

Rajasthan Electricity Regulatory Commission

Petition No. RERC-1878/2021

Petition In the matter of Determination of Annual Revenue Requirement (ARR) and Tariff for FY 2020-21 for Dholpur Combined Cycle Power Plant (DCCPP) of Rajasthan Rajya Vidyut Utpadan Nigam Ltd.

Coram:

Dr. B. N. Sharma,	Chairman
Shri S. C. Dinkar,	Member
Shri Prithvi Raj,	Member

Petitioner : Rajasthan Vidyut Utpadan Nigam Ltd.

Respondents : 1. Jaipur Vidyut Vitran Nigam Ltd.
2. Ajmer Vidyut Vitran Nigam Ltd.
3. Jodhpur Vidyut Vitran Nigam Ltd.

Date of hearings : 18.08.2021, 21.09.2021 & 21.10.2021

Present : 1. Ms. Poorva Saigal, Advocate for Petitioners
2. Sh. Anand Ganesan, Advocate for Respondents
3. Ms. Swapna Seshadri, Advocate for Respondents
4. Sh. G. L. Sharma, Stakeholder

Order Date:

22.11.2021

ORDER

1. Rajasthan Rajya Vidyut Utpadan Nigam Ltd. (in short 'RVUN'), a Generating Company under the provisions of the Electricity Act 2003, has filed a petition on 03.02.2021 for Determination of Annual Revenue Requirement (ARR) and Tariff for FY 2020-21 for DCCPP (3 X 110 MW).

2. In compliance with RERC (Terms & Conditions of Determination of Tariff) Regulations, 2019 issued under Section 62 of the Electricity Act, 2003, RVUN filed the Petition for determination of Annual Revenue Requirement (ARR) & Tariff for FY 2020-21 for DCCPP (3 X 110 MW), before the Commission.
3. As required under Section 64(2) of the Electricity Act, 2003, public notices with salient features of the petition inviting objections/comments/suggestions were published in the following newspapers on the dates mentioned against each:

Table 1: Details of Newspapers

Sr. No.	Name of News Paper	Date of publishing
(i)	Dainik Navajyoti	18.02.2021
(ii)	Rashtradoot	18.02.2021
(iii)	The Times of India	18.02.2021

4. The Petition was also placed on the websites of the Commission and the Petitioner. The objections/comments/suggestions were received from Shri G.L. Sharma, Sh. Shanti Prasad and Jaipur Vidyut Vitran Nigam Limited & Ors.
5. The Commission forwarded the objections/comments/suggestions of the Stakeholders to RVUN for filing its reply. The Petitioner replied to the objections/comments/suggestions made by objectors vide its letters dated 24.05.2021 and 02.09.2021.
6. The Commission vide letter dated 24.03.2021 communicated some data gaps and deficiencies in the Petition. The Petitioner furnished information vide its letter dated 24.05.2021. The public hearing in the matter was held on 18.08.2021, 21.09.2021 & 21.10.2021. The Petitioner submitted certain additional information vide its letter dated 28.10.2021.

7. The Commission has considered the submissions of the Petitioner, Respondents and Stakeholder on each issue, which are summarized as below:

**A. Admissibility of the Petition and Fuel Availability
Stakeholder's Comments/Suggestions**

8. The Petitioner submitted that they have signed a firm Spot Gas Sales Agreement (SGSA) on long term basis with M/s GAIL on 29.07.2020, which is valid up to 01.01.2026. It has also been submitted by RVUN that as per this agreement, the price of gas is variable and shall be as per Gas Sales Purchase Notice. In this regard, the Stakeholder submitted that:
- a) The Petitioner themselves stated that the aforesaid agreement is not at firm price, but the price of gas has been stated as variable. Thus, the agreement with M/s GAIL does not fulfill the directions of the Commission's Order dated 11.09.2020;
 - b) Also, as per the definition of "Daily Contract Quantity" in the aforesaid agreement, i.e., the *"seller by a written notice to the buyer offers to sell certain quantities of gas at such price as proposed by the seller to the buyer for which buyer is to enter in to a transaction agreement for a certain period"*. Thus, the quantity of gas supply is not certain, it will be decided on day-to-day basis from time to time as per the availability with supplier. Therefore, it cannot be said as firm availability of gas;
 - c) Also, the Petitioner vide instant Petition submitted that *"In terms of Article 2 (Transaction) of SGSA, quantity and price of gas shall be regulated through Gas Supply and Purchase Notice (GSPNs), which will be offered by M/s GAIL from time to time"*. This provision clearly says that neither the quantity nor the price of gas is firm, this will vary from time to time. Hence, this does not fulfil the requirement of the Commission's Order dated 11.09.2020 and therefore, the instant petition is not maintainable.

9. The Petitioner vide instant Petition submitted that “the price of Gas was in lower side, but there was take or pay charges of 50% (with minimum quantity obligation). The power was also drawn by Discoms during 01.08.2020 to 25.08.2020, with the consent to bear take or pay obligation of 50%”. In this regard, the Stakeholder submitted that the letter of RUVNL dated 29.07.2020 to RVUN clearly states that, “if the gas is not utilized because of non-declaration of availability or less declaration of availability from DCCPP, RUVNL/Discoms is not liable for any take or pay liability”. Therefore, the consent given by RUVNL for the period 01.08.2020 to 25.08.2020 has been conditional.
10. Further, in respect of supply made during 01.08.2020 to 25.08.2020, the Petitioner to submit as to under which provision of the Electricity Act, 2003, the Petitioner and the Discom have mutually decided the tariff of supply of above period.
11. In respect of mutually agreed rates for the period 01.08.2020 to 25.08.2020, the Stakeholder submitted that in the year 2009, Discoms and Raj West agreed mutually for infirm power supply at Rs. 4.90/kWh. The Commission vide Order dated 28.08.2009 mentioned that it enquired from the Petitioner and the Respondent to clarify as to under which provision of the Regulations or Rules a tariff of Rs. 4.90/kWh has been agreed. In the same Order, it was further mentioned that the Commission, therefore, cannot be expected to endorse the mutual understanding agreed between the Generating Company and the Distribution Licensee as the same is not in line with the Regulations. Therefore, the Petitioner's submission that power was drawn by Discoms during the period 01.08.2020 to 25.08.2020 with the consent to bear take or pay obligation of 50% can neither be approved by the Commission nor the same can be ground for accepting the spot purchase of gas under the present SGSA.

