

MADHYA PRADESH GAZETTE
(Extraordinary)
Notification

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New and Renewable Energy Department
Mantralaya, Vallabh Bhavan, Bhopal

Bhopal, Date 3 November 2011

No. F-3-16-2011-60- In the cabinet meeting held on 18 October 2011, approval on Policy for Implementation of small hydel-electric power based projects in Madhya Pradesh, 2011 was accorded. The publication of the said policy in “Madhya Pradesh Gazette (extraordinary)” is being done for general public.

[By order and in the name of Governor of Madhya Pradesh]
(Anil Shrivastva, Principal Secretary)

**Policy for implementation of Small Hydel-Power based electricity
projects in Madhya Pradesh, 2011**

(1) Preamble:—

- 1.1 Hydel power is one of the cleanest, most viable and renewable sources of energy. Madhya Pradesh Government has constantly endeavoured to set up non-conventional energy producing units and for this purpose policies, incentives and constitution special agencies etc have been formulated.
- 1.2 Considering the unused large potential of hydel power available in the State, it is very important to have a specific, comprehensive and liberal policy so as to expedite the harnessing of available potential of hydel power sources.
- 1.3 This new policy has been framed keeping in view all the aspects and needs of small hydel power sector taking in to consideration the current legal status and regulatory framework of electricity generation and distribution.

(2) Scope:—

- 2.1 This policy shall be applicable to all the small hydel power projects (SHPs) up to 25 MW capacity which have been identified by the Water Resources Department, Narmada Valley Development Authority, Madhya Pradesh Power Generation Company, any other government agency or any private agency. This policy shall also be applicable to all the projects which had been allotted by Madhya Pradesh Electricity Board (now Madhya Pradesh State Electricity Board) or Water Resources Department/Narmada

Valley Development Authority for the development of small hydel power projects under incentive policy issued on 26-9-1994 or 8-8-2006 but are yet to attain the stage of commercial production.

- 2.2 These projects can be for Captive Power Projects or Independent Power Projects. The Captive Power Projects shall have the same meaning as mentioned in Section 2(8) read with Section (9) of the Electricity Act, 2003 and as described in Electricity Rules, 2005 notified by the Government of India, Ministry of Power on 8th June 2005.
- 2.3 The list of all the identified Small Hydel Power Projects with an estimated generating capacity up to 25 MW will be notified. This list shall be immediately updated on identification of new sites by any authorised government or private agency and shall be available on the website for the convenience of applicants. All such projects which are identified under any Government department shall be categorized as Departmental identified hydel power projects (All such scheme have been categorized as category 1 of this Policy).
- 2.4 Those project sites which are not identified by any State Agency (Government departments/agencies etc.) but are identified by private sectors/individuals shall be recognized as Self Identified Sites and for this separate provisions have been made under the policy (All such schemes have been categorized as category 2 of this Policy).

(3) The Regulatory Framework:—

- 3.2 The Electricity Act 2003 has been enacted with effect from June 2003. Under the provisions of this Act any private agency or individual would be free to set up power generating plants and shall have the rights for open access of the transmission facilities.
- 3.2 The Madhya Pradesh Electricity Regulatory Commission (MPERC) has been functioning since 1999 and the orders/regulations passed by this commission from time to time shall be applicable to the provisions of this policy. Similarly Acts passed by Government of India from time to time regarding energy sector shall also be applicable to the provisions of this policy. In case of any inconsistency between the provisions of this policy and orders/regulations issued by the MPERC, the orders/regulations issued by the MPERC shall prevail.

(4) Objectives:—

The objectives of the policy are:

- 4.1 To promote pollution free small hydel power generating projects with private sector participation.
- 4.2 To clearly define the incentives and benefits to be provided to the private sector participants.
- 4.3 To create favourable environment for promoting small hydel power generation.
- 4.4 To lay down rational framework for implementation of the policy.

