

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.302/MP/2022

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 as a result of operation of the Uttarakhand Water Tax on Electricity Generation Act, 2012 in terms Power Purchase Agreements entered by THDC India Limited in relation to Tehri Hydro Electric Power Project (1000 MW) and Koteshwar HEP (400 MW) with different beneficiaries read with Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 and Order dated 12.07.2022 passed in Special Appeal No. 149 of 2021 by Hon'ble High Court of Uttarakhand.

Date of Hearing : **21.2.2023**

Coram : Shri I.S Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member

Petitioner : THDC India Limited

Respondents : Rajasthan Urja Vikas Nigam Limited and 15 ors

Parties Present : Mr. Akshay Sapre, Advocate, THDCIL
Mr. Tabrez Malawat, Advocate, THDCIL
Mr. Syed Hamza, Advocate, THDCIL
Mr. Rahul Kinra, Advocate, BRPL & BYPL
Mr. Aditya Ajay, Advocate, BRPL & BYPL
Ms. Isnain, Advocate, BRPL & BYPL
Mr. Ashutosh Srivastava, Advocate, TPDDL
Mr. Nirmal Bhardwaj, Advocate, TPDDL

Record of Proceedings

During the hearing, the learned counsel for the Petitioner, mainly submitted as under:

- (a) The present petition has been filed on account of imposition of water tax on non-consumptive use of water for electricity generation, in terms of the Uttarakhand Water Tax on Electricity Generation Act, 2012, notified by the Government of Uttarakhand in 2013 (came into force from 15.8.2015).
- (b) The Petitioner had filed Writ petition challenging the Water Tax Act, before the Hon'ble High Court of Uttarakhand and the same was dismissed by the Single



Bench of the Hon'ble Court, vide its order dated 12.2.2021. Against this order, Petitioner filed appeal before the Division Bench of Hon'ble High Court, wherein, the Hon'ble Court on 12.7.2021 stayed the operation of the order dated 12.2.2021. Thereafter, the Hon'ble High Court on 12.7.2022 (while modifying the interim order), granted stay of recovery of water tax till 31.7.2022, but directed the Petitioner to commence payment of water tax dues, from 1.8.2022.

(c) As the Petitioner is now liable to regularly make payment of water tax from 1.8.2022, as per the levy prescribed under the Water Tax Act, therefore, the same qualify to be a change in law event.

2. On a specific query by the Commission as to whether Regulation 56 of the 2019 Tariff Regulations, would be applicable, the learned counsel for the Petitioner clarified that the imposition of water usage charges, is statutory in nature and therefore recoverable as a 'change in law' event.

3. The learned counsels appearing for the Respondents, submitted that the claim of the Petitioner is in the nature of water usage charges, which is not permissible. The learned counsel however sought time to file their replies in the matter.

4. The Commission, after hearing the parties, 'admitted' the petition and directed issuance of notice to the Respondents. The Respondents are permitted to file their replies, on or before **22.3.2023**, after serving the copy to the Petitioner, who may file its rejoinder, if any, by **20.4.2023**. The parties shall ensure the completion of submissions within the due dates mentioned and no extension of time shall be granted.

5. The Petition shall be listed for hearing on **11.5.2023**

By order of the Commission

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