12. The Petitioner vide instant Petition submitted that “the plant was under operation from 02.12.2020 to 05.12.2020 with a gas price of USD 8.50/MMBTU and corresponding variable cost of Rs. 5.83/kWh and power was drawn by Discoms during the period. However, there was no take or pay obligation and therefore, no fuel cost was incurred in regard to the period for which no scheduling was done by Discoms”. In this regard, the Stakeholder sought justification for the following:
- a) When there was no take or pay obligation, should it be concluded that the gas supply during the above period was free of cost and if so, the Petitioner to submit justification for such free of cost supply;
 - b) Sent out energy during 02.12.2020 to 05.12.2020 and at what rate the Discoms have paid for such energy. In case, no charges have been claimed by RVUN and no payment has been made by the Discoms, justification for the same be submitted by the Petitioner.
13. The Petitioner vide instant Petition submitted that “the Energy Charges has been computed considering price of gas as per open market up to December, 2020 and rest with the gas price as offer provided by M/s Gail with take or pay charges for the period effective from 01.01.2021”. The Stakeholder sought the supporting documents on it.
14. The Gas Sales and Purchase Notice (GSPN) submitted by the Petitioner vide instant Petition is for the period 01.04.2020 to 01.05.2020, wherein daily quantity to be made available has been shown only for 01.04.2020 to 05.04.2020 and for the period 06.04.2020 to 30.04.2020 the quantity is zero. This notice is signed by Superintending Engineer (Fuel) of DCCPP, RVUNL but it does not have the signature of Authorized Representative of M/s GAIL. Similar observation is there in respect of various GSPN submitted by the Petitioner vide instant Petition. The Petitioner to submit justification that how and in what manner these notices can be considered as valid. Therefore,

the Petitioner to submit justification as to how the fuel was available with them during FY 2020-21.

15. Referring to Form G 5.1 (Information to be submitted in respect of Fuel for Computation of Energy Charges for FPA), the Stakeholder submitted that in the month of April, 2020, 50940740 SCM gas has been shown as receipt, but consumption has been shown as 27749 SCM, i.e., 0.054%. From May, 2020 to July, 2020 receipt has been shown but consumption is zero, From November, 2020 to March, 2021 the receipt of gas is nil, then how the GSPN can be considered as genuine. The Petitioner to submit justification in this regard.
16. As per Form G 5.3 (Energy Charges for generation), there has been no generation in FY 2019-20. In FY 2020-21, gross generation has been submitted as 2023.56 MU, but as per Form G 5.1 (Information to be submitted in respect of Fuel for Computation of Energy Charges for FPA), consumption of gas from May, 2020 to July, 2020 and from September, 2020 to March, 2021 has been submitted as zero. Therefore, in such circumstances the Petitioner to submit justification for submitting 2023.56 MU generation in FY 2020-21.
17. Further, the Stakeholder submitted that the Petitioner wants to get the energy charges determined at present at a particular rate, which itself is not valid for a long period even for the full Financial Year and in case the Commission determines the Energy Charges at present at any price, the Petitioner will recover the additional charges as per the revision of gas price through fuel surcharge, i.e., adjustment of rate of Energy Charge, which will be on a higher side and thus an additional burden will be passed on Discom and ultimately to the Consumers because of fault of the Petitioner for not having a long term fuel arrangement at firm price.

18. Vide instant Petition, the Petitioner submitted that “.... neither the Regulations nor the PPA provide for any obligation on a generating company to have any firm FSA or otherwise any particular type of FSA. RRVUNL has arranged for fuel and has entered into a FSA with GAIL. RRVUNL is declaring availability based on fuel available and RRVUNL is entitled to tariff. Denial of tariff to RRVUNL is contrary to principles of Section 61, PPA as well as fundamental principles of supply of goods and services”. In this regard, the Stakeholder submitted the following:

- a) For determination of tariff under Section 62 of the Electricity Act, 2003, the Appropriate Commission may require a Licensee or a Generation Company under Section 62 (2) to furnish separate details as may be specified in respect of generation for determination of tariff. Therefore, the Commission under Section 62 (2) is fully empowered to ask the Petitioner about the long-term arrangement of fuel supply and at a firm rate basis. The Petitioner cannot deny the same;
- b) The Supreme Court vide Order dated 29.11.2019 in the matter of Civil Appeal No. 4509 of 2003 with a number of Civil Appeals of 2003 has observed that the Commission exercises the power of a regulator. This court has also considered the concept of regulatory power in various decisions. This court has also held in the decisions that regulatory powers are extensive and they include whatever needs to be done for achieving the objective and purpose of the Act. Therefore, the firm fuel supply arrangement at firm price is a need for achieving the objective of determination of tariff in the present case.
- c) APTEL vide Order dated 13.01.2011 in Appeal No. 70 of 2009 in the matter of GVK (Goindwal Sahib) Ltd Andhra Pradesh V/s Punjab State Electricity Regulatory Commission has observed that “*Section 86 (1) (b) of the Act entrusts the State Commission with the power to regulate the electricity purchase and procurement process of the Distribution Licensee including the price at which electricity shall be procured from Generating Companies. The power to regulate procurement of a Distribution Licensee is wide ranging power there is no provision in the Act which over sides the said*

power of the Commission. The word "regulate" has wide importance it carries with it the power to reject, modify, alter or to vary the terms of agreement". Therefore, the Commission has vast power to regulate the electricity purchase of the Distribution Licensee including its price.

- d) The Supreme Court vide aforesaid Order dated 29.11.2019 has also observed as below:

"One must keep in mind the dichotomy between the power to make a regulation under Section 178 on one hand and the various enumerated areas in Section 79 (1) in which the Central Commission is mandated to take such measures as it deems fit to fulfil the objects of the 2003 Act".

Hence, in Order to fulfil the objective of the Electricity Act, 2003, the Commission has directed the Petitioner to furnish the fuel tied up in required quantity on firm basis at firm price. In absence of such information, the instant petition is not maintainable and may be rejected by the Commission.

