation 11” the words “for a project” shall be substituted.
- 12. Amendment of regulation 16.-** In clause (b) of sub-regulation (1) of regulation 16 of the said regulations, the sign, brackets, figure and the words “, other than the small hydro projects covered in sub-regulation (1) of regulation 11” and in clause (c) signs, brackets, figures and the words “covered under sub-regulation (1) of Regulation 11, or” shall be omitted.
- 13. Amendment of regulation 17.-** In regulation 17 of the said regulations-
- (a) for sub-regulation (2), the following sub-regulation (2) shall be substituted, namely:-
- “(2) Where neither the Commission has approved nor the parties have executed the Power Purchase Agreement for the original capacity, the enhanced capacity shall be taken into consideration while approving or executing the Power Purchase Agreement, as the case may be.”;
- (b) in sub-regulation (3), for the opening words “Where the Implementation Agreement for the original capacity has been signed by the concerned developer with the State Government on or before 31st December, 2014, but the Supplementary Implementation Agreement for the enhancement of the capacity is signed on or after 1st January, 2015, and no joint petition for approval of the power purchase agreement for the enhanced capacity has been filed, or approved by the Commission prior to the commencement of these Regulations,” the words “Where, prior to the commencement of these Regulations, the Commission has approved, or the parties have signed or have otherwise filed a joint petition before the Commission for the approval of, the Power Purchase Agreement for the original capacity, but have not signed any Power Purchase Agreement for additional/enhanced capacity and, after the commencement of these Regulations, a joint petition for approval of Supplementary Power Purchase Agreement for the additional capacity is filed by the parties before the Commission,” shall be substituted; and
- (c) in sub-regulation (4), for the words “Where the Implementation Agreement for the original capacity as well as the Supplementary Agreement for the enhanced capacity are signed on or after 1st January, 2015 and prior to the commencement of these Regulations,” the word “Where” shall be substituted.

- 14. Amendment of regulation 20.-** In clause (ii) of sub-regulation (3) of regulation 20 of the said regulations, for the signs and the words “; and/or” the sign “:” shall be substituted; and thereafter, the following proviso shall be inserted, namely:-

“Provided that in cases where the recovery of free power as per the rates (in percentage) given in Implementation Agreement signed on or before 15.05.2018, is deferred by the State Government, the adjustments in tariff on account of the variations in free power shall be carried out for the respective periods, in accordance with the formulae as may be specified under CHAPTER-V of these regulations from time to time, based on rate (percentage) at which such free power is actually provided in the respective time periods; and the limit of 13% for such period(s) shall stand relaxed to that extent, so long as:-

- (a) the free power so deferred pertains to the first 12 years from the Scheduled COD or from the actual COD, whichever is earlier; and
- (b) the rate of free power so deferred, alongwith the free power actually adjusted, if any, in that period, does not exceed 13% for any such period.”

- 15. Amendment of Chapter-IV.-**

For the existing heading of CHAPTER-IV of the said regulations the following heading shall be substituted, namely:-

“CHAPTER-IV
FINANCIAL PRINCIPLES
(APPLICABLE FROM 01.10.2017 TO 31.03.2020)”

- 16. Amendment of Chapter-V.-**

For the existing heading of CHAPTER-V of the said regulations the following heading shall be substituted, namely:-

“CHAPTER-V
TECHNOLOGY SPECIFIC PARAMETERS FOR SMALL HYDRO PROJECTS
(APPLICABLE FROM 01.10.2017 TO 31.03.2020)”.

By order of the Commission

Sd/-
Secretary