Part A

Policy Guidelines

1.0 Operative Period:—

- 1.1 This policy shall come in force from the date of notification in Madhya Pradesh State Gazette.
- 1.2 All the projects allotted or to be allotted under this policy shall operate on Build, Own, Operate and Transfer (BOOT) basis. The BOOT period shall begin from the Commercial operation date (COD) and shall be for 35 years or the life of the project, whichever is earlier. On completion of the BOOT period the entire project including its movable and immovable assets regarding water structures and power generation shall be transferred free of cost to the State Government.

2.0 Small Hydel Power Projects are categorized as follows:—

Category 1— Projects identified by the Government of Madhya Pradesh/Government undertakings.

Category 2— Projects identified by the developers.

3.0 Participation:—

Any individual/firm/society/organisation/registered company shall be eligible to apply for the development of the project. Only that organisation/individual who is applying for the project development shall be eligible for allotment/implementation/operation of the project. After project allocation, the same individual/organisation or its holding organisation in which it has 51 per cent or more equity shall be eligible for the implementation & thereafter operation of project for a period up to 5 years from commercial production.

4.0 Selection Process:—

Selection process for successful participants would be as follows—

4.1 Projects under Category 1—

- 4.1.1 For the allocation of these projects open tenders shall be invited in two stages. In the first stage request for proposal (R.F.P.) shall be invited from applicants. Along with R.F.P., applicants shall have to deposit a commitment fee of rupees one lakh per Megawatt or its part thereof.
- 4.1.2 Applicants of the first stage shall be provided the project-related technical data and shall be given three months time to study the project.
- 4.1.3 Within 15 days after completion of the three months period, proposals from bidders of first stage shall be invited for the second stage bidding. The second stage bidding shall be in terms of supply of free energy. The bidder who will offer the highest amount of free energy shall be selected for the development of the project. Proposal for

supply of free energy shall be over or above the minimum supply of free energy as mentioned in clause 5.2 of the policy.

- 4.1.4** If more than one bidder offer identical supply of free energy in that case from such bidders revised proposal for supply of free energy will be invited and the bidder offering the highest amount of free energy shall be selected for development of the project.

4.2 Projects under Category 2 –

- 4.2.1** Developers can apply for self identified projects.
- 4.2.2** For self identified projects government shall invite proposals from time to time, four times a year, once in each quarter. Developers who want to submit proposals for their self identified projects shall have to apply in the prescribed format along with technical parameters within the given time limit. Technical parameters by which project may be defined shall be made available for the public on the website for convenience of the applicants.
- 4.2.3** Developer has to deposit project fee of Rs. One lakh per Megawatt or part thereof along with the project proposal.
- 4.2.4** Technical parameters received from the developers shall be forwarded to Water Resources Department/Narmada Valley Development Authority/concerning Electricity Company of the State or any other related departments for their opinion. The concerned departments shall have to present their opinion within 60 days. If no opinion is received within the said time period it shall be taken as deemed consent of the department. The department has to ensure while submitting the no objection about the project proposal that none of their schemes will be affected by the proposed project and that the project has not been previously identified by the department.
- 4.2.5** If for any project site only one application is received then that developer will be selected for the development of the project. If more than one developer apply for the same project site or mention identical technical parameters or technical parameters which are similar to any of the self identified project then in such case the project site will be allocated through competitive bidding process. This competition will be in terms of supply of free electricity. The developer who will offer the highest annual free electricity shall be selected for the development of the project. The total annual free electricity shall be calculated on the basis of capacity of the proposed project and 30 percent of PUF (Plant utilisation factor) standard. The free electricity supply shall be over or above the minimum free electricity prescribed in Clause 5.2 of the policy.
- 4.2.6** If any of the related department does not give the no objection to the project proposal as mentioned in Clause 4.2.4 then the applicant will be refunded the project fees as prescribed in Clause 4.2.3.

5.0 Development of the Project:—

5.1 Letter of Allotment (LOA) and Hydel Power Development Agreement (HPDA)—

- 5.1.1** LOA shall be issued to the developer within 15 days of his selection (Clause 4).

