

No. 32/XXXVI(3)/2013/67(1)/2012
Dated Dehradun, January 28, 2013

NOTIFICATION

Miscellaneous

In pursuance of the provisions of Clause (3) of Article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of, '**The Uttarakhand Water Tax On Electricity Generation Act, 2012**' (Adhiniyam Sankhya 09 of 2013).

As Passed by the Uttarakhand Legislative Assembly and assented to by the Governor on 25 January, 2013.

THE UTTARAKHAND WATER TAX ON ELECTRICITY GENERATION ACT, 2012
[UTTARAKHAND ACT NO. 09 OF 2013]

to levy water tax on electricity generation in the State of Uttarakhand

An

Act

be it enacted in the Sixty-third Year of the Republic of India by the Uttarakhand State Legislative Assembly as follows:-

CHAPTER-1
PRELIMINARY

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| Short Title,
Extent and
Commencement | 1. (1) This Act may be called the Uttarakhand Water Tax on Electricity Generation Act, 2012.
(2) It extends to the whole State of Uttarakhand.
(3) It shall come into force from such date as the State Government may by notification in the Gazette appoint.
(4) The provisions of this Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force. |
| Definitions | 2. In these rules, unless there is anything repugnant in the subject or context :-
(a) "Act" means the Uttarakhand Water Tax on Electricity Generation Act, 2012; |

- (b) **"Commission"** means Uttarakhand State Commission for Water Tax on Electricity Generation established under section 21 of the Act;
- (c) **"Electricity"** means electrical energy generated by way of water drawn from any water source flowing within the territory of the State;
- (d) **"Government"** means Government of Uttarakhand;
- (e) **"Notification"** means a notification published in the Gazette of the State, and the term "notify" shall be construed accordingly;
- (f) **"User"** means any person, group of persons, local body, Government Department, company, corporation, society etc. drawing water or any other authority authorized under chapter -II of the Act to avail the facility to draw water from any source for generation of electricity;
- (g) **"Water"** means natural resource flowing in any river, stream, tributary, canal, nallah or any other natural course of water or stipulated upon the surface of any land like, pond, lagoon, swamp, spring;
- (h) **"Water Source"** means a river and its tributaries, stream, nallah, canal, spring, pond, lake, water course or any other source from which water is drawn to generate electricity;
- (i) **"Water Tax"** means the rate levied or charged for water drawn for generation of electricity and fixed under this Act.

CHAPTER-2

INTRODUCTION

General

3. (1) For the purpose of this Act, every water source in the State is, and shall remain, the property of the Government and any proprietary ownership, or any riparian or usage right, on such water resources vested in any individual, group of individuals or any other body, corporation, company, society or community shall, from the date of commencement of the Act, be deemed to have been terminated and vested with the Government. However, for rivers of interstate nature and rivers under the ambit of international treaties, the ownership right of Uttarakhand Government shall be limited to non-consumptive use of water.

- (2) No person, group of persons, Government department, local authority, corporation, company, society or any other body shall draw water from any source for electricity generation except in accordance with the provisions of the Act.

CHAPTER-3
USAGE OF WATER BY INSTALLATION OF HYDROELECTRIC
GENERATING UNIT

**Installation of
Scheme for
usage of water**

4. No person, group of persons, Government department, local authority, corporation, company society or any other body, by whatever name called (hereinafter in this Chapter will be called the "user"), shall install a Scheme requiring usage of water (non consumptive use) of any water source for generating electricity except without being registered under the Commission in accordance with the provisions provided hereinafter in this Chapter.

**Submission
of Sanctioned
Scheme for
usage of
water by the
user**

5. Any user intending to install a Scheme requiring usage of water (non consumptive use) for the purpose of generation of electricity shall submit Detailed Project Report of the scheme, duly sanctioned by authority competent to do so in this behalf to the Commission accompanied by such fee and charges as may be fixed by the Commission for registration.

**Acceptance
of the
Scheme**

6. After receipt of the scheme from a user, the Commission shall consider the acceptance of the scheme under this Act.

**Information
to the User**

7. After the scheme is accepted by the Commission under section 6, the Commission shall register the scheme and inform the user to –
- (a) Execute an agreement in such a form and manner with the Commission as may be prescribed; and
 - (b) Pay such fee and water Tax as fixed under chapter 4 of this Act.

