

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 302/MP/2022 along with I.A. No. 49/2023

Subject : Petition under section 79(1)(f) of the Electricity Act 2003 for (i) approval of Change in Law and (ii) seeking an appropriate mechanism for grant of an appropriate adjustment/ compensation to offset financial/commercial impact of change in law events on account of imposition of water tax in relation to Tehri HEP (1000 MW) and Koteshwar HEP (400 MW) read with the CERC (Terms and Conditions of Tariff) Regulations, 2019 and Order dated 12.7.2022 passed by Hon'ble High Court of Uttarakhand

Petitioner : THDC India Limited

Respondents : RUVNL & 15 ors.

Date of Hearing : **13.12.2023**

Coram : Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member

Parties Present : Shri Tabrez Malawat, Advocate, THDC
Shri Syed Hamza, Advocate, THDC
Shri Sourajit Sarkar, Advocate, THDC
Ms. Rupali Jain, Advocate, THDC
Ms. Swapna Seshadri, Advocate, PSPCL
Ms. Kritika Khanna, Advocate, PSPCL
Shri Venkatesh, Advocate, TPDDL
Shri Shivam Kumar, Advocate, TPDDL
Ms. Shraddha Deshmukh, Advocate, Rajasthan Discoms
Shri Utkarsh Kokcha, Advocate, Rajasthan Discoms
Shri Nived Veerapaneni, Advocate, UPPCL
Shri Karan Arora, Advocate, UPPCL
Shri Rahul Kinra, Advocate, BRPL & BYPL
Shri Aditya Ajay, Advocate, BRPL & BYPL
Ms. Isnain Muzamil, Advocate, BRPL & BYPL

Record of Proceedings

During the hearing, the learned counsel for the Petitioner, THDC submitted that the appeal filed by the Petitioner (against the order dated 12.2.2021 of the Single Bench of the Hon'ble Court of Uttarakhand), challenging the constitutional validity of the Uttarakhand Water Tax on Electricity Generation Act, 2012, the Division Bench of the Hon'ble High Court has passed a split verdict on 25.10.2023. Accordingly, he submitted that the matter is to be assigned to a three-Judge Bench of the Hon'ble High Court. The learned counsel pointed out that consequent upon the split verdict, the orders of the



Hon'ble Court dated 12.7.2022 and 21.12.2022 remain valid, and the Petitioner is obligated to undertake compliance with the same by making regular payments of Water tax to the Govt. of Uttarakhand. He however submitted that notwithstanding the pendency of the appeal, the Commission may devise a regulatory mechanism for recovery of water charges, similar to the mechanism adopted in the case of the NHPC project in the State of J&K. The learned counsel added that the imposition of the Water tax has considerably increased the generation costs for the Petitioner and the same needs to be recovered from the beneficiaries.

2. The learned counsel for the Respondent, UPPCL clarified that pursuant to the split verdict of the Division Bench of the Hon'ble High Court, the matter shall be assigned to a three-Judge Bench by the Hon'ble Chief Justice, who is to assume charge soon. He accordingly submitted that the matter may be heard after the decision of the Hon'ble Court on this issue.

3. The learned counsel for the Respondent PSPCL pointed out that though the Uttarakhand Water Tax on Electricity Generation Act, imposing water tax, was notified during the year 2015, the Petitioner, had not claimed the same in its tariff petitions filed before this Commission, for the period 2014-19. She, however, suggested that the Commission may dispose of the present petition and grant liberty to the Petitioner to claim the said reliefs at the time of truing-up of tariff of its generating stations, in terms of the Tariff Regulations notified by this Commission.

4. The learned counsel for the Respondent, Rajasthan Discoms pointed out that though the Division Bench of the Hon'ble High Court of Uttarakhand has passed a split verdict, the Court was unanimous in holding that the levy of tax cannot be justified as a fee. She also submitted that similar Writ Petitions filed by other generating companies are pending before the Hon'ble High Courts of Sikkim and Himachal Pradesh.

5. On a query by the Commission whether the Respondents have filed their replies to the IA filed by the Petitioner, the learned counsel for the Respondents prayed for a grant of time to place their submissions on record.

6. Based on the consent of the parties, the Commission, adjourned the hearing of this Petition. The Respondents are directed to file their replies on the I.A. filed by the Petitioner, on or before, **12.1.2024**, after serving a copy to the Petitioner, who may file its rejoinder, if any, by **26.1.2024**.

7. The IA along with the Petition shall be listed for hearing on **9.2.2024**

By order of the Commission

**Sd/-
(B. Sreekumar)
Joint Chief (Law)**

