

# Rajasthan Electricity Regulatory Commission

**Petition No. RERC-1595/19**

Petition filed by Rajasthan Vidyut Prasaran Nigam Ltd. under Section 94 (1)(f) of the Electricity Act,2003 seeking review of Commission's order dt. 04.11.2019.

**Coram:**

**Shri Shreemat Pandey, Chairman**  
**Shri S. C. Dinkar, Member**  
**Shri Prithvi Raj, Member**

Petitioner : Rajasthan Vidyut Prasaran Nigam Ltd.

Respondent : 1. M/s Rajasthan Patrika Pvt. Ltd.  
2. Jaipur Vidyut Vitran Nigam Ltd.  
3. Jodhpur Vidyut Vitran Nigam Ltd.

Date of hearings : 07.01.2020 and 06.02.2020

Present : 1. Sh. Sandeep Pathak, Advocate for Petitioner  
2. Sh. M.K. Sharma, Advocate for Respondent no. 1  
3. Sh. David Mehla, Advocate for Respondent no. 2 & 3

**Order Date:** **25.02.2020**

**ORDER**

1. Petitioner, Rajasthan Vidyut Prasaran Nigam Ltd. (RVPN) has filed this petition on 20.12.2019 seeking review of the Commission's order dt. 04.11.2019 passed on petition no. RERC/1484/19.
2. Notices were issued to Respondents on 07.01.2020 for filing the reply to the petition and M/s Rajasthan Patrika Pvt. Ltd. filed its reply on 27.01.2020

3. The matter was finally heard on 06.02.2020. Sh. Sandeep Pathak, Advocate appeared on behalf of the Petitioner. Sh. M.K. Sharma, Advocate appeared on behalf of M/s Rajasthan Patrika Pvt. Ltd. and Sh. David Mehla, Advocate appeared on behalf of Jaipur & Jodhpur Vidyut Vitran Nigam Ltd.
4. Petitioner in its petition and during hearing submitted as under :
  - 4.1. The Commission has not correctly appreciated the existing Regulations and the impugned order virtually resulted into amendment of the Open Access Regulations, 2016 by allowing the reallocation/ alteration of drawl points without submission of fresh application for new drawl points and without making payment of compensation/ relinquishment charges for reduction in allotted Open Access capacity. Commission has committed gross jurisdictional error and perversity in the eyes of law.
  - 4.2. Open Access Regulations, 2016 clearly stipulate that any partial surrender of the capacity would attract the levy under 14 (2) of the Open Access Regulations, 2016. The Open Access consumer is required to make fresh application towards the grant of open access for the new drawl points as per the specific procedure of LTOA under the Open access Regulations.
  - 4.3. If Petitioner is allowed for reduction of sanctioned LTOA capacity without paying compensation charges and/or Open Access is allowed for new drawl points without fresh application, this will promote other Open Access customers to change the drawl quantum on day to day basis even in LTOA and also to add new drawl points without fresh application which may also create operational problem.
  - 4.4. The Commission in its order dated 04.11.2019 has virtually considered nine different LTOA as one single agreement, whereas each agreement has different period and specifications. Hence, the liabilities arising out of different agreements cannot be clubbed together by allowing Respondent

to reduce the sanction LTOA capacity at various drawl points and further seek sanction of Open Access for new drawl points.

4.5. The dispute raised by the Respondent has already been addressed and settled by Hon'ble APTEL in the order dated 31.03.2010 passed in Appeal No. 104 of 2009 in the matter of Gujarat Energy Transmission Corporation Ltd. V/s Gujarat Electricity Regulatory Commission and Ors. and it is binding on all disputes of similar nature.

4.6. In view of above, it is prayed that Commission may please to review the order dated 04.11.2019 and dismiss the petition filed by M/s Rajasthan Patrika Pvt. Ltd.

5. Respondent in its reply as well as during hearing submitted as under :-

5.1. The review petition does not fulfill the legal requirement of review under section 114 and order 47 of Civil Procedure Code 1908 therefore does not deserve admission.

5.2. The Petitioner is trying to file an appeal through the review petition which is not permissible by the law. If the Petitioner is not satisfied with the order, the right remedy lies in the appeal of the decision for which the Commissions has no jurisdiction. The review petition cannot be used as an appeal.

5.3. All the arguments given in the review petition have already been considered by the Commission before issuing the order dated 04.11.2019. The review petition cannot be filed on the basis of the arguments which have already been considered and overruled by the Commission.

5.4. Petitioner has not made compliance of the order dated 04.11.2019 so far even after furnishing supplementary agreement with the Petitioner. Therefore, Petitioner be directed to make immediate compliance of the

order dated 04.11.2019.

### **Commission's view**

6. Commission has considered the submissions made by Petitioner and Respondents.
7. Commission observes that the review of an order may be considered by the Commission under Section 114 and 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.
8. It is observed from the impugned order that Commission before passing the said order has taken into account all the facts and material placed before it at the time of submitting petition and pleadings during the hearing of the petition. Looking to the arguments made by the Petitioner, Commission is of the considered opinion that there is an attempt to re-argue the case. Same points cannot be argued once again in the Review petition in different words.
9. Petitioner has not pointed out any error apparent on the face of the record or any other new fact or any other sufficient ground for review under Section 114 and Order No. XL VII Rule 1 of CPC in the Commission's Order dated 04.11.2019. Hence, the Commission does not find any ground in the petition which qualifies for review of the order dated 04.11.2019. The Commission,

therefore, rejects the review petition filed by Rajasthan Vidyut Prasaran Nigam Ltd.

10. The review petition stands disposed of accordingly.

(Prithvi Raj)  
Member

(S.C. Dinkar)  
Member

(Shreemat Pandey)  
Chairman