

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

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THE UTTARAKHAND WATER TAX ON ELECTRICITY GENERATION ACT, 2012
[UTTARAKHAND ACT NO. 09 OF 2013] (as amended by Amendment Act No. 04 of 2016)

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

Short Title, Extent and Commencement	1.	<p>(1) This Act may be called the Uttarakhand Water Tax on Electricity Generation Act, 2012.</p> <p>(2) It extends to the whole State of Uttarakhand.</p> <p>(3) It shall come into force from such ¹[DATE] as the State Government may by notification in the Gazette appoint.</p> <p>(4) The provisions of this Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force.</p>
Definitions	2.	<p>In these rules, unless there is anything repugnant in the subject or context :-</p> <p>(a) “Act” means the Uttarakhand Water Tax on Electricity Generation Act, 2012;</p> <p>(b) {“Commission” means Uttarakhand Water Resources Management and Regulatory Commission, under the Uttarakhand Water Management and Regulatory, 2013;}²</p> <p>(c) “Electricity” means electrical energy generated by way of water drawn from any water source flowing within the territory of the State;</p> <p>(d) “Government” means Government of Uttarakhand;</p> <p>(e) “Notification” means a notification published in the Gazette of the State, and the term “notify” shall be construed accordingly;</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(i) “Water Tax” means the rate levied or charged for water drawn for generation of electricity and fixed under this Act.</p>

2- Subs. by section 2 of Uttarakhand Act no 04 of 2016.

¹ With effect from August 15, 2015 vide Not. No. 2207/11-2015/01(50)/2011 by Sinchayi Anubhag-2

		CHAPTER-2 INTRODUCTION
General	3.	<p>(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.</p> <p>(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.</p>
		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 –

		<p>(a) Execute an agreement in such a form and manner with the Commission as may be prescribed; and</p> <p>(b) Pay such fee and water Tax as fixed under chapter 4 of this Act.</p>
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.
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</p>

		at any time to the scheme for their satisfaction.
Control and safety provisions	13.	<p>(1) The Commission may, by notice in writing given to the user require him to:-</p> <p>(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;</p> <p>(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 :-</p> <p>(a) Periodical inspection of the scheme by the Commission or any other officer or expert empowered in the behalf;</p> <p>(b) Any other activity performed or caused to be performed by the Commission under this section in relation to the scheme of the user.</p>
		<p>CHAPTER-4 <u>ASSESSMENT OF WATER DRAWN BY USER</u></p>
Assessment of water drawn by user	14.	<p>(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.</p> <p>(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.</p>
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.	<p>No person shall fraudulently or dishonestly-</p> <p>(a) alter the index of any flow measuring device, or prevent any device from recording the actual quantity of water supplied; or</p> <p>(b) extract or draw water before it has been recorded by the measuring device set up for the purpose of recording the</p>

		<p>same; or</p> <p>(c) tamper the measuring device, install or use a tampered device; or</p> <p>(d) use any other device or method which interferes with accurate or proper registration, calibration or metering of water supplied; or</p>
		<p>CHAPTER-5 <u>WATER TAX</u></p>
Fixation of water Tax	17.	<p>(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.</p> <p>(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.</p>
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.	<p>(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.</p> <p>(2) The user shall pay the water Tax as assessed under sub-section (1) within such time as may be specified by the Commission.</p>
		<p>(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.</p>
		<p>CHAPTER-6 <u>STATE COMMISSION FOR WATER TAX ON ELECTRICITY GENERATION</u></p>
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

		<p>Act:</p> <p>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.</p> <p>(2) { * * * }¹</p> <p>(3) { * * * }¹</p> <p>(4) { * * * }¹</p> <p>(5) { * * * }¹</p>
{ * * * } ²	21.	{ * * * } ²
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{ * * * } ²	23.	{ * * * } ²
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{ * * * } ²	25.	{ * * * } ²
Commission	26.	<p>{The Commission shall discharge the following functions in addition to the functions specified in Water Management and Regulatory Commission established under Uttarakhand Water Management and Regulatory Act 24 of 2013; namely:</p> <p>(a) to enforce the decisions and orders issued under the Act</p> <p>(b) to adjudicate upon the disputes regarding Water Tax.</p> <p>(c) to ensure transparency while exercising the powers and discharging its functions;</p> <p>(d) to establish a system of enforcement, monitoring and measurement of water drawn for electricity generation;</p> <p>(e) to execute other functions as may be assigned to him or fix by the Government. }³</p>

1- Repeal by section 3 of UK Act no 04 of 2016.