- 5.1.2** Developer has to give his consent within 7 days of issue of LOA.
- 5.1.3** Developer has to deposit project performance guarantee of Rs. One Lakh per Megawatt within 30 days of issue of LOA. This guarantee amount may be in form of bank guarantee, demand draft or fixed deposit receipt. This guarantee shall be valid till a period of three months after the date of commercial operation of the project.
- 5.1.4** The selected developer has to execute the HPDA within 30 days of depositing performance guarantee.
- 5.1.5** All the expenditures made on survey, investigation and preparing technical-economical feasibility report (TEFR) or any other investigation carried out shall be bear by the developer from his own resources and will have no rights to claim for reimbursement of the above expenses under any circumstances (whether the project is viable or not).
- 5.1.6** If any selected developer fails to deposit performance guarantee for the project specified in above clauses, the project allotted will be deemed to be cancelled. In such circumstances, tenders shall be invited again according to the provisions of the policy for projects under Category-1 while the projects under Category-2 will be classified as government identified projects and further actions will be taken.

5.2 Minimum free Electricity —

Selected developer has to provide the government free electricity to the government from the power generated by the project as per the table given below. Developers of Category 1 shall have to supply additional free electricity as per the provisions of Clause 4.1.3. Similarly the developers of Category 2, who have been allotted the project under the Clause 4.2.5, shall also have to supply additional free electricity. Agreement for the supply of free electricity and for purchase of power shall be executed through the agreement approved by the department in consultation with finance department and energy department.

S.No. (1)	Estimated installed capacity (2)	Free electricity as percentage of actual power generation (excluding auxiliary consumption) (3)
1	Up to 5 Megawatts	5 % with exemption of a block of 2 years as preferred by developer during the first 7 years of operation from commercial operation date (COD).
2	More than 5 Megawatts but up to 10 Megawatts	8 % with exemption of a block of 2 years as preferred by developer during the first 7 years of operation from commercial operation date (COD).
3	More than 10 Megawatts but up to 25 Megawatts	10 % with exemption of a block of 2 years as preferred by developer during the first 7 years of operation from commercial operation date (COD).

5.3 Approval and Clearance—

- 5.3.1** After execution of HPDA the developer shall seek and obtain necessary approvals including detailed project report and financial closure of the project shall be done within a period of 24 months. This period can be extended maximum up to 6 months on case to case basis. Government shall extend all possible assistance to developers for obtaining necessary approvals but it will be developer's primary responsibility to obtain the primary approvals. In case of failure to obtain approvals and completing the financial closure within the prescribed time limit the HPDA shall be cancelled automatically and the performance guarantee shall be forfeited.
- 5.3.2** Within 30 days of the financial closure, the developer shall have to deposit 0.5 percent of the total project cost as additional performance guarantee in the form of Bank guarantee or Demand draft or fixed deposit receipt. This guarantee shall be valid till three months from the date of commercial operation of the project.
- 5.3.3** In case the approval is not granted by either State Government or Central Government the performance guarantee shall be released. In such case the commitment fees deposited by Category 1 developers under the provision of Clause 4.1.1 and project fees as per provision of Clause 4.2.3 for Category 2 developers shall be refunded to the developers.

5.4 Milestones for project development—

5.4.1 Following shall be the time line for implementation of project and achieving milestones from the date of execution of HPDA—

S. No.	Installed capacity	50 % or more physical and financial progress of the project	Period for functioning of project
(1)	(2)	(3)	(4)
1	Up to 5 Megawatt	30 Months	35 Months
2	More than 5 Megawatt but up to 10 Megawatt	30 Months	40 Months
3	More than 10 Megawatt but up to 25 Megawatt	33 Months	48 Months

If time limit is extended further for completion of project as per the provisions in Clause 5.3.1 then the above time limit shall be increased accordingly.

