

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 177/MP/2022**

**Coram:**

**Shri I.S Jha, Member  
Shri Arun Goyal, Member  
Shri P.K. Singh, Member**

**Date of order: 09.01.2023**

**in the matter of:**

Petition under Section 79 the Electricity Act, 2003 seeking refund of amounts wrongfully claimed by Power Grid as Deferred Tax Liability (DTL) and Foreign Exchange Rate Variation (FERV) charges.

**And in the matter of:**

Himachal Pradesh State Electricity Board Limited (HPSEBL),  
Vidyut Bhawan, HPSEBL,  
Shimla-171004, Himachal Pradesh.

.....**Petitioner**

**Verses**

1. Power grid Corporation of India Limited,  
B-9 Qutub Institutional Area, Katwaria Saria,  
New Delhi-110016.
2. Bhakra Beas Management Board,  
SLDC Complex Industrial Area, Phase-I,  
Chandigarh-16002
3. Punjab State Power Transmission Corporation Limited,  
SLDC Building, 220KV Sub-station,  
ABLOWAL, Patila-147001, Punjab.
4. Rajasthan Rajya Vidyut Prasaran Nigam Limited,  
Vidyut Bhawan, Jyoti Nagar,  
Vidyut Marg, Jaipur-302015.
5. Power Development Department,  
Government of J&K, Narwal Bala,  
Gladni-18004, Jammu.



6. Haryana Vidyut Prasaran Nigam Limited,  
Room No.3213, Shakti Bhawan, Sector-6  
Panchkula-134109, Haryana.
7. Delhi Transco Limited,  
SLDC Building (Behind Jakir Husain College),  
Tagore Hostel Lane, Minto Road.
8. U.P Power Corporation Limited  
Electricity Import- Export & Payment Circle,  
11<sup>th</sup> Floor, Shakti Bhawan Extension.  
14- Ashok Marg, Lucknow-226001, U.P
9. Uttarakhand Power Corporation Limited,  
Kanwali Road, Urja, Bhawan,  
Dehradun-248001, Uttarakhand.

.... Respondents

**For Petitioner** : Shri Adhitya Srinivasan, Advocate, HPSEBL  
Shri Ajay Marwah, Advocate, HPSEBL  
Shri Rishabh Kanjiya, Advocate, HPSEBL  
Shri Karan Thakur, Advocate, HPSEBL

**For Respondents** : Shri Ved Jain, Advocate, PGCIL  
Shri Ankit Gupta, PGCIL  
Shri D.K Biswal, PGCIL  
Shri Ajay Upadhyay, PGCIL  
Shri Ranjeet Pandey, PGCIL  
Shri Mayank Keshan, PGCIL

### **ORDER**

Himachal Pradesh State Electricity Board Limited (HPSEBL) has filed the instant petition under Section 79 the Electricity Act, 2003 for setting aside the arbitrary recovery of deferred tax liability by PGCIL from the Petitioner during the period between 2002-03- 2008-09 and beyond July 2017 and to refund the same alongwith interest at the rate of 14% p.a.

2. The Petitioner has made following prayers:

“a. *Admit the Petition;*



- b. *Set aside the recovery of deferred tax liability from the Petitioner during the period between 2002-03 – 2008-09 for being arbitrary, unfair, unreasonable, unjust and illegal;*
- c. *Direct Respondent No.1 to refund all amounts paid by the Petitioner to Respondent No.1 towards deferred tax liability, together with interest on such amounts at the rate of 14% p.a. on the basis of ROE allowed in the Tariff orders and chargeable between the date on which the Petitioner remitted such amounts to Respondent No.1 and the date on which the Respondent No.1 completes refund of such amounts;*
- d. *Set aside the recovery of FERV charges from the Petitioner for the period beyond July 2017 for being arbitrary, unfair, unreasonable, unjust and illegal;*
- e. *Direct Respondent No.1 to refund all amounts paid by the Petitioner to the Respondent No.1 towards FERV charges, together with interest on such amounts at the rate of 9% p.a. chargeable between the date on which the Petitioner remitted such amounts to Respondent No.1 and the date on which Respondent No.1 completes refund of such amounts;*
- f. *Direct Respondent No.1 to refund the benefit of depreciation (as expense) taken by Respondent No.1 from the Income Tax Department on the notional assets of the NR Constituents over 15 years life span; and*
- g. *Pass such other and further order or orders as this Hon'ble Commission deems appropriate under the facts and circumstances of the present case."*