19. Even as per the petition filed, DCCPP has for many years not been able to achieve normative availability on account of not having proper fuel tie up. While the Commission had earlier for FY 2010-11 decided to reduce the fixed charges by treating the PLF as PAF, the Commission in the Order dated 11.09.2020, had directed the Petitioner to file a fresh petition for determination of tariff for FY 2020-21, once the fuel is tied up in required quantity on firm basis, and firm price.
20. The Commission also noted in the Order that the Petitioner initially had a Fuel Supply Agreement (FSA) with GAIL for supplying 0.75 MMSCMD Natural Gas, which expired in December 2019. Thereafter, the Petitioner had been procuring gas from GAIL under a SGSA dated 01.11.2008, at very high rates, thereby making it impossible for the Stakeholder to procure power at this price as per MOD. It is relevant to note that even the SGSA dated 01.11.2008 was valid up to 31.05.2020 (extended monthly).

21. The Stakeholder had also highlighted the fact that globally, the gas prices were at an all-time low, and that in for April 2020, the Global average Spot price was in the range of USD 2.4 to 3.0/ MMBTU. However, the Petitioner had not been able to supply power at reduced variable cost taking advantage of reduced gas prices. In fact, in May 2020, the Spot Gas prices offered by GAIL to the Petitioner was in the range of USD 8.32-8.66/MMBTU, thereby making the variable charges in the range of Rs. 6.14/unit to Rs. 6.37/unit.
22. The Stakeholder had contended that the Petitioner was declaring availability even though it did not have a firm FSA in place, and that the Petitioner was relying on spot gas agreement with GAIL.
23. The Petitioner in the present Petition has submitted that it has entered into a long-term gas supply agreement (GSA) with GAIL on 29.07.2020. A bare perusal of the GSA would show that there is neither any firm commitment of quantity of fuel, nor is there any commitment on the price of fuel. In fact, the agreement itself is titled as "Spot Gas Sales Agreement".
24. It is pertinent to note that the Commission while passing Order dated 11.09.2020 did not consider the SGSA dated 01.11.2008 as a firm tie up of fuel by the Petitioner. This is relevant particularly for the reason that even after entering into the agreement dated 29.07.2020, the GSPNs placed on record by the Petitioner show that it is currently not procuring gas under the new agreement, but is also procuring some portion under the 2008 agreement which the Commission has already decided not to consider as a firm source. In any case, there cannot be any tariff claimed on the basis of a spot gas sales agreement.
25. The agreement dated 29.07.2020 is also a "Spot Gas Sales Agreement", and not a firm source of gas. The SGSA neither contains any firm quantity nor price of Gas to be supplied by GAIL to the Petitioner. Therefore, the Orders

of the Commission dated 11.09.2020 and 28.10.2020 are not complied with. The Commission had directed the Petitioner to file a fresh petition only after tying up fuel in required quantity on firm basis. The Commission may therefore, first decide whether the SGSA dated 29.07.2020 fulfils these criteria.

26. Certain relevant provisions of the GSA are extracted here under:-

a) The Seller may from time to time have available quantities of Gas, at market determined prices, which it may wish to sell to Buyer"

b) The Parties may from time to time wish to enter into Gas sale transactions for sale and purchase of certain volume of Gas and with a view to facilitate and expedite the entering into of these transactions wish to establish certain general terms and conditions as a framework which, read with the relevant Gas Sales and Purchase Notice (GSPN), will govern and regulate such transactions.

c) This Agreement containing general terms and conditions is a framework that will determine the relationship between the Buyer and the Seller with respect to each transaction and details of each binding transaction shall be described more specifically in the relevant Gas Sales and Purchase Notice to be executed before commencement of actual Gas delivery under this agreement"

27. It is clear that the GSA entered into by the Petitioner with GAIL is not even a proper agreement for sale and purchase of gas. The Agreement itself specifies that it is a "framework" that will determine the relationship between the Buyer and Seller, and that the details of each transaction will be dealt with in the respective GSPN.

28. Therefore, there is no firm commitment of gas by GAIL as it is up to GAIL to offer gas from time to time, as per its own convenience. The Petitioner under no circumstances can enforce performance by GAIL under this GSA. This is even evident from the GSPNs placed on record by the Petitioner and

it is clear that the Petitioner is entering into GSPNs on monthly basis with GAIL, and there is no certainty of gas supply for the future.

29. Further, the price of Gas is also not firm. As is evident from the relevant GSPNs attached by the Petitioner along with the Petition, except for the month of August 2020, the price of gas offered by GAIL for all months up to December 2020, has been in the range of USD 8.44/MMBTU to USD 8.92/MMBTU. In fact, interestingly, while the terms of the GSA provide for a take or pay liability, GAIL appears to have applied two different pricing methods in its GSPNs. This would further show that even the terms of the GSA are subject to unilateral change by GAIL.
30. Under the circumstances, such an arrangement is not contemplated in the Order dated 11.09.2020 passed by this Commission. The GSA is by no means a firm tie up of fuel.

RVUN's Reply

31. The Petitioner submitted that the fuel arrangements have been made and accordingly, availability of Plant is being declared. The Regulations do not mandate for any particular type of Fuel Supply Agreement. The Capacity Charges is payable to the extent of the declared availability.
32. The Petitioner submitted that the price of Gas is variable and shall be regulated through Gas Supply and Purchase Notice (GSPNs) as per Article 2 (Transaction) of SGSA dated 29.07.2020 executed with M/s GAIL. The price of any fuel can never be firm. The direction of the Commission vide Order dated 11.09.2020 is as below:

"The Petitioner is directed to file a fresh petition for determination of tariff for FY 2020-21 for DCCPP, once the fuel is tied up in required quantity on firm basis"

It is evident from the above that the fuel is to be tied up in required quantity on Firm basis and not on Firm price. Hence, the instant Petition is

maintainable. Even in cases of coal, there is no such Firm Price and the same is being notified by Coal India Limited.

