

RAJASTHAN ELECTRICITY REGULATORY COMMISSION

Petition No: RERC/1987/22

Petition for Review of Commission's Order dated 15.12.2021 in the matter of Truing up of ARR FY 2019-20 for KTPS (Units 1-7), STPS (Units 1-6), CTPP (Units 1-4), DCCPP, RGTPS (270.50 MW), Mahi Hydel and approval of Aggregate Revenue Requirement (ARR) & Tariff for FY 2021-22 for KTPS (Units 1-7), STPS (Units 1-6), CTPP (Units 1-4), SSCTPP (Units 7-8), DCCPP, RGTPS (270.50 MW) and Mahi Hydel Power Station.

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

Petitioner: Rajasthan Rajya Vidyut Utpadan Nigam Ltd.

Respondents:

1. Jaipur Vidyut Vitran Nigam Ltd.
2. Ajmer Vidyut Vitran Nigam Ltd.
3. Jodhpur Vidyut Vitran Nigam Ltd.
4. Rajasthan Urja Vikas Nigam Ltd.

Date of hearing: 10.02.2022, 02.03.2022 and 24.03.2022

Present:

1. Sh.Ankit Sharma, Authorized rep. for Petitioner
2. Sh. Sandeep Pathak, Advocate for Respondents

Date of Order: 31.03.2022

ORDER

1. Rajasthan Rajya Vidyut Utpadan Nigam Ltd. (hereinafter referred as 'RVUN' or 'Petitioner'), has filed this petition on 25.01.22 under Section 94(1) (f) of the Electricity Act, 2003 for review of Commission's Order dated 15.12.2021

in the matter of Truing up of ARR FY 2019-20 for KTPS (Units 1-7), STPS (Units 1-6), CTPP (Units 1-4), DCCPP, RGTPS (270.50 MW), Mahi Hydel and approval of Aggregate Revenue Requirement (ARR) & Tariff for FY 2021-22 for KTPS (Units 1-7), STPS (Units 1-6), CTPP (Units 1-4), SSCTPP (Units 7-8), DCCPP, RGTPS (270.50 MW) and Mahi Hydel Power Station.

2. Notices were issued through online portal to Respondents to file reply to the petition. Respondent RVUN filed a common reply on behalf of the Respondents on 28.02.2022 on which rejoinder was filed by the Petitioner on 21.03.2022.
3. The matter was heard on 24.03.2022. Sh. Ankit Sharma, Authorised representative appeared for Petitioner and Sh. Sandeep Pathak, Advocate appeared for Respondents.
4. RVUN filed the petition seeking review of the said order on the following issues:
 - (i) Lease Rent;
 - (ii) Depositing of O&M savings in pension fund.
5. Commission has considered the submission of Petitioner and Respondents 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 Rent

- 6.1 The commission allowed lease rent of Rs. 0.314 crore only against the total claimed of Rs. 2.15 Crore. Further, the commission in its finding stated that the lease rent expenses of Rs. 1.67 Cr. towards Ambikapur and Thermal Design (TD) share does not find prudent hence disallowed. Although, both the stations are being part of RVUN and expenses of each station should be distributed among all the power stations of RVUN and accordingly the lease rent was claimed. Further, RERC Regulation 23 of RERC Tariff

Regulations 2019 provides that:-

"The lease charges for assets taken on lease by Generating Company or a transmission or distribution licensee or SLDC shall be considered as per lease agreement provided they are considered reasonable by the commission."

6.2 Therefore, disallowed lease rent amount of Rs. 1.67 Cr. towards expenditure of Ambikapur and Thermal Design (TD) share is not in line with RERC Regulations 23 of RERC Tariff Regulations 2019. Hence, matter is to be reviewed. RVUN has requested the Commission to consider the lease rents at Ambikapur and TD as share part of the plants expenses.

Issue No. (ii): Depositing of O&M saving in pension fund

6.3 The Commission vide Order dated 15.12.2021 directed the Petitioner to deposit the amount of Rs. 138.93 Crore to the Pension Fund. Further, the Commission also directed the Petitioner to submit the supporting documents against it in the upcoming true-up Petition.

6.4 However, Regulation 47 (7) of the RERC Tariff Regulations, 2019 provides for the terminal liabilities based on actuarial valuation, over and above the normative O&M expenses, subject to prudence check, shall be allowed through tariff separately. The Commission disallowed terminal benefits in true-up of FY 2019-20 which was earlier allowed vide ARR order dated 18.12.2019.