- 5.4.2** All the milestones for the development of project shall be the part of HPDA till the commercial operation date.
- 5.4.3** Except under force majeure conditions, in case of any delay in execution of the project in view of the milestones mentioned in HPDA the developer shall have to compensate for the loss of free electricity which will be equivalent to the delay in power generation as per the time limit mentioned in the agreement. This loss should be compensated by supplying equal amount of free electricity after start of commercial production which shall be additional to the assigned amount of supply of free electricity.
- 5.4.4** If developer commissions the project before the scheduled time limit then he shall be entitled for incentive that is the developer will be exempted from the payment of revenue due for the free electricity

supply from actual commercial operation date till the scheduled date of commercial operation as mentioned in the agreement.

5.5 Quarterly progress report and cancellation—

5.5.1 From the date of commencement of HPDA till the date of commercial operation of the project, developer shall have to submit quarterly progress reports in the prescribed format along with the related documents. Thus received progress report will be verified, the progress of the project should be compulsorily according to the time limits prescribed in the policy and prescribed milestones. In case of any delay in submission of the quarterly progress report the developer has to give satisfactory explanation.

5.5.2 If the explanation given by developer found to be unsatisfactory then developer shall be provided a chance of hearing and the project allocated by the government may be cancelled at any stage.

5.6 Release of performance guarantee—

The performance guarantee shall be released after 3 months from the date of commercial operation of the project.

5.7 Land Allotment—

If government land is available for the development of project then permission for land use shall be provided only for establishment of water carrier system, sub-station and power house construction necessary for hydel power plant.

5.7.1 Allotment of Government land—

5.7.1.1 Department shall take the possession of land belonging to WRD/NVDA or other departments of State Government by obtaining no objection from the concerned department and thereafter the land use permission shall be provided to the developer. The concerned district collector should be intimated about the land use permission.

5.7.1.2 The terms laid down in the circular No. F-16-3-93-VII-2A, dated 06-09-2010 and No. F-6-53-2011-VII-Nazool, dated 08-08-2011 issued by Revenue Department of Madhya Pradesh Government shall be applicable for seeking the permission to use the government revenue land.

5.7.1.3 In case the government land is being used by the developer for purpose other than the sanctioned project then the permission for land use shall be cancelled with immediate effect and the land will be considered as government property. Any construction/plant constructed by the developer in that land shall also be seized by the government.

5.7.1.4 Inspection of the land allotted for the project can be done at any time by the person authorised by State Government/District Collector and it shall be ensured that

the land is not being used for any other purpose except it is allotted for.

5.7.2 In case of forest lands the guidelines issued by forest (Conservation) Act 1980 and rules made from time to time by ministry of environment and forest Government of India and State government shall apply. Applications for survey of forest land shall be submitted to the concerned competent authority of Forest department of M.P. State Government. After completion of the survey, applications in the specified formats for land use shall be submitted to the concerned competent authorities of forest department of M.P. State Government.

5.7.3 During the tenure of BOOT agreement the developer shall ensure proper insurance of all the assets of the project and shall maintain and upkeep the same in such a way that after expiration of BOOT period when assets are to be transferred to State government or its agency then assets must be in fair condition. During transfer the plant must be in running condition and complete details of the plant along with the details and insurance papers regarding any major changes made in plant after its commissioning shall be submitted at the time of handing over of plant.

5.8 Grid interfacing and Evacuation arrangements—

Interfacing arrangements, including the transformer panels, protection, metering etc., from the point of view of generation to the nearest sub-station or an interconnection point shall be the responsibility of the developer, subject to fulfilment of technical and safety parameters in accordance with the Madhya Pradesh State Grid Code, Madhya Pradesh Electricity Supply Code, 2004, M.P. Electricity Regulatory Commission and Central Electricity Regulatory Commission regulations as amended from time to time. This task may be done by the Madhya Pradesh Power Transmission Company Limited (MPPTCL) and /or the other concerned Distribution Company of the state of MP, the cost of which shall be borne by the developer. In this regards the decisions taken by M.P. Electricity Regulatory Commission will be final.

