

RAJASTHAN ELECTRICITY REGULATORY COMMISSION

Petition No: RERC/1972/2021

In the matter of Petition filed by M/s Rajasthan Rajya Vidyut Prasaran Nigam Limited for Review of the Commission's Order dated 22.11.2021 passed in Petition No. 1852/20.

Coram : **Dr. B.N. Sharma, Chairman**
Sh. S. C. Dinkar, Member

Petitioner : Rajasthan Rajya Vidyut Prasaran Nigam Ltd.

Respondents :

- 1) Jaipur Vidyut Vitran Nigam Ltd.
- 2) Ajmer Vidyut Vitran Nigam Ltd.
- 3) Jodhpur Vidyut Vitran Nigam Ltd.
- 4) Rajasthan Rajya Vidyut Utpadan Nigam Ltd.
- 5) Shri G.L. Sharma (Stakeholder).

Date of hearing : 03.02.2022, 02.03.2022, 23.03.2022, 27.04.2022 & 12.05.2022.

Present:

- 1) Sh. Virendra Lodha, Sr. Advocate along with Sh. Rahul Lodha, Advocate for petitioner.
- 2) Ms. Parinitoo Jain, Advocate for Respondent Discoms.
- 3) Sh. G. L. Sharma , Respondent.

Date of Order : 24/05/2022.

ORDER

1. Rajasthan Rajya Vidyut Prasaran Nigam Limited (hereinafter referred as 'RVPN' or 'Petitioner'), on 28.12.2021 has filed instant Petition under Regulation 34 of the RERC (Transaction of Business) Regulations, 2021 for review of Commission's order dated 22.11.2021 in the matter of approval of Investment Plan for FY 2021-22.

2. Notices were issued to Respondents through online portal for reply. Accordingly, Rajasthan Urja Vikas Nigam Ltd. on behalf of Rajasthan Discoms submitted its comments/suggestions on 02.03.2022. Respondent Rajasthan Rajya Vidyut Utpadan Nigam Ltd. not filed its comments/suggestions.
3. Petition was listed for hearing on 03.02.2022, 02.03.2022, 23.03.2022 & 27.04.2022. Commission directed the Petitioner to implead Sh. G.L. Sharma as party. Accordingly, Sh. G.L. Sharma was impleaded as Respondent in the said petition and amended memo of parties was also filed by the Petitioner.
4. Sh. G.L. Sharma filed his comments/ suggestions on 01.04.2022. RVPN submitted its rejoinders on the comments/suggestions of RUVNL and sh. G.L. Sharma on 16.03.2022 and 26.04.2022 respectively.
5. The matter was finally heard on 12.05.2022. Sh. Virendra Lodha, Sr. Advocate along with Sh. Rahul Lodha, Advocate appeared for Petitioner, Ms. Parinitoo jain, Advocate, appeared for Respondent Discoms & Sh. G.L. Sharma appeared as respondent and made their submissions.
6. Petitioner in its Petition, rejoinder and during oral hearing submitted as under:

RVPN's Submission

Issue No. (i): 400/220 kV , 1x500 MVA, 1x315 MVA GSS at Jodhpur (New) (Kankani) alongwith 400kV, 1x80 MVAR Bus Reactor. (Revised) (1x500MVA commissioned on 12.10.2018)-10 Cr.

Issue No. (ii): 400/220 kV, 2 X 500 MVA GSS at Jaisalmer-2 alongwith 1x125 MVAR , 400kV Bus Type Reactor (KfW) ICT-1, (1x500 MVA transformer commissioned on 05.02.2019)- 15 Cr.

Issue No. (iii): 220KV GSSs at Kolayat (New location, Distt. Bikaner) with associated lines [Scheme cost = 15001.28 Lacs]- 4 Cr.

7. The Petitioner stated that the above schemes had already been approved by the GoR & TSPCC and the same has also been approved by the Commission in its various orders since execution.

