

No. MERC/17(1) of 2002/0995

May 18, 2005

Shri S.V. Sodal,
Secretary (CAD),
Water Resources Department,
Government of Maharashtra,
Mantralaya,
Mumbai 400 032.

Subject: **Approval of draft Hydro Power Policy**

Reference: GoMID's letter No. HEP-1203(160/2004)HP dated 6th December, 2004

Sir,

This refers to your two letters No. HEP-1203(160/2004)HP dated 6th December, 2004, and 7th April, 2005 submitting a copy of the draft Hydro Policy and seeking Commission's advice to facilitate finalisation of the State Policy in this regard.

2. As mandated under Section 86(2) of the Electricity Act, 2003, I am directed to forward herewith the Commission's advice and comments, where appropriate, on the draft Hydro Power Policy.
3. Matters concerning tariff and power purchase and procurement process will be decided separately through formal Orders, for which the process has been separately initiated by the Commission. It is possible that, in this process, some further recommendations may also be made to GoM.

With regards,

Yours faithfully,

(A.M. Khan)
Sd/-
Secretary, MERC

Encl: as above.

Annexure to MERC letter No. MERC/17(1) of 2002/ dated 18.5.2005

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION -

ADVICE TO GOMON DRAFT SMALL HYDRO POLICY

The Clause-wise comments and advice of the Maharashtra Electricity Regulatory Commission (MERC), where appropriate, as mandated under Section 86(2) of the Electricity Act, 2003, on the draft State Hydel Policy for Development of Small Hydro Power Sector through private sector participation referred under GoMID's letter No. HEP-1203(160/2004)HP dated 6th December, 2004, are set out below:

A-1 Scope:

(a) Generally, the scope shall meet the conditions / definitions stipulated under the Electricity Act, 2003.

(b) The Commission's ruling on the nature of CPPs and related issues is given in its Order dated 8th September, 2004 in Case Nos. 55 & 56 of 2003, which may be referred to for further clarity (copy enclosed). Relevant extract is given below, which concerns the interpretation of the term "primarily".

"ISSUE NO. 1: DEFINITION OF A CPP WITH RESPECT TO OWN CONSUMPTION VERSUS SALE MIX

Table 1 provides the interpretation of word "primarily" in the definition of the CPP u/s 2(8) of EA 2003 for Self-Consumption versus Sale to Distribution Licensee and/ or the Third Party.

Table 1

Interpretation of 'Primarily' in Definition of CPP under Section 2(8) of EA 2003

<i>Self Consumption (as % of Installed Capacity of CPP)</i>	<i>Sale to Distribution Licensee/ Third Party (as % of Installed Capacity of CPP)</i>
51%	49%

The above interpretation of the word "primarily" is the Commission's current stand in this matter, and is in line with the Order dated 03.08.2004 in Case No. 57 of 2003. However, as the Commission is to be guided by the National Electricity Policy and Tariff Policy of the Government of India as and when it is notified MERC may revisit the above interpretation, if required.

Relief to CPP Holders- Special Conditions

In order to facilitate better utilisation of excess CPP capacity the following conditions (as shown in Table 2) shall apply in the specific cases to ensure discipline in the share of self consumption:

Table 2

Treatment of Existing/ New CPPs in Case of Special Conditions with Respect to Self Consumption and Sale to Grid/ Third Party

Particulars	Condition on Consumption as a Percentage of Total Installed Capacity of Captive Power Plant (CPP)			
	Self Consumption	Sale to Distribution Licensee	Sale to Third Party	Cumulative Sale (Distribution Licensee and Third Party)
Normal Condition*	<i>Minimum 51%</i>	<i>Maximum 49%</i>	<i>Maximum 49%</i>	<i>Maximum 49%</i>
Special Condition	<i>Minimum 25% with a time limit</i>	<i>Maximum 75% with a time limit</i>	<i>Maximum 49%</i>	<i>Maximum 75% with a time limit</i>

*Note: *Normal Condition is the share of consumption for self use and that for sale to the grid/ third party as defined by the Commission*

CPP Holders will be allowed to sell power in excess of the defined ceilings in this dispensation under the following Special Conditions:

- 1) Low Capacity Utilisation: Where the existing CPP Holder has a low capacity utilisation, viz. less than or equal to 25% of the installed capacity and hence lower offtake of power for self consumption. This relaxation would be applicable for a time limit of 3 years, before a review by the Commission in case extension of this time period is desired by the CPP Holder on valid grounds.
- 2) Shutdown of Manufacturing Capacity: Where the existing CPP Holder's unit is shut down and hence there is lower offtake of power for self-consumption. This relaxation would be applicable for a time limit of 3 years, before a review by the Commission in case extension of this time period is desired by the CPP Holder on valid grounds.
- 3) Proposed Capacity Expansion of Existing CPP: Where the existing CPP Holder goes for CPP capacity expansion in anticipation of the higher future requirements and hence there is lower proportion of offtake of power for self consumption till the additional capacity is utilised. This relaxation would be applicable for a time limit of 3 years, before a review by the Commission in case the CPP Holder desires the extension of this time period on valid grounds.

Proposed Capacity Expansion for New CPP: Where a new CPP is installed which has excess capacity in anticipation of higher future requirements, and hence there is lower proportion of offtake of power for self-consumption in the intervening period. This relaxation would be applicable for a time limit of 3 years, before a review by the Commission in case the extension of this time period is desired by the CPP Holder on valid grounds."

The Commission advises that the above interpretation and dispensation be applied by GoM to small hydro project CPPs also.

