

**RAJASTHAN ELECTRICITY REGULATORY COMMISSION**

**Petition No. RERC-2032/2022**

In the matter of Petition for review of Commission's Order dated 23.06.2022 passed in the Petition No. 1985/2022 for determination of ARR and Tariff for CSCTPP unit 5&6 for FY 2022-23.

**Coram:**

**Dr. B. N. Sharma, Chairman**  
**Sh.Hemant Kumar Jain, Member**  
**Dr. Rajesh Sharma 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 : 10.08.2022, 01.09.2022, 20.09.2022 and 03.11.2022

Present : 1. Sh. Ankit Sharma, Representative for Petitioner.  
2. Sh. Sandeep Pathak, Advocate for Respondents.  
3. Sh. G. L. Sharma, stakeholder.

**Date of Order:**

**09.11.2022**

**ORDER**

1. Rajasthan Rajya Vidyut Utpadan Nigam Ltd. (hereinafter referred as 'RVUN' or "Petitioner"), has filed the instant Petition under Section 94 (1) (f) of the Electricity Act, 2003 for review of Commission's Order dated 23.06.2022 in Petition No. 1985/2022 for determination of Aggregate Revenue

Requirement (ARR) & Tariff for FY 2022-23 for CSCTPP Units 5&6 Power Station of RVUN.

2. Notices were issued through Online Portal to Respondents to file reply on the petition. Accordingly, Discoms submitted their reply/comments on 31.08.2022. Comments/objections were received from Sh. G. L. Sharma, Stakeholder on 19.09.2022. RVUN submitted its rejoinder/reply on Discom's comments and stakeholder's objections on 12.09.2022 and 20.09.2022 respectively. Commission during the hearing on 03.11.2022, directed the petitioner to submit the impact of the proposed RoE on their Tariff within three days time. RVUN accordingly submitted the same vide its letter dated 04.11.2022.
3. The matter was heard finally on 20.09.2022 and 03.11.2022. Sh. Ankit Sharma, Representative appeared for the Petitioner. Sh. Sandeep Pathak, Advocate, appeared for the Respondents and Sh. G. L. Sharma appeared as a Stakeholder.
4. RVUN has filed the instant petition seeking review of the said order on the following issue:
  - (i) Availability for FY 2022-23.
  - (ii) Return on Equity for FY 2022-23.
5. The submissions of Petitioner, Respondents and Stakeholder on each issue are summarized as below:

**Issue No. (i) : Availability for FY 2022-23**

**RVUN's Submission**

6. The Commission in its order for determination of Final Capital Cost of CSCTPP Unit 5&6 dated 28.12.2021 has considered Plant Load Factor (PLF) and Availability as 84% of the project.

7. Though, the Commission in its impugned order dated 23.06.2022 has considered PLF and Availability as 85% for units 5&6 for FY 2022-23.
8. As per RERC Tariff Regulations, 2019, the Availability of the Plant is 83% which achieved COD before 01.04.2019 and the Plants which achieved COD after 01.04.2019, the Availability is 85%. The Regulation is reproduced as under:

*"45. Norms of operation for Thermal Generating Stations*

*The norms of operation as given hereunder shall apply:*

*(1) Target Availability for recovery of full Annual Fixed Charges for Thermal Generating Stations:*

*a) Target Availability for full recovery of annual fixed charges shall be 85 per cent for all Thermal Generating Stations to be commissioned after April 1, 2019 and 83 percent for all existing Thermal Generating Stations, except those covered under sub-Regulation (1) b), and (1) c)."*

9. Further, case of Mahi power plant the Commission has ruled out in its order dated 22.03.2021 as under:

*"The Commission in previous true up orders has approved the target availability of 90% considering Mahi Hydel power Station as Run of River Power Station without pondage and this issue has never been challenged by the petitioner. The petitioner on this issue submitted that in the Orders on True-Up FY 2016-17 and 2017-18 as there was no disallowance on account of Mohi Hydel Power Station, therefore, RVUN has not raised the issue earlier. The Petitioner is trying to raise the settled issue at its convenience. The Tariff Regulations, 2014 are in force since FY 2014-15 and the Commission in all the previous years have approved the target availability of 90% for Mahi Hydel Power Station, which was not challenged by the Petitioner".*

10. Therefore the issue of availability is a settled issue and RVUN requests the Commission to keep the availability as approved in its order dated 28.12.2021.
11. In view of above, the matter of availability is not a new fact, therefore, the review of the order is admissible under section 94(l )(f) of Electricity Act, 2003 and (c) of Rule I of CPC of order no. XL VII under the provision of "any other sufficient reason".
12. In view of the above, RVUN has requested the Commission to allow 84% Availability for CSCTPP Unit 5&6 considering 83% for Unit 5 and 85% for the unit 6 for FY 2022-23.

#### **Respondents Objections/Comments**

13. 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.
14. 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.
15. The Commission, after prudence check, approved the Availability in accordance with the RERC Tariff Regulations, 2019. The fresh interpretation of the provisions of the RERC Tariff Regulations, 2019 sought by the Petitioner cannot be done by way of Review Petition. The adjudication/determination once done cannot be allowed to be reopened under Section 94(1)(f) of the Electricity Act, 2003.

