

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA

Notification

Shimla, the 27th January, 2023

No. HPERC/428.- WHEREAS Regulation 31-B 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 “RE Tariff Regulations, 2017”), provided the mechanism for Late Payment Surcharge;

AND WHEREAS 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;

AND WHEREAS the Ministry of Power has issued a clarification 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 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 Rules shall prevail;

AND WHEREAS this necessitates the Commission to amend its RE Tariff Regulations, 2017 to align it with the Electricity LPS Rules, 2022 by enforcing the same retrospectively w.e.f 3rd June, 2022;

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), and all other powers enabling it in this behalf and after previous publication, the Himachal Pradesh Electricity Regulatory Commission make the following Regulations further to amend the RE Tariff Regulations, 2017, published in the Rajpatra, Himachal Pradesh, dated 23rd November, 2017.

REGULATIONS

- 1. Short title, applicability 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) (Sixth Amendment) Regulations, 2023.

(2) These Regulations shall be applicable for the Power Purchase Agreements approved by the Commission on or after 3rd June, 2022 and shall be deemed to have come into force on and from 3rd June, 2022.

2. Amendment of Regulation 2.- In Sub-regulation (1) of Regulation 2 of RE Tariff Regulations, 2017,

(i) after Clause (b), the following shall be inserted, namely;-

“(ba) ‘Base Rate of Late Payment Surcharge’ means the marginal cost of funds based on lending rate for one year of the State Bank of India, as applicable on the 1st April of the Financial Year in which the period lies, plus five per cent and in the absence of marginal cost of funds based lending rate, any other arrangement that substitutes it, which the Central Government may, by notification, in the Official Gazette, specify;”

(ii) after Clause (g), the following Clauses (ga) and (gb) shall be inserted, namely;-

“(ga) ‘Default Trigger Date’ means,-

(i) in case of non-payment of dues, one month after the due date of payment or two and half months after the presentation of bill by the renewable energy generator, whichever is later; and

(ii) in case of non-maintenance of the payment security mechanism, shall be from the next bank working day after the payment security mechanism due to be replenished but is not done;

“(gb) ‘Due Date’ means the date by which the bill for the charges for power supplied by the renewable energy generator are to be paid, in accordance with the Power Purchase Agreement and in case not specified in the Power Purchase Agreement, forty-five days from the date of presentation of the bill by the renewable energy generator:

Provided that if the due date for payment of any invoice falls on a bank non-working day, the next bank working day shall be considered as due date for payment;”

(iii) after Clause (r), the following shall be inserted, namely;-

“(ra) ‘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;”

(iv) after Clause (r), the following shall be inserted, namely;-

“(rb) ‘Payment Security Mechanism’ means Letter of Credit or Letter of Credit backed by Escrow Account as per the agreement and shall also include advance payment;”

3. Amendment of Regulation 31-B.- For Regulation 31-B of RE Tariff Regulations, 2017, the following shall be substituted, namely;-

“The Distribution Licensee shall make timely payments of energy bills of the renewable energy generator(s) by assigning priority over and above all other payments. In case the payment of any bill payable under the power purchase agreement is delayed beyond a period of 45 days from the date of presentation of the bill, a Late Payment Surcharge shall be payable on the payment outstanding after the due date at the base rate of Late Payment Surcharge applicable for the period for the first month of default:

Provided that if the period of default lies in two or more financial years, the base rate of Late Payment Surcharge shall be calculated separately for the periods falling in different years:

Provided further that the rate of Late Payment Surcharge for the successive months of default shall increase by 0.5 per cent for every month of delay and shall not be more than three per cent higher than the base rate at anytime:

Provided further that the payment made by the Distribution Licensee to the renewable energy generator for power procured from it shall be first adjusted towards Late Payment Surcharge irrespective of the bill to which it pertains and thereafter towards monthly charges starting from the longest overdue bill:

Provided further that all the bills payable by the Distribution Licensee to a renewable energy generator for power procured from it, shall be time tagged with respect to the date and time of submission of the bill and the payment made by the Distribution Licensee, as has not been adjusted towards the Late Payment Surcharge as per the third proviso to this Regulation, shall be adjusted first against the oldest bill and then to the second oldest bill and so on so as to ensure that payment against a bill is not adjusted unless and until all bills older than it have been paid for.”

4. Insertion of Regulation 31-BB.- After Regulation 31-B of RE Tariff Regulations, 2017, the following Regulation 31-BB shall be inserted, namely;-

“31-BB. Payment Security Mechanism.- (1) The Distribution Licensee shall maintain unconditional, irrevocable and adequate payment security mechanism.

(2) The supply of power shall only be made if an adequate Payment Security Mechanism is maintained or in the absence thereof, advance payment is made:

Provided that in case the renewable energy generator supplies power without the Payment Security Mechanism or without advance payment, it shall lose the right to collect the late payment surcharge from the Distribution Licensee:

Provided further 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:

Provided further 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 after the commencement of sale of power by the RE generator to the extent of 25% of contracted power through the Power Exchanges then the renewable energy generator shall be entitled to sell 100% of the contracted power through Power Exchanges.

- (3) In case of non-maintenance of Payment Security Mechanism, renewable energy generator shall regulate power supply to the Distribution Licensee in accordance with Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 notified by the Ministry of Power on 3rd June, 2022.
- (4) The gains or losses, as the cases may be from the sale of such power, which shall be the difference between selling price of such power in the Power Exchanges and the expense borne by the renewable energy generator including energy charges, transmission charges; other incidental charges and shall be adjusted on monthly basis in the following order:-
 - (i) liquidation of overdue amount, if any (in case of gains only);
 - (ii) the balance shall be shared in the ratio of 75:25 between the Distribution Licensee and the renewable energy generator.
- (5) The renewable energy generator shall share the detailed calculations as per the Sub-regulation (4) of this Regulation, with the defaulting entity i.e. Distribution Licensee on a monthly basis:

Provided that such gains or losses, as the case may be, shall be computed by taking into account on daily basis the selling rate of such power in the Green Day Ahead Market (GDAM) or actual sale price on any other platform, whichever is higher.

By order of the Commission

Sd/-
(Chhavi Nanta), HPAS
Secretary