### **Submissions of the Petitioner**

3. The brief facts which led to the filing of the instant petition is as follows:
- a. Pursuant to the approval of ULDC scheme and MoU, one SLDC and two Sub-LDCs were established along with allied infrastructure such as auxiliary power supply, telemetry (RTUs) and communication to monitor / control real time data of various sub-stations and power houses was under the supervision of the Petitioner.
  - b. All the assets and infrastructure employed under the ULDC scheme were acquired through the funds infused by PGCIL but was under notionally owned and under the effective control of the Petitioner and were being operated and maintained (including repair works) by the Petitioner.



- c. As per the MoU scheme, PGCIL did not earn any income on account of notional assets and infrastructure operated by the Petitioner.
- d. As the ULDC scheme was put into commercial operation in 2002, recovery of various costs and items of expenditure under this scheme by PGCIL was done by way of tariff over a 15-year period pursuant to various orders of the Commission.
- e. Between 2002-03 to 2008-09, the total equity charges (Capital+RoE) recoverable from NR constituents as per the terms of the tariff orders was approximately ₹73.16 crore.
- f. As per the Commission's orders dated 2.9.2015 and 18.3.2011 in Petition No. 82/2002 and Petition No. 28/2010 respectively, the total equity recovery charges for all NR constituents for the years 2002 to 2004 and 2004 to 2009 was ₹16.3503 crore and ₹56.8121 crore respectively. Each constituent (including the Petitioner) was required to bear its pro-rata share of the aggregate equity recovery charges.
- g. Further, the proviso to Regulation 39 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 ("the 2009 Tariff Regulations") permitted PGCIL to recover deferred tax liability for the period up to 31.3.2009 whenever it materializes directly from the beneficiaries and long-term customers
- h. PGCIL unfairly and illegally raised deferred tax bills amounting to ₹92.27 crore on the NR constituents out of which HPSEBL paid an amount of ₹6,60,64,382/- under protest to avoid surcharge.



- i. The only income of PGCIL from the ULDC scheme up to 31.3.2009 is return of equity (RoE @16% (2002 to 2004) and @14% (2005 to 2009) (approximately ₹10 crore cumulatively for all NR constituents), which does not qualify for DTL.
- j. The ULDC scheme provided for recovery of costs and expenditures over a 15-year period between 2002 to 2017. As such, full recovery of costs and expenditure (including in respect of any FERV charges) by PGCIL was completed by July 2017 and there was no outstanding liability under the ULDC scheme with respect to any NR constituents including the Petitioner
- k. As regard to the issue of arbitrary levy of FERV charges by PGCIL, PGCIL despite all the recoveries in relation to ULDC scheme having been completed by July, 2017 has raised FERV bills beyond that period pursuant to Regulation 50 of the 2014 Tariff Regulations read with order dated 20.7.2018 in Petition No. 218/TT/2017. Against the FERV bills raised by PGCIL, Petitioner has made a payment of ₹56,18,887/- under protest.
- l. Hence, the Petitioner has filed the instant petition for setting aside the recovery of DTL during the period between 2002-03- 2008-09 and FERV charges for the period beyond July 2017 for being arbitrary, unfair, unreasonable, unjust and illegal.