**Prohibition
on
installation
of a Scheme**

8. No user shall install a Scheme requiring usage of water without adhering to the requirements of section 10.

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| Registration for usage of water | 9. | No person shall install a Scheme, requiring usage of water or in any other way use the water, unless he/she is authorized to do so by a registration certificate, issued under section 10. |
| Grant of Registration Certificate | 10. | An user intending to use water (non consumptive use) for generation of electricity shall be issued a registration certificate after the execution of an agreement between the user and the Commission under the Act. |
| Registered User not to do certain things | 11. | <p>No registered user shall without prior approval of Commission :-</p> <p>(a) Undertake any transaction to acquire by purchase or takeover or otherwise, the utility of any other user; or</p> <p>(b) Merge his utility with the utility of any other user;</p> <p>(c) No user shall at any time assign his registration or transfer his utility or any part thereof by sale, lease, exchange or otherwise without the prior approval of the Commission.</p> |
| Duties, obligations and responsibilities of the Registered User | 12. | <p>(1) The registered user shall be liable to pay water tax for the water drawn for electricity generation as per the provisions of the Act.</p> <p>(2) Where any user has constructed a Hydropower scheme, for purpose of generation of electricity, prior to the commencement of the Act, such user shall, within a period of six month from the date of commencement of the Act, apply for registration under the Act and the Commission shall pass an order to register the user within a period of six months from the date of receipt of application in accordance with the provisions of the Act.</p> <p>(3) If the user as mentioned in sub-section (2) fails to apply or register within time stipulated therein, the Commission shall forthwith impose suitable penalty which may be enhanced in case of prolonged default.</p> <p>(4) Every registered user shall be under an obligation to ensure the safety of the life and property of inhabitants of the area under the operation of the scheme.</p> <p>(5) Every registered user shall be bound to allow the authority or any other officer authorized by authority to have access at any time to the scheme for their satisfaction.</p> |

**Control and
safety
provisions**

13. (1) The Commission may, by notice in writing given to the user require him to :-
- (a) Cause periodic inspection carried out by an expert, to the satisfaction of the Commission and in accordance with the procedure and at such intervals, as the Commission may specify, for the Scheme;
- (2) The user shall pay such fee and such other charges as the State Water Commission may fix in this behalf, to the State Water Commission for undertaking the following activities :-
- (a) Periodical inspection of the scheme by the Commission or any other officer or expert empowered in the behalf;
- (b) Any other activity performed or caused to be performed by the Commission under this section in relation to the scheme of the user.

CHAPTER-4**ASSESSMENT OF WATER DRAWN BY USER****Assessment
of water
drawn by
user**

14. (1) The Commission shall install or cause to be installed flow measuring device within the premises of Scheme or at such other place where the Commission deems fit for purposes of measuring the water drawn for electricity generation or may adopt any indirect method for assessment of water drawn by the user.
- (2) The Commission may either install or, require a user to install a flow measuring device as per the specifications approved by the Commission at his premises or at his location or at such other place as the Commission may direct and thereafter adjust the expenditure incurred by such user on such installation towards the water Tax payable by the user.

**Injuring the
flow
measuring
device or any
fitting**

15. No person shall willfully injure or cause to be injured, any device or any of the fittings of the device.

**Fraud in
respect of
flow
measuring
devices**

16. No person shall fraudulently or dishonestly-
- alter the index of any flow measuring device, or prevent any device from recording the actual quantity of water supplied; or
 - extract or draw water before it has been recorded by the measuring device set up for the purpose of recording the same; or
 - tamper the measuring device, install or use a tampered device; or
 - use any other device or method which interferes with accurate or proper registration, calibration or metering of water supplied; or

CHAPTER-5

WATER TAX

**Fixation of
water Tax**

17. (1) The user shall be liable to pay the Water Tax under the Act at such rates as the Government may by notification fix in this behalf.
- (2) The State Government may review, increase, decrease or vary the rates of the Water Tax fixed under this section from time to time in the manner it deems fit.

**Recovery of
water Tax**

18. The Commission shall recover water tax as per the rates fixed by the State Government from every user whenever water is drawn by a user for generation of electricity.

**Procedure
for
assessment**

19. (1) The assessment of water drawn by the user for electricity generation and computation of water tax there of, shall be carried out by the Commission.
- (2) The user shall pay the water Tax as assessed under sub-section (1) within such time as may be specified by the Commission.
- (3) If any user fails to pay water Tax due on him, penalty shall be imposed on the user as determined by the Commission. The User has to pay Water Tax along with penalty within extended time as may be specified by the Commission. If the user again fails to pay Water Tax along with penalty within the extended time, the dues shall be recovered as arrears of land revenue.