33. The Petitioner submitted that the Gas was available consistently throughout since August, 2020 under the agreement dated 29.07.2020 at 58,810 MMBTU/day, which is sufficient to run the plant well above the norms allowed by the Commission. Further, in case there was any less quantity available, Declared Capacity of the plant would have been given accordingly.
34. It is also to apprise that Gas supply was available on Firm basis under the Agreement dated 29.07.2020, as evident from GSPNs for the month of August, 2020, October, 2020 to November, 2020 and thereafter as well, but in the absence of any approval to bear obligation of Take or Pay charges from Discoms for supplies beyond October, 2020 GSPNs as offered by M/s GAIL for Firm Gas supply could not to be signed. Hence, the directions of the Commission were duly complied. If Discoms and the Commission approves the execution of Firm Fuel Supply agreement with Take or Pay Obligation, then the same can be done by the Petitioner.
35. Further, in respect of supply made during 01.08.2020 to 25.08.2020, the Petitioner submitted that the statements made by the Stakeholder are misleading. The issue was for Fuel Price, which are to be allowed on actuals and therefore, the Petitioner had consulted RUVNL prior to making fuel arrangements. In fact, the Petitioner intimated to RUVNL that Firm Gas is available at cheaper rates for the period 01.08.2020 to 31.08.2020 under the Agreement dated 29.07.2020 and the offer was having the obligation of Take or Pay charges, accordingly, consent of RUVNL was essential. There was nothing in the correspondences which supports to the interpretation of the Stakeholder. The reference to case of Raj west is misconceived and without any basis. Further, it is also submitted that interim tariff for DCCPP

was applicable vide Order dated 18.12.2019 and accordingly, bills were raised for the month of August, 2020.

36. With respect to the submissions made in the instant Petition, i.e., "the plant was under operation from 02.12.2020 to 05.12.2020 with a gas price of USD 8.50/ MMBTU and corresponding variable cost of Rs. 5.83/kWh and power was drawn by Discoms during the period. However, there was no take or pay obligation and therefore, no fuel cost was incurred in regard to the period for which no scheduling was done by Discoms", the Petitioner submitted that the submissions have been misinterpreted by the Stakeholder. It is submitted that when Gas supply was arranged on R.E. basis, there was no obligation of Take or Pay charges, which does not mean that Gas supply was free of cost, rather it implies that fuel charges were payable only for the actual gas quantity taken, whenever power is scheduled by Discoms. To the extent that there was no power scheduled, no gas was purchased. Since, there is no Take or Pay charges, no additional payment was claimed for such gas by the Petitioner.
37. Further, the sent out energy during 02.12.2020 to 05.12.2020 is 4.3465 MU at Rs. 5.85/kWh on short term supply on R.E. basis without implication of Take or Pay charges, which was claimed by RVUN through bill dated 22.02.2021 to the RUVNL and the verification of the same has also been done.
38. The gas price for the period 01.01.2021 to 31.03.2021 was considered based on available price of gas (Firm basis) from M/s GAIL; but in absence of any approval from RUVNL, no Gas Supply and Purchase Notice (GSPN) could be executed for Firm supply and the gas was arranged for the period on R.E. basis and the Petitioner submitted the details against it.
39. Against the GSPN submitted vide instant Petition for the period 01.04.2020 to 01.05.2020, the Petitioner submitted that as per the agreement dated 29.07.2020 - Article 2 (Transaction), the acceptance of the buyer on the

offer of seller is essential for which each GSPN shall be signed by the buyer. Accordingly, same were signed, as confirmation to the offer. Further, signing of GSPNs by buyer having detailed information of gas quantity available on day to day basis submitted with the instant petition itself is the authentic document, justifying availability of gas.

40. Referring to Form G 5.1 (Information to be submitted in respect of Fuel for Computation of Energy Charges for FPA), the Petitioner submitted that the figures mentioned in it is actual gas available, which is supplied as and when the power is scheduled from the plant (DCCPP). Further, as the petition was prepared in the beginning of November, 2020, therefore, available quantity of gas was shown as zero.
41. The gross generation as mentioned in Form G 5.3 (Energy Charges for generation) is indicating anticipated figures, based on the availability of plant in FY 2020-21. Hence, the Petitioner requested the Commission to consider it accordingly.
42. Against determination of Energy Charges, the Petitioner submitted that despite prevailing scenario in availability of gas, the Petitioner through regular pursuance with M/s GAIL, managed execution of Agreement for supply of gas on long term basis. Further, all the GSPNs executed so far also indicates that the gas was available throughout in requisite quantity to run the plant (DCCPP) well above the norms allowed by the Commission. Therefore, the Petitioner requested the Commission to kindly consider the claim. The Commission may verify from the various GSPNs of FY 2020-21 that the average quantity of gas available and its corresponding prices on monthly basis is varying between Rs.12.89/SCM to Rs. 38.46/SCM. Further, it was submitted that there cannot be any Firm price of fuel, this is not even so in case of Coal. The Petitioner has no control over the Gas prices. The Petitioner had offered the option to RUVNL with regard to the fuel with or without Take or Pay obligation. Any firm quantum would require burden of

Take or Pay obligation. The other option is R.E., wherein there is no Take or Pay.

43. With respect to the submission made vide instant Petition, i.e., “.... neither the Regulations nor the PPA provide for any obligation on a generating company to have any firm FSA or otherwise any particular type of FSA. RRVUNL has arranged for fuel and has entered into a FSA with GAIL. RRVUNL is declaring availability based on fuel available and RRVUNL is entitled to tariff. Denial of tariff to RRVUNL is contrary to principles of Section 61, PPA as well as fundamental principles of supply of goods and services”. The reference to the Supreme Court Order dated 29.11.2019 by the Stakeholder has no relevance in the instant petition, as it was never challenged with regard to the powers vested with the Commission. However, it cannot be denied that the Generating Companies are entitled to the costs along with reasonable return in terms of Section 61 and the Petitioner has only sought for the recovery of its costs.
44. The APTEL's Order dated 13.01.2011 referred is with regard to the Section 86(1) (b) of the Electricity Act, 2003, has no relevance to instant Petition. It is evident from the above that Section 86(1) (b) deals with the Regulation of power procurement agreement including price of Distribution Companies' with Generating Company or other source, which is not the case with the Petitioner in the matter of instant Petition.
45. The achievement/non-achievement of normative availability is not relevant to the present proceedings. The scope of the present proceedings relates to the tariff determination for the Dholpur Generating Station. The extent to which the Petitioner would be entitled to charge the tariff applicable would be dependent upon the normative availability. In any event, the Tariff Regulations, 2019 contemplate a proportionate reduction of fixed charges to the extent of shortfall in target availability. Therefore, to the extent that the petitioner is unable to declare availability, it would not be

able to claim capacity charges. The same has no bearing on the rate of tariff to be determined by this Commission.