5.9 Transmission and Distribution—

5.9.1 The developer shall be free to construct his own dedicated transmission lines from the point of generation to consumption point. The developer shall also have the right of open access of existing transmission facilities of the State as per the provisions mentioned in the Electricity Act 2003. Under the terms of this policy developer shall sign the wheeling agreement with the M.P. Power Transmission Company Ltd. (MPPTCL)/related Distribution Company.

5.9.2 In case the developer sells power to Third Party Consumers/ Licensee distributor/ Power Trading Company then it shall be bound for payment of wheeling and transmission charges to the MPPTCL/related Distribution Company, subject to the final decision taken by M.P. Electricity Regulatory Commission.

5.9.3 Metering equipments as specified by MPPTCL/related Distribution Company shall be installed at generation site/consumer site in

accordance with the provisions of M.P. Electricity Supply Code, 2004 and MPERC regulations for metering at the cost of the developer. The officials of MPPTCL/related Distribution Company may inspect the same.

6.0 Sale of Power:—

The entire power generated in case of IPP and any surplus power generated in case of CPP can be sold to any consumer/willing distributor company or Power Trading Company based in M.P. state.

7.0 Inspection of Project:—

- 7.1 Keeping in view the safety of the project, authorised officials of State government shall have the right of inspection of the project. During the inspection developer shall provide the necessary assistance to these officials.
- 7.2 The developer shall maintain all the records regarding power generation (capacity, generation, constraints in the production, etc.) and make available all the records to the inspecting authorities during inspection.

8.0 Exclusive jurisdiction of M.P. Electricity Regulatory Commission (MPERC):—

- 8.1 MPERC shall have exclusive jurisdiction on those provisions of this Policy which are within its regulatory mandate for management of the Electricity Act, 2003, especially regarding notification of electricity tariffs for sale of power, power purchase agreements, wheeling, banking, distribution, transmission loss charges, etc. Similarly, as per the provisions of Electricity Act, 2003, MPERC shall have jurisdiction as regards promotion of non-conventional energy sources, facilities for transmission of energy and sharing of purchase of power amongst the MPPTCL/ Transmission Licensee/ Distribution Licensee etc. All the stakeholders shall be bound to follow the orders, regulations and guidelines issued by MPERC regarding these issues from time to time.
- 8.2 In the event of any dispute between the developer and the WRD/NVDA or MPPTCL/Transmission Licensee/Licensee Distributor regarding interpretation of this policy or any terms/Clauses of the agreement, the case shall be sent toward State government or MPERC for decision under the Section 86(i) of Electricity Act, 2003.

PART B

General Provisions

- 1.0** The developers whom projects were allotted by Madhya Pradesh State Electricity Board under the policy of 1994 and have not yet started the commercial production shall be extradited in this policy. Developers whose projects were taken up by Water Resources Department/Narmada Valley Development Authority for allotment procedures under the policy of 2006 shall also be extradited in this policy. Extradited developers shall have to submit the revised implementation schedule according to provisions of this policy and shall execute the Memorandum of Understanding (MoU) so as to accept the terms and conditions of this policy within two months of notification of this policy. Information about publication of this policy shall be conveyed to the developers within 7 days of notification. If the developer does not sign the MoU in that case application of the developer will be nullified.
- 2.0** There will be options to convert Independent power production (IPP) into Captive power production (CPP) and vice-versa however the permission shall be in accordance with the guidelines of MPERC.
- 3.0** As per the guidelines of MPERC the developer shall be allowed to change the option for energy sale from any third party consumer to a Licensee and from one third party consumer to other third party consumer.
- 4.0 Surrender of the project allotment—**
After execution of the agreement developer shall be free to surrender the project but in this case the performance guarantee shall be forfeited.
- 5.0 Transfer of project—**
- 5.1** Developer shall not be allowed in any case to transfer the project to any one for a period of five years from the date of commercial production.
- 5.2** After the consent of Madhya Pradesh government and after the payment of prescribed fees for transfer developer shall transfer the work of the project to any other developer.