CHAPTER-6

STATE COMMISSION FOR WATER TAX ON ELECTRICITY GENERATION

**Establishment
of
Commission**

20. (1) The Government may, within three months from the date of commencement of the Act, by notification, establish an Commission to be known as the State Commission for tax on electricity generation to exercise the powers conferred on, and to

discharge the functions under this Act:

Provided that till the Commission is established under the section, the Principal Secretary/Secretary, Irrigation may exercise the powers and discharge the functions of the Commission under the Act.

- (2) The Commission established under sub-section (1) shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, be the said name, sue or be sued.
- (3) The Head Office of the Commission shall be at such place as the State Government fix in this behalf.
- (4) The Commission shall consist of a Chairperson and not more than two Members.
- (5) The Chairperson and Members of the Commission shall be appointed by the State Government on the recommendations of a search committee referred to in sub-section (1) of section 22.

Qualifications for appointment of Chairperson and Members of the Commission

21. (1) The Chairperson shall be appointed from amongst persons who are either holding or have held a post not below the rank of Secretary to State Government and have adequate knowledge of, or experience in, or have shown capacity in dealing with, problems relating to engineering, finance, commerce, economics, law, administration or management.
- (2) The Members of the Commission shall be persons of ability, integrity and standing who have adequate knowledge of, or experience in, or have shown capacity in dealing with, problems relating to engineering, finance, commerce, economics, law or management :

Provided that at least one Member shall be from amongst the persons who are either holding or have held a post not below the rank of Chief Engineer or equivalent and having qualification

and experience in the field of Hydropower Engineering.

- (3) The Chairperson or any Member of the Commission shall not hold any other office of the profit.
- (4) The Chairperson shall be the Chief Executive Officer of the Commission.

**Constitution
of a search
Committee**

22. (1) The Government shall, for the purposes of selecting the Chairperson and Members of the Commission, constitute a search committee consisting of-
 - (a) Chief Secretary - Chairperson;
 - (b) Principal Secretary/ Secretary
Finance, Uttarakhand Government - Member;
 - (c) Principal Secretary/ Secretary
Irrigation, Uttarakhand Government - Member;
 - (d) Principal Secretary/ Secretary
Power, Uttarakhand Government - Member;
 - (e) Principal Secretary/ Secretary
Law, Uttarakhand Government - Member.
- (2) The Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation, or removal of the Chairperson or Member and six month before the superannuation or end of the tenure of the Chairperson or a Member make a reference to the search committee for filling up of the vacancy.
- (3) The search committee shall finalize the selection of Chairperson or the Members, within two months from the date on which the reference is made to it.
- (4) Before recommending any person for appointment as Chairperson or Member, the search committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his function as such Chairperson or Member.

**Term of
Office and
Conditions of
Service**

23. (1) The Chairperson and other Members shall hold office for a term of three years from the date they enter upon their office :

Provided that no Chairperson or Member shall hold office after he has attained the age of 65 years :

Provided further that the Government may, at any time for the reasons recorded in writing and after giving an reasonable opportunity of being heard, determine term of the Chairperson or Member before he completes three years term or attain age of 65 years, as the case may be :

Provided further that the Government may suspend the Chairperson or any Member of the Commission in respect of whom an order determining the term is proposed to be passed or in the opinion of the Government there are just and sufficient reasons to suspend the Chairperson or the Member.

- (2) The salary, allowances and other terms and conditions of service of the Chairperson and the Members shall be such as may be prescribed :

Provided that the salary, allowances and other terms and condition of service of the Chairperson and the Members shall not be varied to their disadvantage after appointment.

- (3) The Chairperson and Members shall, before entering upon their office, make and subscribe to an oath of office and secrecy in such form and in such manner and before such authority as may be prescribed.

- (4) Notwithstanding anything contained in sub-section (1), the Chairperson or a Member may relinquish his office by giving in writing to the Government a notice of not less than three months.

- (5) The Chairperson or any Member ceasing to hold office as such shall -

- (a) not be eligible for further appointment under the Government for a period of two years from the date he ceases to hold such office; and

- (b) not accept any commercial employment for a period of two years from the date he ceases to hold such office.

**Removal of
Chairperson
or Member**

24. (1) The Chairperson or the Member shall cease to hold his office as such if he-
- (a) has been adjudged as insolvent by the competent court; or
 - (b) has been convicted of an offence by the competent court.
 - (c) has become physically or mentally incapable of acting as such; or
 - (d) has acquired such financial or other interest as is likely to affect prejudicially his function in the Commission ;
- (2) Where a question arises as to if the Chairman or the member has become physically or mentally incapable of acting as such or has acquired such financial or other interest as is likely to affect prejudicially his function in the Commission, the decision in this regard shall be taken by the Government and shall be final.

