

THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION
SHIMLA

NOTIFICATION

Shimla, the 08th October, 2018

No. HPERC-F(1)-3/2018.- 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 Transmission Tariff) Regulations, 2011 and has determined the tariff for the transmission licensee i.e. HPPTCL 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 transmission system of the licensees 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 Transmission 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 Transmission Tariff) (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 3 – In regulation 3 of the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2011 (hereinafter referred as “the said regulations”),-

(a) the existing clause (1) shall be renumbered as clause (1-a) and before 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:

Provided that in case of any local authority engaged in the business of transmission of electricity, the Accounting Statement shall mean the items, as mentioned above, prepared and maintained in accordance with the relevant Acts or Statutes as applicable to such local authority;”;

(b) for clause (5), the following clause (5) shall be substituted, namely:-

“(5) **“allocation statement”** means for each financial year, a statement in respect of each of the businesses of the licensee including inter-state & intra-state transmission system, showing the amounts of any revenue, cost, asset, liability, reserve or provision etc, which has been either-

(a) determined by apportionment or allocation between different businesses of the licensee including the licensed business, together with a description of the basis of the apportionment or allocation, or

(b) charged from or to each such other business together with a description of the basis of that charge;” ;

(c) for clause (13), the following clause (13) shall be substituted, namely:-

“(13) “**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
- (v) 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 transmission company regulated under these regulations;” ;

(d) after clause (22), the following clause (22-a) shall be inserted, namely:-

“(22-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;” ;

(e) after clause (27), the following clause (27-a) shall be inserted, namely:-

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

(f) after clause (32), the following clause (32-a) shall be inserted, namely:-

“(32-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;” ; and

(g) for clause (43), the following clause (43) shall be substituted, namely:-

“(43) 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. Amendment of regulation 4.– At the end of regulation 4 of the said regulations, the following sub-regulation (4) shall be added, namely:-

“(4) The norms of operation specified under these regulations are the ceiling norms and this shall not preclude the transmission licensee and the beneficiaries from accepting improved norms of operation as determined by the Commission and such improved norms shall be applicable for determination of tariff.”

4. Insertion of regulation 5-A.– After regulation 5 of the said regulations , the following regulation 5-A shall be inserted, namely:-

“5-A. Preparation of Accounting Manual and Regulatory Accounts.– The licensee 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.”

5. Insertion of regulation 6-A.– After regulation 6 of the said regulations, the following regulation 6-A shall be inserted, namely:-

“6-A. Segregation of Accounts.– The licensee shall maintain separate accounts and sub balance sheets for each of the other businesses and also for inter and intra-state transmission systems:

Provided that the licensee shall follow a reasonable basis for allocation of all joint and common costs between the transmission business including inter and intra-state transmission systems and the other business and shall submit the Accounting Statements, as approved by its board of directors, to the Commission alongwith his application for determination of tariff:

Provided further that where the sum total of the direct and indirect costs of such other business exceeds the revenues from such other business or for any other reason, no amount shall be allowed to be added to the aggregate revenue requirement of the licensee on account of such other business.”

6. Insertion of regulation 10-A.- after regulation 10 of the said regulations, the following regulation 10-A shall be inserted, namely:-

“**10-A. Carrying Cost.-** The transmission licensee, 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.”

7. Substitution of regulation 15.- For existing regulation 15 of the said regulations, the following regulation 15 shall be substituted, namely:-

“ **15. Initial Spares.-** The capital cost may include initial spares capitalised as a percentage of the original project cost, subject to the following ceiling norms:-

- (a) Transmission Line 0.75%
- (b) Transmission Sub-station (Green Field) 3.0%
- (c) Transmission Sub-station (Brown Field) 4.5%
- (d) Series Compensation devices and HVDC Station 3.5%
- (e) Gas Insulated Sub-station (GIS) 4.0%
- (f) Communication System 3%”

8. Amendment of regulation 16.- For existing sub- regulation (2) regulation 16 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 or compliance of any existing law;
- (c) 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;
- (d) 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.;
- (e) Any liability for works admitted by the Commission after the Cut-off Date to the extent of discharge of such liabilities by actual payments;

(f) Any additional capital expenditure, which has become necessary for efficient operation of the transmission system. 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, up-gradation of capacity for the technical reason such as increase in fault level; and

(g) Any additional expenditure on items such as relays, control and instrumentation, computer system, power line carrier communication, DC batteries, replacement due to obsolescence of technology, replacement of switchyard equipment due to increase of fault level, tower strengthening, communication equipment, emergency restoration system, insulators cleaning infrastructure, replacement of porcelain insulator with polymer insulators, replacement of damaged equipment not covered by insurance and any other expenditure which has become necessary for successful and efficient operation of transmission system:

Provided that any expenditure on acquiring the minor items or the assets including tools and tackles, furniture, air-conditioners, voltage stabilizers, refrigerators, coolers, computers, fans, washing machines, heat convectors, mattresses, carpets, etc., bought after the Cut-off Date shall not be considered for additional capitalization for determination of tariff:

Provided further that if any expenditure has been claimed under Renovation and Modernisation (R&M) or repairs and maintenance under O&M Expenses, the same expenditure cannot be claimed under this Regulation. ”

9. Substitution of regulation 17.– For existing regulation 17 of the said regulations, the following regulation 17 shall be substituted, namely:-

“17. Asset Base.- The Commission shall determine the asset base for each year of the control period at the beginning of the control period, which shall be-

Sum of -

(a) The asset base of the base year as determined by the Commission, considering the most recent audited accounts, estimates of actuals during the base year after doing prudence check and any other factors considered appropriate by the Commission, and

(b) Proposed capitalisation during the year after exercising prudence check shall be -

- (i) schemes for which Commission’s approval has been granted,
- (ii) schemes which have been submitted for Commission’s approval, and
- (iii) schemes not requiring Commission’s approval;

Less-

Assets proposed to be retired during the year.