PART C

Incentives

1.0 Following facilities shall be available for the development of small hydel power projects in the State of Madhya Pradesh—

- 1.1** The energy produced by small hydel power projects set up under this policy can be used for captive usage and for sale of power to Distribution Company, third party consumers within the State and Power Trading Company of the State.
- 1.2** In case of the power sales to third party MPPTCL or related State Distribution Company shall facilitate wheeling of power at the rates prescribed by MPERC.
- 1.3** Energy cess relaxation shall be available for the power supplied by small hydel power project for a period of 10 years from the effective date of this policy.
- 1.4** Projects implemented under this policy shall receive the status of industry and shall be eligible for all the incentives provided under “Industrial Promotion Policy” of the State government as amended from time to time.
- 1.5** The industrial consumer opting to buy energy from small hydel power projects shall be allowed a corresponding pro rata reduction in contract demand on a permanent basis but the decision of MPERC in this regard shall be final. The provision of reduction in contract demand shall be applicable up to the limit of hydel power development agreement of the first 200 Megawatt projects.
- 1.6** No water rates shall be payable for water consumption by small hydel power projects. This exemption shall be applicable only when there is no consumptive use of the water.
- 1.7** If a developer intends to generate and distribute electricity in a rural area as notified by the State government vide notification No. 2010-F-13-05-13-2006, dated 25th March 2006, such developer shall not require any license for distribution of electricity in such designated rural areas, but shall be bound to comply with the norms prescribed by the Central Electricity Authority under Section 53 of Electricity Act, 2003.

2.0 Banking—

Banking of 100 % of energy in each financial year shall be permitted subject to the following conditions:

- 2.1** Data verification of the banked energy during the financial year shall be done by the officials of the concerned State Distribution Company/State Power Trading Company. Developer shall have to pay 2.0 % of the banked energy as banking fees to the concerned State Distribution Company/State Power Trading Company.
- 2.2** Return of the banked energy shall be in accordance with the regulations issued by MPERC from time to time.
- 2.3** After returning the banked energy, if there is any balance energy left, at the end of financial year, then this may be purchased by the concerned State Distribution Company/State Power Trading Company as per the rules/directions of MPERC.

3.0 Other Facilities—

- 3.1** The power consumed from the small hydel power projects for the purpose of captive use or third party sale shall be exempted from payment of Electricity

Duty as per the provisions mentioned in notification No. 1475-XIII-2002, dated 1st March 2002 and notification No. 4328-XIII-2006, dated 12th July 2006.

- 3.2 Carbon credits or any other similar incentives which are available for such small hydel power projects shall be made available to the developer as per the guidelines issued by MPERC from time to time.
- 3.3 All the equipments/plants/machineries brought into the state for use in the small hydel power projects shall be exempted from payment of Entry Tax. This exemption shall be effective for a period of five years from the date of signing of HPDA. Developers who opt for migration from 1994 and 2006 Policy and have not yet availed of the benefits of this facility shall be given this facility for a period of five years from the date they have been permitted to switch from the old policy to this new policy.
- 3.4 On investing in small hydel power projects, the small hydel power project unit or such industrial unit which consume energy from small hydel power projects shall be eligible for availing assistance facility in commercial and related taxes under the provisions of Madhya Pradesh Investment Policy Assistance Scheme, 2010. Small hydel power project units have to provide the option regarding who shall get the benefits of relief in taxes right at the beginning of the project.
- 3.5 The cases related to address the difficulties in proper implementation of project and to resolve interdepartmental coordination issues shall be presented to the Project Clearance and Implementation Board (PCIB) constituted under the chairmanship of the Chief Secretary.

Note:- For the purpose of interpretation, Hindi version of this document shall prevail.

(Anil Shrivastva, Principal Secretary)