46. It is respectfully submitted that neither the PPA (as read with the supplementary PPAs) entered into between the Petitioner and the Respondent Discoms nor the Tariff Regulations, 2019 issued by this Commission, place any restriction or stipulation in regard to the source of fuel or the price of fuel and the availability declared by the Generating Station in relation thereto. There is no ceiling cap or minimum off take that has been prescribed under the Tariff Regulations, 2019. The Agreement dated 31.10.2005 was executed with ONGC for supply of 0.75MMSCMD gas with M/s GAIL as Transporter for the gas. The Agreement expired in December 2019, but Spot GSA dated 01.11.2008 entered into with M/s GAIL was effective up to 31.07.2020. It is pertinent to mention here that pursuant to the directions of the Commission, the Petitioner has been successful in arranging fuel (Gas) for the Dholpur Generating Station.
47. The Petitioner is entitled to recovery of fixed charges for the availability of the generating station at or above the normative levels, irrespective of whether the availability is declared on the basis of natural gas or liquid fuel or RLNG. Therefore, the generating company can declare availability on the basis of any source of fuel whether it be natural gas or RLNG and from whichever supplier. It is the beneficiaries that have the option to accept or refuse to dispatch the capacity on the basis of the variable cost. The above is also borne out from the definition of the term 'Declared Capacity' in the RERC Tariff Regulations, 2019.
48. It is therefore, open for the Petitioner to declare availability of the generating station on the basis of the spot RLNG or any other fuel available. Accordingly, the Petitioner has been duly declaring availability of the generating station to the extent of the fuel available. A tabular

statement of the availability and scheduling for the financial years FY 2019-20 and FY 2020-21 are as under:

Table 2: Availability and scheduling of DCCPP power plant for FY 2019-20 & FY 2020-21

DC & SG of DCCPP power plant for FY 19-20 & 20-21						
Month	FY 19-20			FY 20-21		
	DCCPP			DCCPP		
	DC (LU)	SG (LU)	Avb. %	DC (LU)	SG (LU)	Avb. %
April	2210.40	0.00	95.81	2210.40	0.00	95.81
May	2284.08	0.00	95.81	2284.08	0.00	95.81
June	2210.40	0.00	95.81	2210.40	0.00	95.81
July	1679.29	0.00	70.44	2284.08	0.00	95.81
August	2149.77	0.00	90.18	1279.34	1041.40	53.66
September	2185.07	0.00	94.71	0.00	0.00	0.00
October	2284.08	0.00	95.81	2127.60	0.00	89.24
November	2210.40	0.00	95.81	2088.00	0.00	90.50
December	2284.08	0.00	95.81	2135.22	43.47	89.56
January	2284.08	0.00	95.81	2212.32	0.00	92.80
February	2136.72	0.00	95.81	2063.04	0.00	90.32
March	2284.08	0.00	95.81	1504.56	0.00	63.11
Total	26202.45	0.00	93.09	22399.03	1084.86	79.80

Therefore, for the period when the fuel was not available, for instance in the month of September 2020, the availability declared by the Petitioner has been nil and it is not entitled to any capacity charges for the month of September, 2020.

49. It is a settled principle that fuel is the responsibility of the generator. As a necessary corollary, the discretion to source the fuel also lies with the generator, subject to prudence check by the Commission. It is then the prerogative of the beneficiary to decide, whether or not to schedule the power at the variable price declared. If the procurer decides to exercise its discretion and does not schedule the power, then in accordance with the

principles of availability-based tariff (as provided in the RERC tariff regulations, 2019), the procurer shall be liable to pay the capacity/ fixed charges to the extent of the declared capacity of the generator.

50. Without prejudice to the above, it is submitted that there is an acute shortage of gas in the country, the allocation of which lies within the purview of the Ministry of Petroleum and Natural Gas and despite the extensive efforts of the Petitioner, it has been unable to enter into a viable arrangement with any other gas supplier. In this regard, the following aspects are relevant –

- a) A Gas Sales and Purchase Agreement (GSPA) dated 31st October 2005 was executed between the Petitioner and ONGC for supply of gas to the Dholpur Generating Station and further, was assigned to GAIL (India) Limited as per the tripartite agreement dated 22.12.2007. As per Article 6 of the GSPA, 1.5 MMSCMD gas was to be delivered from Panna Mukti and Tapti ('PMT') Gas Field of ONGC;
- b) The allocation of the PMT gas to the Petitioner kept reducing pursuant to the directions of the Ministry of Petroleum and Natural Gas. Accordingly, the Petitioner, as a prudent utility and in Order to meet its obligations, entered into a SGSA with GAIL India Limited on 1st November 2008 which was extended from time to time and was valid up to 31.07.2020;
- c) By Order dated 25.11.2019, the Ministry of Petroleum and Natural Gas assigned the PMT gas field as non APM gas, the distribution of which would be as per the MoPNG guidelines dated 02.08.2017. Therefore, the PMT gas was no longer available for the Petitioner generating station and stood diverted to the priority sector as per the Guidelines issued by The Ministry of Petroleum and Natural Gas. The petitioner has also submitted that the copy of the Guidelines dated 2nd August 2017 issued by the Ministry of Petroleum and Natural Gas. Further, the Communication dated 16.12.2019 from M/s GAIL, informing the non-availability of Gas from PMT field with effect from 21.12.2019 onwards

and that Gas shall now be offered from the diversified portfolio of alternate gas (RLNG) available with the GAIL.

- d) In the above circumstances, the Petitioner started exploring possibilities for procuring long term gas supply agreement with the existing gas suppliers in India. The Petitioner made extensive enquiries with M/s Gujarat State Petroleum Corporation and GAIL India Limited. The petitioner has also submitted that the copy of the offers received from M/s Gujarat State Petroleum Corporation and GAIL India Limited. The offer from Gujarat state Petroleum Corporation was not viable on account of price offered and transportation issue involved;
- e) In continuation to the efforts for arrangement of gas on long term basis, the Petitioner had several rounds of discussion with M/s GAIL deliberating on alternative sources of gas supply on sustainable basis. M/s GAIL, vide its e-mail dated 27.03.2020 communicated the offer for April 2020 to September 2020 for USD 5.40/MMBTU with Take or Pay Obligation @90% on the total supplied volume along with SGSA.
- f) The Petitioner carried out vigorous and detailed discussions with M/s GAIL to revise the offered price as per the prevailing market rate of spot gas. Subsequently M/s GAIL vide e-mail dated 22.06.2020 furnished the new SGSA valid from 01.07.2020 till 01.01.2026 and GSPN for accepting and signing the SGSA wherein the offered gas was for the duration from 01.07.2020 to 31.08.2020 for USD3.77/MMBTU with Take or Pay Obligation @90% on the total supplied volume.
- g) Since there was applicability of Take or Pay charges, acceptance/approval from the Rajasthan Discoms was required. Accordingly, the Petitioner sought consent from RUVNL and RUVNL consented to avail power on the above offered rate of gas but with ToP @50%.
- h) In pursuance thereof, the Petitioner made all out efforts with M/s GAIL for reducing the Take or Pay obligation to 50% and M/s GAIL agreed to modify the ToP level to 50% keeping in view of the long-term relationship with the Petitioner. On confirmation from M/s GAIL to keep