The net value of such retired assets shall be calculated as follows:

Net Value of retired Assets = OCFA – AD – CC

Where;

OCFA: Original capital cost of Replaced Assets

AD: Accumulated depreciation pertaining to the Replaced Assets

CC: Total Consumer Contribution pertaining to the Replaced Assets:

Provided further that the amount of insurance proceeds received, if any, towards damage to any asset requiring its replacement shall be first adjusted towards outstanding actual or normative loan and the balance amount, if any, shall be utilised to reduce the capital cost of such replaced asset, and any further balance amount shall be considered as Non-Tariff Income.

(2) The interest on loan capital and return on equity shall be computed on the financing of the cost of the schemes included in the asset base.

10. Insertion of regulation 17-A.- After regulation 17 of the said regulations, the following regulation 17-A shall be inserted, namely:-

“17-A. Consumer Contribution, Deposit Work, Grant and Capital Subsidy.-

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

(2) Capital works undertaken by the Transmission Licensee 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 licensee 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 18, 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 23;

(d) provisions related to return on equity, as specified in regulation 19, 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 20, shall not be applicable to the extent of financial support provided through consumer contribution, deposit work, capital subsidy or grant.”

11. Amendment of regulation 20.- In regulation 20 of the said regulations-

(a) at the end of sub-regulation (2), the following proviso shall be added:-

“Provided further that if the Transmission Licensee as a whole 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.”;

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

“(5) The transmission licensee 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 transmission customers and any benefit on account of refinancing of loan and interest on loan shall be shared in the ratio of 2:1 between the transmission licensee and the transmission customers. Refinancing may also include restructuring of debt.”; and

(c) at the end, the following sub-regulation (7) shall be inserted, namely:-

“(7) The above interest computation shall exclude the interest on loan amount, normative or otherwise, to the extent of capital cost funded by consumer contribution, deposit work, capital subsidy or grant, carried out by transmission licensee.”

12. Substitution of regulation 21.- For existing regulation 21 of the said regulations, the following regulation 21 shall be substituted, namely:-

“21. Working Capital.- The Commission shall calculate the working capital requirement for the transmission licensee containing the following components:-

- (a) O&M expenses for one month;
- (b) receivables for two months on the projected annual transmission charges; and
- (c) maintenance spares @ 15% of O&M Expenses for one month.”

13. Substitution of regulation 22.- For existing regulation 22 of the said regulations, the following regulation 22 shall be substituted, namely:-

“22. Interest Charges 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 licensee has not taken working capital loan from any outside agency or has exceeded the working capital loan based on the normative figures.”

14. Amendment of regulation 23.– In regulation 23 of the said regulations, the following sub-regulation (2-a) shall be added, namely:-

“(2-a) The salvage value for IT equipment and software shall be considered as NIL and 100% value of the assets shall be considered depreciable.”

15. Substitution of regulation 24.– For existing regulation 24 of the said regulations, the following regulation 24 shall be substituted, namely:-

“**24. Non-tariff income** (1) All income being incidental to electricity business and derived by the licensee from sources, including but not limited to profit derived from disposal of assets, rents, income from investment and miscellaneous receipts from the transmission customers excluding income to licensed business from the other business of the transmission licensee shall constitute non-tariff income of the licensee

(2) The amount of non-tariff income relating to the transmission business as approved by the Commission shall be deducted from the Aggregate Revenue Requirement in determining annual transmission charges of the transmission licensee:

Provided that the transmission licensee shall submit full details of its forecast of non-tariff income to the Commission along with its application for determination of Aggregate Revenue Requirement. The non-tariff income shall inter-alia include:

- (a) Income from rent on land or buildings;
- (b) Income from sale of scrap;
- (c) Income from statutory investments;
- (d) Interest on advances to suppliers/contractors;
- (e) Rental from staff quarters;
- (f) Rental from contractors;
- (g) Income from hire charges from contactors and others;
- (h) Income from advertisements, etc.;
- (i) Miscellaneous receipts like parallel operation charges;
- (j) Deferred Income from grant, subsidy, etc., as per Annual Accounts;
- (k) Excess found on physical verification;
- (l) Interest on investments, fixed and call deposits and bank balances;
- (m) Prior period income.”

16. Substitution of regulation 26.– For existing regulation 26 of the said regulations, the following regulation 26 shall be substituted, namely:-

“26. Refund of excess amount.- The licensee shall recover the charges as determined by the Commission. Where any licensee recovers charges exceeding those determined by the Commission, the excess amount shall be refunded to the person who has paid such excess charges, alongwith interest equal to the prevalent (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 incurred by such licensee.”

17. Amendment of regulation 33.– For existing sub- regulation (4) of regulation 33 of the said regulations, the following sub- regulation (4) shall be substituted, namely:-

“(4) 10% of the charges collected from the short term open access customer shall be retained by the transmission licensee and the balance 90% shall be considered as non-tariff income and adjusted towards reduction in the transmission service charges payable by the long term and medium term users.”

By order of the Commission

**Sd/-
Secretary**