16. Further, the Petitioner has not stated any reasons to justify that the consideration of Availability of 85% is an error apparent on the face of the record. It is a settled position that exercise of discretion by any court of law cannot be challenged by way of Review Petition. The reasonableness of discretion is not a subject matter or ground of review. Hence, there is no violation of Regulation 45 of the RERC Tariff Regulations, 2019.

### **Stakeholder's Objections/Comments**

17. The Petitioner has not stated under which provision of the Tariff Regulations, the Availability of 84% is allowable. In accordance with Regulation 45 of the RERC Tariff Regulations, 2019, the Availability has to be approved for the station as a whole and not unit wise as claimed by the Petitioner as there is no provision to consider the Availability on average basis.
18. If the 'Availability' has to be considered on average basis as claimed by the Petitioner, the Station Heat Rate (SHR) has also to be considered on average basis considering SHR of Unit 5 and Unit 6 separately as 2123.44 kcal/kWh and 2133.60 kcal/kWh respectively. By considering the SHR of Unit 5 and Unit 6 separately, the SHR for the station works out to 2128.52 kcal/kWh as against the SHR of 2123.44 kcal/kWh approved by the Commission. The Petitioner has not made any submissions in this regard.
19. Further, the Petitioner has pleaded that the issue of availability is a settled issue but this is not correct position as the Commission in its review order dated 23.05.2022 in the matter of Petition for review of Commission's Order dated 28.12.2021 passed in the Petition No. 1879/2021 for approval of ARR and Tariff for FY 2018-19 to FY 2021-22 for CSCTPP Units 5&6 observed that the Commission will re-examine the other normative parameters as per the relevant Tariff Regulations. Thus this was reopened in the review order dated 23.05.2022. The Commission observed as under:

*“47. On perusal of the above definition, it is clear that Cut-off date is defined from date of Commercial Operation of the Project and there is no provision of Unit-wise Cut-off date separately. Therefore, the Cut-off date should be considered from COD of the Project as defined in the RERC Tariff Regulations, 2019. Consequently, it is also clarified that the Commission will re-examine the other normative parameters as per the relevant Tariff Regulations.”*

20. There is no provision in the RERC Tariff Regulations to consider project Availability on average basis. In the view of above submissions, present petition deserve to be dismissed.

### **Commission's view**

21. 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.
22. 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.
23. 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.

24. The Commission vide order dated 23.06.2022 has considered the availability as per RERC Tariff Regulations, 2019, there is nothing new to be considered on the same issues for which review is sought by the Petitioner.
25. As RVUN could neither point out any apparent error nor provided any new information which satisfies the conditions for review on this issue. Hence, the submissions of RVUN are not maintainable regarding review sought on the issue of Availability for FY 2022-23 for CSCTPP Units 5&6.
26. Hence, prayer of Petitioner on this issue is disallowed.

### **Issue No. (ii) - Return on Equity for FY 2022-23**

#### **RVUN's Submission**

27. The RoE claimed by the RVUN for FY 2022-23 was not approved by the Commission in the order dated 23.06.2022 due to the non-availability of specific document from the GoR for claiming the RoE. However, the Commission granted liberty to the RVUN to come up with the requisite document from GoR for the claim against RoE in the truing-up petition for FY 2022-23.
28. As per clause (a) of CPC rules, review can be filed on "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"
29. Now, The Energy Department, GoR vide letter dated 27.06.2022 has issued fresh directions for claiming RoE for FY 2022-23. The same is reproduced as under :

*"1. FD agree to allow RoE@15% for FY 2022-23 to RVUNL.*

2. The administrative directions about utilization of the RoE will also be issued subsequently, i.e. the equity contribution on behalf of Govt. of Rajasthan in proposed Ultra Supercritical Thermal Power Projects will be provided out of RoE being allowed as above."

30. FGD and new projects are important project of Rajasthan. The installation of FGD is compulsory as per directions of Ministry of Environment and Forest and RVUN is about to issue Lol for FGD, whereas new projects have been planned as per future requirement of Power. If Commission does not approve the RoE in the current order and consider the same in the true up of FY 2022-23, it means that the approval of RoE shall be in FY 2024.
31. The equity contribution for the above project has not been provided separately and non approval of the RoE shall defer the projects beyond 2024 as no bank will be offering loan for a project without equity contribution.
32. RVUN, therefore has requested to allow RoE for FY 2022-23 as mentioned below:

Rs. in Cr.			
S. No.	Stations/Plants	Equity FY 22-23	RoE for FY 22-23 @15%
1.	CSC TPP	1492.77	223.92

### **Respondents Objections/Comments**

33. ROE for FY 2022-23 not considered by Commission due to non-availability of specific document from Govt. for claiming the ROE. That specific document of Government of Rajasthan (GoR) was provided on 27.06.2022 and on the basis of the same the Petitioner has sought review of Commission's order dated 23.06.2022.
34. As per Clause(a) of CPC rules, it is abundantly clear that review can only be filed on the discovery of new and important matter or evidence which



after exercise of the due-diligence was not in the knowledge of the applicant and could not be produced by him at the time when the decree was passed. But in present case, the aforesaid document has been issued by the Govt. much beyond the Commission's order therefore it is outside the purview of the review jurisdiction.