ToP charges of 50% vide e-mail dated 07.07.2020, the Petitioner conveyed the same to RUVNL by communication dated 21.07.2020 for which RUVNL confirmed bearing ToP charges @ 50% and price of USD 3.77/MMBTU in reference to the agreement offered by M/s GAIL to the Petitioner effective from 01.07.2020 to 01.01.2026 for supply of Spot RLNG for the Dholpur Generating Station (for the period 01.08.2020 to 31.08.2020).

- i) The Petitioner on receiving consent from RUVNL entered into long term agreement dated 29.07.2020 valid up to 01.01.2026 with M/s GAIL for supply of gas on regular basis with a Take or Pay obligation of 50%. The requisite quantity i.e., 58810 MMBTU/day is sufficient to run the Generating Station well above the normative availability determined by the Commission, which is also evident from the various GSPNs executed so far (up to March, 2021) and even Availability/Declared Capacity for the Dholpur Generating during FY 2020-21 is also verified by the Respondents
- j) The Respondent (RUVNL/Discoms) availed power from the Dholpur Generating Station during the month of August, 2020 on the above rates. It would be pertinent here to mention that at the relevant time the prices of Spot RLNG gas got reduced, considering low demand due to the impact of COVID-19 from April, 2020 for a certain period.;
- k) Since the Respondent (RUVNL/Discoms) had consented to bear the ToP charges @ 50% for the period up to 31.08.2020, the Petitioner wrote to the Respondents on 20.10.2020 seeking consent at the price of USD 6.25/MMBTU and ToP obligation @ 50% for supply of firm gas under the Agreement dated 29.07.2020 for the period for October and November 2020. It was also clarified by the Petitioner that, in the absence of confirmation, the Petitioner would be constrained to arrange gas on Reasonable Endeavour (RE) basis and declare capacity accordingly. In response, the Respondents advised to take up the matter with this Commission. The petitioner has also submitted the communications exchanged between the parties in this regard.

It is reiterated that the gas supply agreement entered into between the Petitioner and GAIL India limited is proper and has been executed in accordance with the past practice and the practice prevalent in respect of the gas supply agreements being entered into currently, keeping in view the gas deficit as well as the guidelines of the Ministry of Petroleum and Natural Gas. Further, Regulation of supply of Gas through GSPNs is also one of the provisions of Agreement in accordance with the prevalent practice and gas is being arranged accordingly. The term and condition of SGSA dated 29.07.2020 executed with M/s GAIL is as per their standard practice in case of supply of Spot RLNG, considering prevalent market condition in procuring Gas which is also confirmed by M/s GAIL

51. Out of approximately 25000 MW Gas based power plants in India, 14000 MW has been classified as stranded on account of the acute gas shortage. Despite the gas shortage throughout India, the Petitioner has entered into a firm supply agreement with M/s GAIL India for supply up to 2026 as per required quantity on regular basis.
52. Even the Central Commission in its Consultation Paper for the 2019-24 Regulations, has recognized that on account of shortage of domestic gas, the available alternative is to source costlier gas either through SPOT Market or RLNG
53. There was no occasion of challenging the Order dated 11.09.2020 as this Commission had directed the Petitioner to file a fresh petition with certain direction, which has been duly complied with. While the Order had been passed on 11.09.2020, the matter had been reserved for Orders on 29.07.2020. At the relevant time, this Commission has not considered whether the same constitutes a firm tie up Further, in the Order dated 28.10.2020, this Commission has re-iterated the stand taken in the Tariff Order dated 11.09.2020 without examining the submissions of the parties on the scope of the GSA dated 29.07.2020. In the circumstances, the present

Petition is maintainable under the provisions of the Tariff Regulations, 2019 as read with the Orders dated 11.09.2020 and 28.10.2020.

54. The Petitioner vide written submission has also submitted that the Central Commission by its Order dated 02.11.2017 in Petition No. 89/MP/2016, has also upheld the validity of the availability declared by the generator Pragati Power, including based on spot gas arrangement.
55. Further, The Central Commission has also recognized the above aspect in its Order dated 30.07.2013 [Pages 55 to 68 of the Rejoinder filed by the Petitioner] in Petition No. 166/MP/2012 in the case of Ratnagiri Gas and Power Pvt. Ltd v. Maharashtra State Electricity Distribution Company Limited.
56. The Hon'ble Tribunal, by its Order dated 22.04.2015 in its Appeal No. 261 of 2013 in the case of Maharashtra State Electricity Distribution Company Limited v. Central Electricity Regulatory Commission and Others has upheld the Central Commission's order dated 30.07.2013 passed in Petition No. 166/MP/2012.
57. Considering the above, the Petitioner submitted that it is entitled to capacity charges on the basis of the availability declared available from time to time.

Power scheduled by DISCOMS during FY 2020-21
Stakeholder's Comments/Suggestions

58. One of the issues raised by the Petitioner is that the Stakeholder have scheduled power during the year, and therefore the Petitioner cannot be denied the capacity charges. This is completely misconceived. There is only one isolated incident in August, 2020, when the Stakeholder had scheduled power from the Petitioner. An isolated event of power scheduled during one month in the year, certainly cannot be the basis for the Petitioner to

claim tariff for the entire year and that too on the basis of a SGSA wherein the fuel price and availability is dictated by GAIL.