8. The Petitioner stated that the Commission has exceeded jurisdiction in rejecting proposal of Investment Plan incorporated in the Investment guidelines in RERC (Investment Approval) Regulation,2006.
9. The Petitioner submitted that the guidelines issued by the Government of India vide notification Dt. 10.08.2021 cannot be treated with retrospectively. It is a settled principle of law that a rule or law cannot be construed as retrospective unless it expresses a clear or manifest intention to the contrary. Accordingly, the same is not applicable for the projects already approved or under execution. The proposed schemes are already under implementation, and considerable expenditure has already been incurred as targeted date for completion of the project is FY 2021-22.
10. Further, the Petitioner submitted that the Commission has rejected approval of investment of ongoing projects on the basis of guidelines issued by Government of India vide notification dated 10.08.2021 although the projects being approved & partially executed at the time of issuance of guidelines. The guideline states that the same may be adopted by the State Government. However, the Commission has held that the State Government is required to constitute committee and the same is contrary to the record.
11. The State Government of Rajasthan has not adopted the guidelines issued by the Government of India vide notification Dt. 10.08.2021 for intra-state projects. Therefore, the development of intra-state transmission system is governed by notification dated 19.03.2021 whereby the State Government has issued policy directive under section 108(1) of Electricity Act,2003 for not opting Tariff Based Competitive Bidding.
12. The Petitioner also submitted that the scheme of 220 kV GSSs at Kolayat (New location, Distt. Bikaner) with associated lines [Scheme cost = 15001.28 Lacs] shall be executed in phase manner, which was less than the limit of Rs. 100 Cr. Therefore, the scheme was beyond the approval from NCT equivalent committee.
13. In view of the above, the petitioner requested the Commission to consider these projects for investment approval.

14. The Petitioner further submitted that the State Government issued a policy directive under section 108 (1) of Electricity Act, 2003 and wherein policy decision of not opting Tariff Base Competitive Bidding (TBCB) mode for development of Intra-state Transmission system was taken. The Petitioner further submitted that it proposed the projects more than Rs. 100 Cr. in the Interlocutory application Dt. 17.05.2021 in compliance with the aforesaid policy decision. Therefore, the objection raised by the Respondent for non-compliance of the Commission's direction is meritless.
15. The Petitioner Submitted that the Commission has approved these projects in various previous orders irrespective of threshold limit of Rs. 100 Cr. Further, The Petitioner stated that the mode of execution of the ongoing projects cannot be changed at the stage of completion of the projects. Therefore, approval of NCT equivalent committee shall have no results and unnecessary delay the project.

Issue No. (iv): New schemes to be identified

16. The Petitioner submitted that the provision amounting to Rs. 35.00 Cr. was kept for new works to be identified during FY 2021-22 as per clause 9 (Annexure-I) of Rajasthan Electricity Regulation Commission (Investment Approval) Regulations, 2006.
17. Further, the Petition was filed before 04 months of starting FY 2021-22 and the decision of said petition was given by Commission in the month of November of FY 2021-22. During the course of time expenditure has to be incurred for preliminary works on New Schemes/Projects as per clause 9.
18. The Petitioner has provided a list of schemes/projects identified during FY 2021-22 as on 30.11.2021 wherein expenditure required for preliminary works.

Issue No. (v): Institutional Strengthening works

19. The Petitioner has submitted that the proposal of Rs. 2 Cr. under Institutional Strengthening Work has been made as per the Regulation 7 (Annexure-I) of Rajasthan Electricity Regulation Commission (Investment Approval) Regulations, 2006 and requested to the Commission to allow the same as it would results in efficiency improvement in licensees' business operations.

20. The Petitioner submitted that the ambit of Institutional strengthening work is very wide and it includes technical advisory service, consultancy services to meet Institutional strengthening, including efficiency improvement in business operation and training to personnel. Accordingly, it is covered under Institutional strengthening and should not be part of O&M expenses.
21. The Petitioner further submitted that the proposal of approval of schemes of Institutional strengthening in the instant review petition No. RERC/1854/20 was again raised with facts & details before the Commission. The Petitioner further submitted that the amount claimed under institutional strengthening was for improvement of efficiency in licensee business operations. Therefore, the petitioner requested to the Commission to consider the same as capital works as per regulation 7 (Annexure – I) of RERC (Investment Approval) Regulations, 2006.
22. Respondents in their reply and during oral hearing submitted as under:

Respondents Comments/Suggestion

Issue No. (i): 400/220 kV , 1x500 MVA, 1x315 MVA GSS at Jodhpur (New) (Kankani) alongwith 400kV, 1x80 MVAR Bus Reactor. (Revised) (1x500MVA commissioned on 12.10.2018).

Issue No. (ii): 400/220 kV, 2 X 500 MVA GSS at Jaisalmer-2 alongwith 1x125 MVAR , 400kV Bus Type Reactor (KfW) ICT-1, (1x500 MVA transformer commissioned on 05.02.2019

Issue No. (iii): 220KV GSSs at Kolayat (New location, Distt. Bikaner) with associated lines [Scheme cost = 15001.28 Lacs]

23. The Respondents submitted that the GOI had issued a guideline on TBCB mode vide notification Dt. 10.08.2021. In view of the above guidelines, the Commission desisted to allow the proposed projects exceeding Rs. 100 Crore. Further, the schemes have not been approved by the Committee as required vide the above GOI guideline. Further, no fresh notification has been issued by the State Government subsequent to Government of India guidelines Dt.10.08.2021. In view of the above, the Respondent requested the Commission not to allow review as sought by the petitioner.