35. The prayers made by the petitioner reveal that it is seeking additional directions from the Commission, which is not permissible under review jurisdiction. On this ground the impugned petition is liable to be dismissed.

### **Stakeholder's Objections/Comments**

36. In present petition, Petitioner has neither pointed out any mistake/ error which is apparent on the face of the record nor pointed any new and important matter or evidence which after exercise of the due-diligence was not in the knowledge of the Petitioner and could not be produced by him at the time of passing the Commission's order dated 23.06.2022. Petitioner not specified the other reasons sufficient for consideration of the review petition therefore the present petition is not maintainable and deserve to be dismissed.
37. The Commission in the order dated 23.06.2022 after considering the submissions of RVUN and material placed on record for allowing RoE for FY 2022-23 had granted liberty to RVUN to claim the ROE in the true up petition for FY 2022-23 after getting the requisite documents from GOR. The Commission observed as under:

*"4.32. The Commission has considered the submissions of RVUN for allowing RoE from FY 2022-23 onwards, however, the Petitioner has not submitted any specific document from the GOR stating that the RoE for RVUN from FY 2022-23 may be allowed. Therefore, the Commission for the purpose of this Order has not considered the same. However, the Commission grants liberty to the Petitioner to come up with the*

*aforesaid document from GOR for its claim on ROE during the true-up Petition for FY 2022-23."*

38. Therefore, in light of above, the GOR letter dated 27.06.2012 cannot be a ground for review as the issue has already been considered and liberty has been granted to the Petitioner to claim the ROE in true up petition.
39. Since, RVUN has neither pointed out any error apparent nor provided any new information, which satisfies the conditions for review of the impugned Order, the review sought by RVUN deserves to be disallowed on this issue.

### **Commission's view**

40. It is observed that Commission during the proceedings of original petition, directed the RVUN to submit letter from Government of Rajasthan allowing RVUN to claim RoE for FY 2022-23 for RVUN stations. The Petitioner, however, could not produce the required document and the Commission issued the order in the matter on 23.06.2022 granting liberty to the Petitioner to come up with the aforesaid document from GOR for its claim on ROE during the true-up Petition for FY 2022-23.
41. The Petitioner has now submitted that during the proceedings of the original petition the matter was under consideration of the State Government. The GoR vide its letter dated 27.06.2022 has allowed the petitioner to claim the RoE for FY 2022-23.
42. It is observed that since this issue was under consideration of the State Govt. during the proceedings of the petition and the requisite letter dated 27.06.2022 has been issued soon after the issuance of the order dated 23.06.2022. Further, as per RERC Tariff Regulations, 2019 generating companies are entitled for RoE @ 15% of equity base.

43. In view of above facts and circumstances, the Commission deems it appropriate to review the RoE approved for FY 2022-23 and allows the same considering the approved equity base of Rs. 1492.77 Crore and rate of RoE of 15% in accordance with the RERC Tariff Regulations, 2019.

**Table 1: Return on Equity for FY 2022-23 (Rs. Crore)**

Particulars	FY 2022-23		
	Claimed in Petition No. 1985/22	Approved in order dated 23.06.2022	Revised Approved
Return on Equity	236.77	0.00	223.92

44. Accordingly, the revised AFC and Summary of Tariff for FY 2022-23 is as shown in the table below:

**Table 2: AFC for FY 2022-23 (Rs. Crore)**

Particulars	FY 2022-23		
	Claimed in Petition No. 1985/22	Approved in order dated 23.06.2022	Revised Approved
Operation & Maintenance expenses	266.14	266.14	266.14
Interest on loan and finance charges	630.97	594.35	594.35
Depreciation	433.35	416.35	416.35
Interest on working capital	83.18	80.08	82.92
Return on Equity	236.77	0.00	223.92
Insurance	14.79	8.18	8.18
Terminal benefits	24.23	24.23	24.23
Amortization	0.77	0.77	0.77
Less: Non-Tariff Income	1.12	1.12	1.12
<b>Annual Fixed Charges</b>	<b>1689.09</b>	<b>1388.98</b>	<b>1615.73</b>

**Table 31: Final Tariff for FY 2022-23**

Particulars	FY 2022-23		
	Claimed in Petition No. 1985/22	Approved in order dated 23.06.2022	Revised Approved
AFC (Rs. Crore)	1689.09	1388.98	1615.73
AFC per Unit (Rs./kWh)	1.84	1.51	1.76
Energy Charges (Rs. Crore)	2177.19	2203.11	2203.11
Energy Charge Rate (Rs./kWh)	2.37	2.37	2.37
<b>Total Tariff (Rs./kWh)</b>	<b>4.20</b>	<b>3.87</b>	<b>4.12</b>

45. The Review Petition filed by RVUN stands disposed of in the above terms.

(Dr. Rajesh Sharma)  
Member

(Sh. Hemant Kumar Jain)  
Member

(Dr. B.N. Sharma)  
Chairman