

Tariff for FY 2021-22 for Kalisindh Thermal Power Plant (KaTPP) Units 1&2 (2 X 600 MW) of RVUNL.

2. Notices were issued to Respondents through online portal to file reply to the petition. Rajasthan Urja Vikas Nigam Ltd. (RUVNL) on behalf of Respondents Discoms has filed reply on 08.03.2022. Petitioner also filed rejoinder to the reply on 21.03.2022.
3. The matter was heard on 24.03.2022. Sh. Ankit Sharma, Authorized representative appeared for Petitioner, Sh. Shashwat Purohit, Advocate appeared for Respondents.
4. RVUN has filed the petition seeking review of the said order on the following issues:
 - (i) Lease Charges.
 - (ii) Return on Equity.
5. Commission has considered the submission of Petitioner and Respondent under section 94 (1) (f) of the Electricity Act, 2003 read with Order No. XL VII Rule 1 of Civil Procedure Code.
6. RVUN in its petition, rejoinder and during hearing has submitted as under:

Issue No. (i) : Lease Charges

- 6.1 The Commission vide its order dated 04.10.2021 disallowed the lease rent on the basis of following finding:

"4.121 The Commission finds that the Petitioner themselves have submitted in response to Stakeholder comment that the lease rent is a part of Finance Charges. As the Commission has dealt with the same under Finance Charges, therefore, the Commission does not find it prudent to allow the lease rent separately, Accordingly, only amortization on lease hold land is allowed"

- 6.2 RVUN has submitted that "lease rent is a part of Finance Charges" this statement was given because the lease rent was indicated under "Note 30 of finance Cost" of annual audited accounts. RVUN further submitted that this statement was given to clarify and help the stakeholder to identify the lease rent from the annual audited accounts in response to stakeholder query.
- 6.3 RVUN was just trying to clarify its stand and to bring more clarity to stakeholder therefore, RVUN submitted that no other meaning should be concluded from this statement.
- 6.4 RVUN did not claim any lease rent under finance charges as the same was claimed separately, therefore it was not included in the finance charges claim of RVUN. Therefore, the question of dealing with the same under Finance Charges does not arise.
- 6.5 RVUN, therefore has requested that the same should be allowed as per Regulations 23 of RERC Tariff Regulations, 2014 & 2019 based on the actual payment being made by RVUN.

Issue No. (ii): Return on Equity

- 6.6 The Commission has disallowed the ROE claim of Rs. 247.61 Crore of FY 2019-20 as per the Energy Department, GOR letter dated 17.09.2021, which stated that the ROE for FY 2019-20 be withdrawn.
- 6.7 Based on above disallowance of Rs.247.61 Crore and other disallowances, the Commission has approved the surplus of Rs. 184.37 Crore against RVUN claim of Gap of Rs. 418.50 Crore during FY 2019-20.
- 6.8 RVUN submitted that they have already refunded ROE of Rs. 192.75 Crore through credit note on 21.09.2021.
- 6.9 RVUN therefore has requested the Commission to consider the above credit note and allow revenue gap/surplus accordingly while truing-up of ARR of KaTPP for FY 2014-15 to FY 2019-20.

6.10 RVUN in view of above has prayed to admit and allow the present review petition and approve each item as claimed in the review petition.

7. Respondents in their common reply and during hearing submitted that:

7.1 The present review petition has been filed for review of the order dated 04.10.2021 on two counts i.e. (a) lease rent and (b) return on equity.

7.2 The Petitioner has sought to review order on lease rent on the basis that the Petitioner did not claim lease rent, under finance charge and the Commission has dealt with the same under finance charge. Contention of the Petitioner is misconceived as the head of lease rent has been considered by the Commission and the same cannot be reviewed as separately from the finance charge.

7.3 The claim of the Petitioner under Regulations 23 of RERC Tariff Regulation of 2014 and 2019 is baseless. The contentions pertaining to the same were placed before the Commission and the same was considered in the order dated 04.10.2021. Thus, the Petitioner cannot seek review of the same unless any error apparent on the face of record could be demonstrated.

7.4 Commission has decided the issue after due consideration and thus, no occasion arises to review the order dated 04.10.2021. The Respondents therefore have prayed to dismiss the review petition.

Commission's Analysis

8. Commission has considered the submissions, reply and oral arguments made on behalf of the Petitioner and Respondents.

9. Petitioner has sought for review of Commission's order dated 04.10.2021 on the issues of (i) Lease Charges and (ii) Return on Equity.

10. On the issue of lease charges, the Petitioner has submitted that "lease rent is a part of Finance Charges" this statement was made in response to stakeholder's query and it was stated to clarify and help the stakeholder to identify the lease rent from the annual audited accounts in response to stakeholder query. However, they did not claim any lease rent under finance charges as the same was claimed separately. Thus, the lease charges were not included in the finance charges claim of RVUN.
11. Petitioner on the issue of Return on Equity (ROE) submitted that they have already refunded ROE of Rs. 192.75 Crore through credit note on 21.09.2021. Petitioner therefore has requested to consider the above credit note and allow revenue gap/surplus accordingly in true-up order of KaTPP for FY 2014-15 to FY 2019-20.
12. Per contra Respondents have submitted that the contentions pertaining to lease charges and ROE were placed before the Commission and the same were considered in the order dated 04.10.2021. Thus, the Petitioner cannot seek review of the same unless any error apparent on the face of record could be demonstrated. Commission has decided the issue after due consideration and thus, no occasion arises to review the order dated 04.10.2021.
13. Commission observes that review of an order may be considered by the Commission under section 94 (1) (f) of the Electricity Act, 2003 read with Order No. XL VII Rule 1 of Civil Procedure Code, on the following grounds:
 - a) Discovery of new and important matter or evidence which after exercise of due diligence was not in the knowledge of the applicant and could not be produced by him at the time when the decree or order was passed.
 - b) Some mistake or error apparent on the face of the record, and
 - c) For any other sufficient reason.
14. Further, the ratio decided by the Hon'ble Supreme Court in its various

decisions for exercise of the power of review, has been culled out by Hon'ble APTEL in judgment dt. 17.04.2013 in the matter of Ajmer Vidyut Vitran Nigam Limited Vs Rajasthan State Electricity Regulatory Commission & Anr. in RP No.12 of 2012 in Appeal No.17 of 2012.

15. In view of above orders, it is observed that in the instant petition, RVUN is only rearguing the case and seeking revision of Commission's order without pointing out any error apparent on the face of the record.
16. The Commission vide order dated 15.12.2021 has given detailed reasoning on each of the issue raised by the Petitioner, there is nothing new to be considered on the same issues for which review is sought by the Petitioner.
17. As RVUN could neither point out any apparent error nor provided any new information which satisfies the conditions for review of the impugned order the submissions of RVUN are not maintainable in the Review Petition.
18. The review Petition stand disposed of in the above terms.

(S. C. Dinkar)
Member

(Dr. B.N. Sharma)
Chairman