**Officers and
other
Employees of
the
Commission**

25. (1) The Commission shall have a Secretary to exercise such powers and perform such duties under the control of the Chairperson, as may be prescribed.
- (2) The Secretary shall be appointed by the Government.
- (3) The number, nature and categories of other officers and employees required to assist the Commission, to discharge its functions, shall be such as may be prescribed.
- (4) The salaries and allowances payable to, and other term and conditions of the service of the Secretary, officers and other employees shall be such as may be prescribed.
- (5) The Commission shall engage the engineers and other staff of State Government to assess the water drawn by users and other technical activities to assist the Commission to discharge its functions on the terms and conditions as may be prescribed.

**Functions of
the
Commission**

26. The Commission shall discharge the following functions; namely:
- (a) Enforce the decisions and orders issued under the Act
 - (b) Adjudicate upon the disputes regarding Water Tax.
 - (c) Ensure transparency while exercising the powers and discharging its functions;
 - (d) Establish a system of enforcement, monitoring and measurement of water drawn for electricity generation;
 - (e) Such other functions as may be prescribed.

**Powers of the
Commission**

27. (1) The Commission shall for the purposes of making any inquiry or initiating any proceedings under the Act, have the same powers as are vested in a Civil Court, under the Code of Civil Procedure, 1908 in respect of the following matters, namely,-
- (a) summoning and enforcing the attendance of any witness and examining him on oath;
 - (b) discovery and production of any document or other material object capable of being produced as evidence;
 - (c) receiving of evidence on affidavits;
 - (d) requisition of any public record;
 - (e) issuing commission for examination of witnesses;
 - (f) reviewing its decisions, directions and orders;
 - (g) any other matter which may be prescribed.
- (2) The Commission shall have the powers to pass such interim order in any proceeding, hearing or matter before it, as it may consider appropriate.
- (3) The Commission may authorize any person, as it may deem fit, to represent the interest of the registered users in the proceedings before it.

**Proceedings
before
Commission**

28. All proceedings before the Commission shall deem to be judicial proceedings and the Commission shall deem to be a Civil Court for the purposes of offences affecting the administration of justice under the Indian Penal Code, 1860.

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| Power of entry and seizure | 29. | The Commission or any officer, not below the rank of Gazetted Officer specially authorized in this behalf by the Commission, may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts of copies there from subject to the provisions of Indian Penal Code. |
| Delegation | 30. | The Commission may, by general or special order in writing, delegate to the Chairman, any Member, Secretary, officer of the Commission or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under the Act, (except the powers to adjudicate disputes under clause (f) of sub-section (1) of section 26 and the powers to make regulations under section 48 as it may deem necessary. |
| Appeal to High Court | 31. | <p>(1) Any person aggrieved by any decision or order of the Commission may file an appeal to the High Court.</p> <p>(2) An appeal under sub-section (1) shall be preferred within ninety days from the date of communication of the decision or order of the Commission to the person aggrieved by such decision or order.</p> |
| Penalty for non-compliance of directions of Commission | 32. | If any complaint is filed before the Commission that any person has contravened any provisions of the Act, or if the Commission is satisfied that any person has contravened any of the provisions of the Act or the rules or regulations or any direction issued by the Commission has not been complied with, the Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under the Act, such person shall pay, by way of penalty, such amount which shall be prescribed by the Commission for each contravention and in case of a continuing |

failure to pay such penalty, with an additional penalty which may be levied as deemed fit by the Commission for everyday from the day such failure commences until he pays such penalty.

**Power to
adjudicate**

33. (1) For the purpose of adjudicating under the Act, the Commission shall appoint any of its members to be an adjudicating officer for holding an inquiry in such manner as may be prescribed after giving the person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.
- (2) While holding any inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or produce any document which, in the opinion of the adjudicating officer, may be useful for, or relevant to, the subject-matter of the inquiry, and if, on such inquiry, he is satisfied that the person has failed to comply with any provision of the Act, he may impose such penalty as he thinks fit in accordance with the provisions of the Act.
- (3) Any person aggrieved by an order under sub-section (2) may, within thirty days of the order, prefer an appeal before the Commission :

Provided that the Commission shall not pass any order without affording reasonable opportunity to the other party or parties, as the case may be.

**Factors to be
taken in to
account by
adjudicating
officer**

34. While adjudicating the quantum of penalty under section 35, the adjudicating officer shall have due regard to the following factors, namely:-
- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the repetitive nature of the default.