2- Repeal by section 4 of UK Act no 04 of 2016.

3- Subs. by section 5 of UK Act no 04 of 2016.

<p>Powers of the Commission</p>	<p>27.</p>	<p>(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,-</p> <ul style="list-style-type: none"> (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. <p>(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.</p> <p>(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.</p>
<p>Proceedings before Commission</p>	<p>28.</p>	<p>{All proceedings before the Commission shall deem to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code and the Commission shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.}¹</p>
<p>Power of entry and seizure</p>	<p>29.</p>	<p>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.</p>

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 1- Subs. by section 6 of UK Act no 04 of 2016.

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.

<p>Power to adjudicate</p>	<p>33.</p>	<p>(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.</p> <p>(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.</p> <p>(3) Any person aggrieved by an order under sub-section (2) may, within thirty days of the order, prefer an appeal before the Commission :</p> <p style="padding-left: 40px;">Provided that the Commission shall not pass any order without affording reasonable opportunity to the other party or parties, as the case may be.</p>
<p>Factors to be taken in to account by adjudicating officer</p>	<p>34.</p>	<p>While adjudicating the quantum of penalty under section 35, the adjudicating officer shall have due regard to the following factors, namely:-</p> <p>(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;</p> <p>(b) the repetitive nature of the default.</p>
<p>Penalty not to effect other liabilities</p>	<p>35.</p>	<p>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.</p>
<p>{***}¹</p>	<p>36.</p>	<p>{***} 1</p>

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1- Repeal by section 7 of UK Act no 04 of 2016.

Establishment of fund by the Govt.	37.	{(1) There shall be a fund constituted to be called the Commission fund and that shall be credited thereto,- (a) any grants and loans made to the Commission by the Government; (b) all fees received by the Commission under the Act; (c) all sums received by the Commission from such other sources as may be decided upon by the Government. (2) The Government may prescribe the manner of utilizing the fund for meeting the expenses.} ¹
{***} ²	38.	{***} ²
{***} ²	39.	{***} ²
{***} ²	40	{***} ²
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:-

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1- Subs. by section 8 of UK Act no 04 of 2016.

2- Repeal by section 9 of UK Act no 04 of 2016.

		<p>(a) the form and manner in which the agreement is to be executed under clause (b) of section 7;</p> <p>(b) the form and manner of application and the fee to be paid for grant of registration certificate under section 10;</p> <p>(c) the salary, allowances and other terms and conditions of service of the Chairperson and Members of the Commission under section 23;</p> <p>(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;</p> <p>(e) the powers to be exercised and duties to be performed by the Secretary of the Commission under sub-section (1) of section 25;</p> <p>(f) the number, nature and categories of officers and employees of the Commission under sub-section (2) of section 25;</p> <p>(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;</p> <p>(h) the manner of applying the Commission Fund under sub-section (3) of section 40; and</p> <p>any other matter which is required to be, or may be prescribed.</p>
<p>Powers of commission to make regulations</p>	<p>46.</p>	<p>(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.</p> <p>(2) All regulations made by the Commission under the Act shall be subject to the condition of previous publication.</p>
<p>Rules and regulations to be laid before the State legislature</p>	<p>47.</p>	<p>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.</p>
<p>Power to remove difficulties</p>	<p>48.</p>	<p>(1) If any difficulty arises in giving effect to the provisions of the Act, the Government may, by order published in</p>

	<p>the Government Gazette, make such provisions not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty:</p> <p>Provided that no order shall be made under this section after the expiry of two years from the date of commencement of the Act.</p> <p>(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.</p>
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