24. The Respondents submitted that the Petitioner has not pointed out any error on the face of the record in the order of the Commission as such review Petition is not admissible.
25. The Respondents submitted that the Commission had earlier given directions for development of intra-state transmission projects above Rs. 100 Cr. through tariff based competitive bidding process but the Petitioner has not complied with the directions and has also not submitted any justification for not complying the directions. Hence, there is no point for any review in the matter.
26. The Respondents submitted that the contention of the petitioner that the Commission in its order dated 22.11.2021 has rejected the investment approval given in the order dated 08.10.2020 is incorrect. The Petitioner has not pointed specifically as to where and in which works the schemes were approved by the Commission in the order dated 08.10.2020.

Issue No. (iv): New schemes to be identified

27. The Respondents has stated that the new schemes are yet to be identified during the FY 2021-22. The Respondent further stated that the Commission refrained to approve the token provision of Rs. 35 Crore since the Petitioner had not provided any details of the schemes proposed to be taken against the claimed amount.
28. The Respondents further submitted that the clause 9 of the Regulation 2006 states that the amount expended on preliminary works shall be adjusted against the cost of the schemes as soon as the same starts getting implemented. However, in this instant case the scheme has not yet been approved. Hence, the respondent requested the Commission not to allow the review as sought by the petitioner.
29. The Respondents submitted that seeking approval for token expenditure in respect of schemes costing more than 100 Crore would mean the nullifying the disallowing order of the Commission in respect of schemes above Rs. 100 Crore, therefore, review of the same is not admissible.

Issue No. (v): Institutional Strengthening works

30. The Respondents stated that the proposal made under Institutional Strengthening Work was in O&M Nature, and that the Commission has not disallowed the expenses but has only changed the head of claim i.e. O&M expenses. Therefore, the Respondent requested the Commission not to consider the Petitioner's claim.
31. The Respondents submitted that the Commission in the order dated 08.10.2020 had disallowed it as capital works and considered the same as a part of R&M expenses. Raising the same in the review means review of the order Dt. 08.10.2020 for which no review or appeal has been filed and thus the same has already attained finality. No review of any finality attend order is admissible under any law.
32. The Respondents submitted that the Petitioner's submissions are only elaborating the submissions for reconsideration of the issues. The APTEL in the order dated 16.12.2012 in review petition No. 5 of 2012 in Appeal No. 102 of 2011 has observed that elaborate submissions are for reconsideration of issues on merit and the same is not permissible in the review petition. Hence, the present review petition is not admissible and needs to be rejected/dismissed by the Commission.
33. The Respondents submitted that the financial year 2021-22 for which the Investment Plan is going to be closed very shortly and therefore, question of any review does not arise.

Commission's Analysis

34. Commission has considered the submissions, reply and oral arguments made on behalf of the Petitioner and Respondents.
35. We observe that Commission has issued the order dated 23.12.2021 after detailed analysis of issues. The Petitioner has raised few points in the instant Petition, which have been strongly opposed by Respondents.
36. Regarding Issues No. (i) & (ii), the Commission observes that petitioner had not claimed any investment in ongoing scheme as at S. No. (i) & (ii) in FY 2021-22 in the Main petition filed on 27.11.2020. Petitioner had included aforesaid schemes in the IA filed on 17.05.2021 stating that Energy Department, GoR vide letter dated 19.03.2021 has issued Policy

Directives under Section 108 of the Electricity Act, 2003, regarding not opting TBCB mode for the development of intra state Transmission system.

37. The Petitioner filed the IA on 17.05.2021 for inclusion of these schemes, whereas they were aware in March itself that it could not be completed in FY 2020-21. Further, the IA was filed on the ground of Government direction u/s 108 only, no separate mention for ongoing scheme have been made.
38. Accordingly, Commission has disallowed these two schemes in the Investment Plan for FY 2021-22. Now, since the FY 2021-22 is over, no investment can now be made. However, the Commission shall now consider these two schemes in the Investment Plan for FY 2022-23.
39. Regarding Issues No. (iii), (iv) & (v), as the FY 2021-22 is already over and no investment can now be made in FY 2021-22, therefore, Petitioner may approach the Commission in the Investment Plan Petition for subsequent years with the complete details along with justification of capital expenditure to be incurred where the Commission will examine the same based on the details furnished.
40. The review Petition is disposed of accordingly.

(S.C. Dinkar)
Member

(Dr. B.N. Sharma)
Chairman