4. The petition was listed for hearing on 13.12.2022 for admission. During the course of hearing, the learned counsel for the Petitioner submitted that the instant petition is filed against the arbitrary and illegal claims of deferred tax liability (“DTL”) and/or



foreign exchange rate variation (“FERV”) charges pursuant to the ULDC scheme of Northern Region Phase-I. He submitted that the Petitioner has made various correspondences requesting PGCIL to intimate the income tax component of ULDC charges and month-wise/year-wise detailed calculations of deferred tax applicable on the income part, but PGCIL has failed to supply any information. The copy of the correspondences made with PGCIL has also been placed on record in the instant petition. Further, the Petitioner in various meetings held with PGCIL requested PGCIL to submit the desired information and clarifications on the excess payment claimed by the Petitioner. The learned counsel submitted that the issue of DTL and FERV was also discussed in various meetings of commercial sub-committee of NRPC. He submitted that the assets in respect of which PGCIL has claimed DTL are notionally owned by the NR constituents and are held, controlled, operated and maintained by the NR constituents including the Petitioner. As such, no income has or could have accrued to PGCIL from the use of the assets by the NR constituents and thus the question of PGCIL collecting DTL does not arise. He submitted that the amount has been paid by HPSEBL under the protest to avoid surcharge. He prayed to issue directions to Respondent to provide all the details on the basis of which PGCIL has made claims against the Petitioner. He further submitted that if the Petitioner is satisfied with the information provided by PGCIL, the Petitioner may withdraw the instant petition.

5. In response, the learned counsel for PGCIL submitted that PGCIL has provided the information sought by the Petitioner. However, the Petitioner has failed to place on record the reply given by PGCIL to the Petitioner’s queries. Referring to clause



3.1.1.,3.1.2 and 4.2(ii) of the MoU entered between the Northern Region Electricity Board (NREB) and its constituents including, Petitioner and PGCIL, he submitted that the ownership of all the ULDC equipment's supplied by PGCIL vests with PGCIL and the ownership of such equipments will vest with the constituents after repayment of their costs. He submitted that the information/ clarification as sought by the Petitioner has already been provided by PGCIL. He submitted that from the year 2002 to July 2017, PGCIL has been claiming depreciation in accordance with the provisions of the Electricity Act, 2003 which has been approved by the Commission in its various orders. He further submitted that as the instant petition is listed for admission, the onus is on the Petitioner to establish a case in its favour and establish its claim.

6. We have considered the submissions of the Petitioner and PGCIL. It is observed that the Petitioner does not have any grievance or issues with the orders approving tariff for the ULDC schemes of Northern Region Phase-I, on the basis of which PGCIL has raised the bills for reimbursement of DTL and FERV from the constituents of Northern Region, including the Petitioner. The basic grievance of the Petitioner is that PGCIL has not furnished the details/ clarifications sought by the Petitioner regarding the computation and the basis on which the PGCIL has raised the bills for reimbursement of DTL and FERV. Per contra, PGCIL has submitted that the information sought by the Petitioner has already been furnished and has strongly refuted the contentions of the Petitioner. It appears that the Petitioner has certain doubts about the PGCIL's claim of DTL and FERV and the treatment of depreciation and we are of the view that the same can be sorted out and settled between the Petitioner and PGCIL. Accordingly, the PGCIL is directed to provide the details sought



by the Petitioner and also to convene meeting(s) with the Petitioner within 30 days to address the issues raised by the Petitioner.

7. The Petitioner is also given liberty to file a fresh petition if its concerns are not addressed and the filing fee deposited by the Petitioner in respect of the instant petition shall be adjusted against the fresh petition, if any, filed by the Petitioner in this regard.

8. In view of the above discussion, Petition No. 177/MP/2022 is disposed of at the admission stage.

**sd/-**  
**(P. K. Singh)**  
**Member**

**sd/-**  
**(Arun Goyal)**  
**Member**

**sd/-**  
**(I. S. Jha)**  
**Member**