(c) Sale may be allowed to any consumer and not only to HT consumers as mentioned in the draft as well as licensees/ MSEB or any Power Trading Company.

(d) The Policy provisions also may be made explicitly applicable to State Govt. companies or undertakings (such as MIDC) who own the water reservoirs, and to local authorities.

A-2, 3 & 4 **Operative Period, procedure for selection of developers, and development of project.**

The Operative Period cited by Irrigation Department is in respect of the Build, Operate and Transfer Basis (BOT) dispensation. This period, and the procedure for selection of developers are for GoM to decide, but preferably in consultation with the Developers. It may be noted that the Commission has initiated the tariff determination process for Small Hydro Projects separately, and the tariff and other dispensation determined through this process may or may not apply for a period coterminus with the BOT and/or lease period agreed to between the developer and GoM. However, it is not clear why a price preference of 5% of maximum bid offered by CPPs is proposed to be given to CPPs at A.3.3.2 for inter se comparison, and the Commission advises that this distinction made between IPPs and CPPs be removed.

The developer can submit a competitive bid only if information on project viability is available at the time of bidding. This is not the case in the proposal where the bidder is required to bid, and pay the “upfront amount” before the TFR. This provision may reduce investor interest and thus reduce competition. To encourage larger and fair competition, GoMID could prefer to ensure that adequate information on the project site and its viability is provided at the time of bidding.

A-5 **Consultancy**

The Commission has no specific advice in this matter since it is between the Developer and the GoMID.

A-6.3 Apart from **Technical standards** relating to connectivity with the grid referred to in clause (b) of Section 73 of EA, 2003, Section 10 and other applicable provisions of EA, 2003 will have to be complied with.

A-7 **Grid Interfacing and Evacuation arrangements.**

This will be as per the dispensation emerging from the tariff and procurement process determination exercise being carried out separately.

A-8 **Transmission Utilities:**

In modification of the proposed provisions, the first three paras of A-8 may read as follows:

"Developer may construct and maintain dedicated transmission lines as defined in EA, 2003 from the generation plant to the destination of his use. However, he will have the right to access for existing transmission facilities in the State as per the provisions of EA, 2003 and the Regulations and other dispensations of MERC regarding Transmission Open Access. The developer shall sign Energy wheeling agreement with MSEB/STU. When transmission lines of MSEB/STU are used, rates of wheeling charges and transmission losses shall be as decided by MERC from time to time, and wheeling transactions shall be settled accordingly."

(These rates will be determined in the ongoing tariff determination and procurement process by MERC separately.)

A-9 **Banking**

The provisions will be as per the dispensation emerging from the separate tariff and procurement process determination exercise currently underway.

A-10 **Generation Restrictions**

The second last sentence should read as "..... the directives of State Govt., subject to the provisions of Section 11 of EA, 2003.". The last sentence should be deleted, being inconsistent with the statutory provisions.

A-12 **Force Majeure**

The proposed force majeure provisions may be amended taking into account the special conditions applied by the Commission in case of CPPs self-consuming less than 51%, cited in comments on A-1 above.

A-14 **Taxes and Duties**

The Commission in its Order dated 8th September, 2004 on fossil fuel based CPPs has stated that *"to encourage and promote sale of available surplus captive power within the State and to avoid unduly overburdening the Captive Power Plants with further levy of Electricity Duty, the Commission, in exercise of the power vested in it under Section 86(2), advises the Government of Maharashtra to abolish the Electricity Duty on the self-consumption by Fossil Fuel based Captive Power Plants in the State. The Commission also recommends that Tax on Sale of Electricity should not be levied in the case of CPPs".* The Commission advises GoM similarly in the case of SHP CPPs also.

A-15 Transfer of Allotment

The condition at A-15.3 when a developer wants to transfer ownership of generating unit completely to other developer, should be subject to the Commission's advice set out above in respect of Clause A-1.

A-16 Sale of Power

This will be as per the dispensation emerging from the separate tariff and procurement process determination exercise currently underway.

A-17 Inspection of Project

The Commission advises that development of database (capacity, generation, PLF, downtime with relevant constraints etc.) should also be carried out.

A-18 Exclusive Jurisdiction of MERC

The first paragraph may be reworded as follows: *"MERC has exclusive jurisdiction on those provisions of this Policy which are within its regulatory mandate under the provisions of Electricity Act, 2003, especially regarding electricity sales rates, power purchase agreements and provisions regarding wheeling, banking distribution and transmission loss charges etc. Similarly, MERC has jurisdiction as per the provisions of EA, 2003 as regards the promotion of non-conventional energy sources, facilities for transmission of energy, sale of power to any interested consumer and sharing of purchase of power amongst the MSEB / utilities / Licensees. Orders issued by MERC regarding these issues from time to time shall be binding on all."*

In the event of dispute in interpretation of this policy or any clause in the agreement between developer and GoMID or MSEB/STU, the same shall be referred to MERC "to the extent of its jurisdiction under section 86 (1)" and other provisions of EA 2003.

C-2 Promotional Incentives offered by GoM

As at A-14 above, the Commission advises that SHP CPPs should also be exempt not only from Electricity Duty but also from Tax on Sale of Electricity.

Change of Option from Sale to 3rd party to sale to Licensee and vice versa

This will be as per the dispensation emerging from the tariff determination and procurement process exercise currently underway.

(A.M. Khan)
Sd/-
Secretary, MERC

Mumbai, Dated: 18th May, .2005