59. The Petitioner vide letters dated 26.06.2020 and 09.07.2020 intimated the Stakeholder that they were being offered Spot Gas by GAIL, for the period from 01.07.2020 to 31.08.2020, in terms of which, the variable charges to the Stakeholder would work out to be Rs. 2.93/kWh. The Stakeholder vide letter dated 29.07.2020 conveyed its consent to avail supply of power with effect from 01.08.2020 up to 31.08.2020 at a variable cost of Rs. 2.93/kWh. In this regard, the Stakeholder had even clarified that it would not be liable to pay any other charges over and above Rs. 2.93/kWh. The said consent can by no stretch be deemed to be an approval for all times ahead.
60. On the other hand, the Stakeholder have acted in a responsible manner and in the interest of the consumers of the State. The tariff payable to the Petitioner for the power scheduled in August, 2020 is in fact lower than the APPC rate which was around Rs. 4.5/unit (approx.), and therefore was beneficial to the Discoms and its consumers.
61. Apart from the above, the Stakeholder has scheduled a miniscule quantum of power of 4 MU (approx.) in December, 2020, which was on account of transmission system constraint and peak load requirements in the State.
62. It is submitted that the Commission may treat the power scheduled by the answering Respondent as isolated incidents, akin to buying power in the short-term market. The power has been scheduled keeping in view the tariff/availability and consumer interest.
63. In any case, as stated above the Petitioner has not complied with the earlier Orders of the Commission and is seeking to claim tariff on the basis of SGSA, where there is no assurance on the availability or on the price of fuel.

RVUN's Reply

64. The Discoms are laying undue emphasis on the title of the Agreement – 'Spot Gas Sales Agreement' to state that the same does not constitute a firm tie up as directed by the Commission in its Orders dated 11.09.2020 and 28.10.2020.
65. The Petitioner submitted that the price of gas/RLNG is determined by the market conditions and are variable in nature. The price of gas cannot be firm considering various dynamic factors such as change in Dollar price, type of gas, GCV of gas etc. M/s GAIL has offered two options of GSPN under the GSA dated 29.07.2020 which are as under: -
- a) Option 1: The price of gas is on the lower side, but there are take or pay charges - 50% (with minimum quantity obligation). As stated hereinabove, the power was drawn by the Discoms under this Option during the period from 01.08.2020 to 25.08.2020, after consenting to bear the Take or Pay obligation of 50%.
 - b) Option 2: The price of Gas on the market basis (RE basis), which is costlier than option 1, but there is no take or pay obligation. The plant was under operation from 03.12.2020 to 05.12.2020 when the unit was under operation on R.E. basis a gas price of USD 8.50 per MMBTU and corresponding variable cost of Rs. 5.83/kWh. However, there was no take or pay obligation and therefore no fuel cost was incurred in regard to the period for which no scheduling was done by Discoms.
66. Accordingly, the energy charges have been computed considering the price of gas as open market rate up to the month December 2020 and rest with the gas price as offer provided by M/s GAIL with take of Pay charges for the period October, 2020 to November, 2020.
67. Apart from the Dholpur Generating Station, the Discoms are also taking power from Anta, Auraiya and Dadri (NTPC Power plants which are similarly situated), having gas supply agreement with M/s GAIL on 80% take and

pay liability. The average cost of power purchase from Anta, Auraiya Gas based Power Plants of NTPC, works out to be more than Rs. 8 per unit as per their own petition no 1773/2020, which is substantially higher than the purchase from DCCPP.

68. Even if the Discoms decide not to schedule power, the capacity charges would be payable but, in such circumstances, under Option 2, there will not be any implication of take or pay obligation for gas price. In fact, the Discoms have actually scheduled the electricity from the Dholpur Generating Station based on the availability and therefore, the Petitioner is entitled to tariff. During the year 2020-21, the Discoms have scheduled a total of 108.48615 MU as on date. The Respondents cannot then take the plea that 'an isolated incident' of scheduling does not hold them liable to pay the capacity charges for the rest of the period. Quite apart from the fact that the Generating Company – Petitioner will not supply electricity as a gratuitous act and is entitled to compensation for the power actually supplied, the Discoms cannot seek selective application of the directions of this Commission.
69. Irrespective of the quantum of units scheduled by the Discoms, the fact remains that the Petitioner has duly discharged its obligation in terms of the directions of this Commission and has entered into a GSA with GAIL India Limited for a period of six years under which Gas was available with Take or Pay Charges, if consented to by the Respondents as was done during the month of August, 2020 or otherwise shall be arranged on RE basis without Take or Pay obligation as is being consistently done so far. Both the options are within the knowledge of the Respondent as is evident from the communications dated 20.10.2020, 12.11.2020 & 08.12.2020 and is therefore, entitled to the payment of capacity charges to the extent of the power declared available as per the provisions of the Tariff regulations, 2019.

70. Further, the Respondents in their reply have authenticated/consented/verified the Declared Capacity (DC) as well as energy scheduled during FY 2020-21, which confirms that the plant was available but power was not scheduled. It is also submitted that the capacity charges for the months of April, 2020 to August, 2020 and December, 2020 (2-5 December, 2020) were also paid by Respondents, based on the DC declared by the Petitioner.

Commission's View

71. The Commission has analysed all the Stakeholders suggestions and objections along with corresponding reply of the petitioner to the same.
72. RVUN filed the petition for approval of ARR and Tariff for FY 2020-21 for RVUN Generating Stations including DCCPP vide Petition No. 1590/2019 dated 29.11.2019.
73. The Commission vide Order dated 11.09.2020 against Petition No. 1590/2019 for determination of Tariff for DCCPP for FY 2020-21 ruled as below:

"5.5 shortage of fuel cannot be considered as a sufficient reason for not maintaining normative availability of the plant.

5.6. As per the provisions of RERC Tariff Regulations, 2019, the availability of the plant is to be considered duly considering the availability of fuel. In case of DCCPP, firm fuel is not available at firm price. Also, in previous financial years availability of fuel remain inadequate because of which, DCCPP was not able to achieve the optimum level of generation. Hence, the Commission, deems it appropriate not to determine the tariff for DCCPP at this stage in the absence of firm fuel tie-up at firm price. However, the Petitioner is directed to file a fresh petition for determination of tariff for FY 2020-21 for DCCPP, once the fuel is tied up in required quantity on firm basis and the Commission will determine the tariff considering the fuel tied up by RVUN".