6.5 As per the Regulations the gain losses are to be shared as under:

*"Gains and Losses on account of Uncontrollable and Controllable factors
The "uncontrollable factors" shall comprise the following factors which were beyond the control of, and could not be mitigated by, the applicant, as determined by the Commission:*

.....

(3) Gain or loss to the Generating Company or Licensee or SLDC on account of controllable factors shall be retained or borne by the Generating Company or Licensee, as the case may be, except in case of the following:

- a) Interest on working capital, which shall be as per Regulation 27;*
- b) Station Heat Rate, Auxiliary Consumption, and Secondary fuel oil consumption, which shall be as per Regulation 56 and*

c) Distribution loss, which shall be as per Regulation 75.

(4) Nothing contained in sub-Regulation (3) above shall apply in respect of any gain or loss arising out of variations in the price of fuel and/or rate of power purchase, which shall be"

6.6 In view of above, it is clear that the O&M is the part of controllable factors and gain is to be retained by the Generating Company as the Commission has passed in the earlier orders. Thus, the saving in O&M expenses should be allowed to be retained by RVUN.

6.7 Also the saving determined shall be after actual recovery of the O&M based on actual availability of the plant.

6.8 Further, the Regulation 47(7) of RERC Regulations, 2019 allow the terminal benefits over and above O&M expenses, thus Commission should have allowed terminal benefit accordingly.

6.9 It is important to mention here that Petitioner plan its business to be carried out within norms of RERC tariff Regulations for the entire control period of MYT. As RVUN is facing acute shortage of the fund due to outstanding towards Discoms of Rs 24083.68 Cr as on 01.01.2022 and looking to the financial crunch and regulatory provisions for the allowing terminal benefits over and above the normative O&M, RVUN request the Commission to review the matter and allow the normative O&M without any direction to deposit saving in pension fund.

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 reply and during hearing have submitted as under:

7.1 The present review petition has been filed for review of the order dated 15.12.2021 on two counts i.e. (a) lease rent and (b) Depositing of O&M savings in pension fund.

7.2 The review petition filed by the Petitioner under section 94 (1) (f) of the Electricity Act, 2003 is not maintainable the grounds provided under the said Section are to be read in accordance with the general powers of

review provided under Code of Civil Procedure 1908, particularly under Order 47 Rule 1. The basic requirement for entertaining any review petition by any competent civil court or by this Commission is that there must be an error apparent on the face of the record. The review jurisdiction cannot be invoked to virtually seek appeal of the judgment or order already passed or to seek additional or fresh directions from the Commission. The prayers made by the Petitioner reveal that it is additional directions from the Commission, which is not permissible under review jurisdiction. On this ground alone the impugned petition is liable to be dismissed.

- 7.3 The Petitioner is raising an issue of lease rent and O&M Fund. Both these aspects were duly considered by the Commission and after giving thoughtful consideration and upon careful interpretation of the applicable Regulations, the order dated 15.12.2021 was passed. Now the Petitioner wants to seek fresh interpretation of certain provisions of the RERC Tariff Regulation, 2019, which cannot be done by way of a review petition. Therefore the review petition is not maintainable and is liable to be dismissed.

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 15.12.2021 on the issues of (i) Lease Rent; and (ii) Directions to deposit the O&M savings in pension fund.
10. On the issue of lease rent, the Petitioner has requested the Commission to consider the lease rents at Ambikapur and Thermal Design(TD) as share part of the plants expenses as per Regulations 23 of RERC Tariff Regulations 2019.
11. Petitioner on the issue of O&M savings has submitted that the O&M is under controllable factors and gain is to be retained by the Generating Company. Further, the Regulation 47(7) of RERC Regulations, 2019 allow the terminal benefits over and above O&M expenses, thus Commission should allow

terminal benefit separately and the gain on account of O&M savings to be retained by RVUN .

12. Per contra Respondents have submitted that the Petitioner is raising an issue of lease rent and O&M savings. Both these aspects were duly considered by the Commission and upon careful interpretation of the applicable Regulations, the order dated 15.12.2021 was passed. Now the Petitioner wants to seek fresh interpretation of certain provisions of the RERC Tariff Regulation, 2019, which cannot be done by way of a review petition. Therefore the review petition is not maintainable and is liable to be dismissed.
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. On the touchstone 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