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| Penalty not to effect other liabilities | 35. | The penalties imposed under the Act shall be in addition to, and not in derogation of, any liability in respect of payment of compensation or, in the case of a user, the revocation of his registration which the offender may have incurred. |
| Grants and loans by the Govt. | 36. | The Government may, after due appropriation made by State Legislature in this behalf, make to the Commission grants and loans of such sums of money as the Government may consider necessary. |
| Establishment of fund by the Govt. | 37. | <p>(1) There shall be a fund constituted to be called the Commission fund and that shall be credited thereto,-</p> <p>(a) any grants and loans made to the Commission by the Government;</p> <p>(b) all fees received by the Commission under the Act;</p> <p>(c) all sums received by the Commission from such other sources as may be decided upon by the Government.</p> <p>(2) The fund shall be applied for meeting,-</p> <p>(a) the salary, allowances and other remuneration of Chairperson, Members, officers and other employees of the Commission;</p> <p>(b) the expenses of the Commission to discharge its function under the Act;</p> <p>(c) the expenses on objects and for purposes authorized by the Act.</p> <p>(3) The Government may prescribe the manner of applying the fund for meeting the expenses specified in clause (b) or clause (c) of sub-section (2).</p> |
| Accounts of Commission | 38. | <p>(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed.</p> <p>(2) The annual accounts and balance-sheet of the Commission shall be forwarded to the Government and the Government shall cause the same to be laid, as soon as may be after it is received, before the State Legislature.</p> |

- Annual Report of the Commission** 39. (1) The Commission shall prepare once every year, in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the Government.
- (2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before the State Legislature.
- Budget of the Commission** 40. The Commission shall prepare, in such form and at such time in each financial year as may be prescribed, its budget for the next financial year, showing the estimate receipts and expenditure of the Commission and forward the same to the Government.
- Directions by the Government** 41. (1) To discharge its functions, the Commission shall be guided by such direction in matters of policy involving public interest as the State Government may from time to time give to it in writing.
- (2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final.
- Protection of action taken in good faith** 42. No suit, prosecution or other proceeding shall lie against the Government or the Commission or any officer of the Government, or any Member, officer or other employee of the Commission or any public servant for anything done or in good faith purporting to be done under the Act or the rules or regulations.
- Members, officers, etc. to be public servants** 43. The Chairperson, Members, officers and other employees of the Commission when acting or purporting to act in pursuance of any of the provisions of the Act, shall be deemed to be public servant within the meaning of the Indian Penal Code, 1860.
- Provisions of the act to be in addition to and not in derogation of other laws** 44. The provisions of the Act are in addition to and not in derogation of any other law for the time being in force in the State.

Powers of Government to make rules

45. (1) The Government may, by notification, make rules for carrying out the provisions of the Act.
- (2) In particular and without prejudice to the generality of foregoing power, such rules may provide for all or any of the following matters, namely:-
- (a) the form and manner in which the agreement is to be executed under clause (b) of section 7;
 - (b) the form and manner of application and the fee to be paid for grant of registration certificate under section 10;
 - (c) the salary, allowances and other terms and conditions of service of the Chairperson and Members of the Commission under section 23;
 - (d) the form and manner in which and the authority before whom the Chairperson and Members shall make and subscribe oath under sub-section (3) of section 23;
 - (e) the powers to be exercised and duties to be performed by the Secretary of the Commission under sub-section (1) of section 25;
 - (f) the number, nature and categories of officers and employees of the Commission under sub-section (2) of section 25;
 - (g) the salaries, allowances and other terms and conditions of Secretary, officers and other employees of the Commission under sub-section (4) of section 25;
 - (h) the manner of applying the Commission Fund under sub-section (3) of section 40; and
 - (i) any other matter which is required to be, or may be prescribed.

Powers of commission to make regulations

46. (1) The Commission may, with the prior approval of the Government make regulations consistent with the Act and the rules made thereunder generally to carry out the provisions of the Act.
- (2) All regulations made by the Commission under the Act shall be subject to the condition of previous publication.

Rules and regulations to be laid before the State legislature

47. Every rule made by the Government and every regulation made by the Commission shall be laid, as soon as may be after it is made, before each House of the State Legislature.

Power to remove difficulties

48. (1) If any difficulty arises in giving effect to the provisions of the Act, the Government may, by order published in the Government Gazette, make such provisions not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of the Act.

- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature.

By Order,

D. P. GAIROLA,
Principal Secretary.