74. As per the above, it was directed that the Petitioner has to file a fresh petition for determination of tariff for FY 2020-21, only once the fuel is tied up in required quantity on firm basis at firm price.
75. In compliance to the above direction, RVUN filed the instant Petition for determination of ARR and Tariff for FY 2020-21 on 03.02.2021. RVUN submitted that they have signed a firm SGSA on long term basis with M/s GAIL on 29.07.2020, which is valid up to 01.01.2026. There were two options for procuring the fuel based on the above agreement.
- a) Option 1: The price of Gas is on the lower side, but there are take or pay charges - 50% (with minimum quantity obligation).
 - b) Option 2: The price of Gas on the market basis (RE basis), which is costlier than option 1, but there is no take or pay obligation.
76. It is observed that the Gas agreement submitted by RVUN dated 29.07.2020 is same as earlier one, i.e., submitted by RVUN during proceedings of Petition No. 1590/19.
77. Further, the Recital C & D of the SGSA states as under:
- "(C) The Parties may as such from time to time wish to enter into Gas sale transactions for sale and purchase of certain volume of Gas and with a view to facilitate and expedite the entering into of these transactions wish to establish certain general terms and conditions as a framework which, read with the relevant Gas Sales and Purchase Notice (GSPN), will govern and regulate such transactions.*
- (D) This Agreement containing general terms and conditions is a framework that will determine the relationship between the Buyer and the Seller with respect to each transaction and details of each binding transaction shall be described more specifically in the relevant Gas Sales and Purchase Notice to be executed before commencement of actual Gas delivery under this agreement."*

78. In view of the above, it is observed that the SGSA is a mere agreement to establish a framework for sale and purchase of gas. It is further observed that Article 2.2 of the SGSA states as follows:

"2.2 Parties agree that there shall be no binding commitment to sell and purchase Gas under this Agreement unless and until a GSPN has been executed and each GSPN shall supplement and be read and construed together with this Agreement."

79. As stated above, it is observed that the Agreement is not even binding on the parties unless and until a monthly GSPN is executed.

80. Further, the SGSA is devoid of any specific details pertaining to either the quantum or the price of gas. With regards to price, Article 9.2.3 states as follows:

"9.2.3 Invoice of Foreign Currency Component shall be raised in equivalent Indian Rupees converted at the prevailing TT selling rate as per the State Bank of India (SBI) Card rate applicable on a business day of SBI New Delhi immediately preceding the date of Invoice."

81. It is observed that GSPN is signed for only one month and even for transaction period of one month, the gas price is linked to USD and the entire exchange variation risk is to be to the account of Petitioner. Further, the supply through monthly GSPN is also on reasonable endeavour basis or have to pay Take or Pay charges. Further, from the submissions of the Petitioner it is evident that price of monthly gas supply varied between Rs. 12.89/SCM to Rs. 38.46/SCM which is more than 200% variation, and can't be said firm price.

82. In view of the above observations, the Commission is of the view that the Gas agreement is not in compliance with the directions of this Commission given in the Order dated 11.09.2020 and does not provide remedy to the issues flagged therein.

83. Hon'ble APTEL vide Order dated 13.01.2011 in Appeal No. 70 of 2009 in the matter of GVK (Goindwal Sahib) Ltd Andhra Pradesh V/s Punjab State Electricity Regulatory Commission has observed that:

"Section 86 (1) (b) of the Act entrusts the State Commission with the power to regulate the electricity purchase and procurement process of the Distribution Licensee including the price at which electricity shall be procured from Generating Companies. The power to regulate procurement of a Distribution Licensee is wide ranging power there is no provision in the Act which over rides the said power of the Commission. The word "regulate" has wide importance it carries with it the power to reject, modify, alter or to vary the terms of agreement".

84. The Commission has vast power to regulate the electricity purchase of the Distribution Licensee including its price. In order to have a reasonable price to the Discoms, the Commission has to see whether the Generating Company has a firm availability of fuel at firm rate or not. For such assessment, the Petitioner has to submit the required information. As discussed earlier, the Fuel Supply Agreement submitted by the Petitioner does not have any commitments about quantity of fuel availability and the firm price at which it will be available which is the crucial information for determination of tariff of generating station.

85. Further, the Fuel Supply Agreement stipulates that the gas price is linked to USD and entire exchange risk rate is to be borne by the Petitioner and hence the firm price at which gas would be available is not mentioned anywhere in the agreement. The Petitioner is simply trying to pass on the entire risk of fuel availability and fuel price to the consumers without proposing any risk mitigation measures. In absence of firm quantity of gas and firm price, the Commission cannot determine the tariff (Variable charges in particular) as sought by the Petitioner based on the incomplete information.

86. It is further observed that the Petitioner for claiming fixed charges has relied on Hon'ble APTEL's Judgment in Appeal No. 261 of 2013 dated 22.04.2015 in the matter of MSEDCL Vs CERC, RGGPL and Others wherein Hon'ble APTEL upheld CERC's decision in Petition No. 166/MP/2012 directing MSEDCL to pay capacity charges to RGGPL even though RGGPL scheduled availability on the basis of RLNG as primary fuel. The Commission has gone through the same and is of the view that the facts and circumstances of the above referred case is entirely different from the present case.
87. The Commission observes that unlike the above referred case, in the present case there is no embargo on entering a new fuel contract for plant operations, on the contrary the Commission in its Order dated 11.09.2020 had directed the Petitioner to enter into a long-term contract with firm quantity and price which the Petitioner has failed to do so.
88. It is the duty of the Commission, and it is mandated by the Act to ensure tariff visibility and certainty to a reasonable extent and due to this reason the above direction was given, and the matter was disposed.
89. The Commission observes that the Order dated 11.09.2020 has attained finality, and the Petitioner was therefore obligated to file a fresh petition only after tying up firm source of fuel at firm price. The Petitioner has filed a Petition again with the same type of Fuel Supply Agreement which was rejected by the Commission vide its Order dated 11.09.2020 and hence the Commission is constrained to reject this Petition for determination of tariff.
90. In view of the present fuel arrangement not fulfilling the Commission's directive, the Commission has no other option than to dismiss the petition. The Commission can determine the tariff only when the Petitioner submits the Firm Fuel Supply Agreement with firm price.

91. The petition stand disposed of accordingly.
92. Copy of this Order may be sent to the Petitioner, Respondents, Objectors, CEA and Government of Rajasthan.

(Prithvi Raj)
Member

(S. C. Dinkar)
Member

(Dr. B.N. Sharma)
Chairman