

Petition filed under section 86 (1) and 181 of the Electricity Act, 2003 read with regulations 12.2, 12.3, 12.4, 12.5 and 14.1 of RERC (Electricity Supply Code and Connected Matters) Regulations, 2021 to obtain clarity and remove the difficulties faced by Discoms in implementation of the said regulations regarding assessment made in vigilance cases booked under Section 135 and 126 of the Electricity Act, 2003.

Coram:

Dr. B.N. Sharma, Chairman

Hemant Kumar Jain, Member

Dr. Rajesh Sharma, Member

Petitioners : Jaipur Vidyut Vitran Nigam Ltd.
Ajmer Vidyut Vitran Nigam Ltd.
Jodhpur Vidyut Vitran Nigam Ltd.

Date of Hearing : 01.12.2022, 10.01.2023, 13.04.2023, 01.06.2023, 12.07.2023.

Present : Sh. Bipin Gupta, Advocate for Petitioners.

Date of Order:

03.08.2023

ORDER

1. The three distribution companies namely, Jaipur Vidyut Vitran Nigam Ltd. (JVVNL), Ajmer Vidyut Vitran Nigam Ltd. (AVVNL) and Jodhpur Vidyut Vitran Nigam Ltd. (JdVVNL), collectively called Discoms or Petitioners had filed petition under section 86 (1) and 181 of the Electricity Act, 2003 read with regulations 12.2, 12.3, 12.4, 12.5 and 14.1 of RERC (Electricity Supply Code and Connected Matters) Regulations, 2021 to obtain clarity and remove the difficulties faced by Discoms in implementation of the said regulations regarding assessment made in vigilance cases booked under Section 135 and 126 of the Electricity Act, 2003.

2. The matter was initially listed for hearing on 01.12.2022, The Commission directed Petitioners to submit the detailed report on the issues arose during the course of hearing including details of billing efficiency, cases booked as theft, conviction rate, assessment and realization for theft cases for last three years. Petitioners were also directed to file the prevailing practice in this regard in other States along with court ruling supporting their petition. Petitioners filed the requisite information on dated 24.03.2023. However, in respect of practice being adopted by other States, petitioners submitted that they could not gather any information in this regard from other States.
3. Subsequently, on hearing dated 01.06.2023, Commission directed Petitioners to submit the circle wise data for the AVVNL similar to the details as they had already filed in respect of JVVNL & JdVVNL. Petitioners submitted additional submissions on 09.06.23.
4. The matter was finally heard on 12.07.2023.

Petitioners submission:

Petitioners in its petition, written submissions and during the course of hearing submitted as under:

5. Petitioners submitted that the Commission has notified the RERC (Electricity Supply Code and Connected Matters) Regulations, 2021 on dated 17.02.2021 (herein after referred as 'Supply Code Regulations, 2021'). The said Regulations are applicable to the Distribution Licensees including Deemed Licensees and consumers in the State of Rajasthan.
6. Accordingly, the Petitioners are presently governed by the "Supply Code Regulations, 2021" which has repealed the existing conditions of RERC (Electricity Supply Code and Connected Matters) Regulations, 2004. However, The Petitioners are facing difficulty in implementation of Supply Code Regulations, 2021, regarding the assessment and imposition of panel charges in cases pertaining to unauthorized use of electricity and theft of electricity.
7. Petitioners further submitted that Regulation 12.2 of the Supply Code Regulations, 2021 deals with the case of Unauthorized use of Electricity under Section 126 of the Act and Regulation 12.3 lays out the procedure for dealing with cases of unauthorized use of electricity. The relevant portion of Regulation 12.3 is reproduced as under:-

a) *Provisional assessment and Notice:*

If the Assessing officer on the basis of Inspection Report and other materials comes to the conclusion that it is prima facie a case of unauthorized use of electricity, he shall:

- i. *Make provisional assessment based on the best of his judgment which is reasonable in the given circumstances and is based on all the available evidence and records. While doing so the Assessing officer shall compute the amount payable by the person benefited by the unauthorized use of electricity as per provision laid down in sub-section (5) read with subsection (6) of Section 126 of the Act:*

Provided that if the period of unauthorized use of electricity can be conclusively established, the assessment shall be done for the entire period for which the unauthorized use was taking place and if the period of such unauthorized use is not known or cannot be conclusively established, the period of assessment shall be limited to 12 (twelve) months immediately preceding the date of inspection:

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8. Regulation 12.4 of the Supply Code Regulations, 2021 deals with the cases of theft of electricity under section 135 of the and Similarly, Regulation 12.5 governs the process for the assessment to be made in case of theft of electricity which is reproduced below:

“12.5 Assessment Bill for theft of electricity

- a) *The quantum of electricity for civil liability shall be provisionally assessed as per Appendix-I of these regulations.*

- b) *The period of assessment for theft of electricity shall be for a period of 12 (twelve) months preceding the date of detection of theft of electricity or the exact period of theft if determined, whichever is less;*

Provided further that period of theft of electricity shall be assessed based on the following factors: -

- i. *actual period from the date of commencement of supply to the date of inspection;*
 - ii. *actual period from the date of replacement of component of metering system in which the evidence is detected to the date of inspection;*
 - iii. *actual period from the date of preceding checking of installation by authorized officer to date of inspection;*
 - iv. *data recorded in the energy meter memory wherever available.*
 - v. *based on the document being relied upon by the accused person.*
- c) *The assessment bill shall be prepared on two times the rate as per applicable tariff.*

- d) While making the assessment bill, the Licensee shall give credit to the consumer for the amount paid by the consumer for the period of the assessment bill.
- e) The assessment order shall be served upon the consumer or the person in occupation or possession or in charge of the place or premises, as the case may be, within 7 (seven) days of disconnection of supply or within 2 (two) days from the date of receipt of request of such person, whichever is earlier."

9. Petitioners also submitted that Appendix-I of the Supply Code Regulations, 2021, has specified the formula for assessment of energy/levy of charges in case of unauthorized use of electricity or theft of electricity which is also reproduced as under:

"Appendix-I

Formula for assessment of energy/levy of charges in case of unauthorized use of electricity or theft of electricity

(a) Unauthorized use.

- i. For the purpose of assessment, connected load on the date of inspection, shall be computed as per Annexure-1.
- ii. The quantum of unauthorized use of electricity under various categories listed at sub-regulation 12.2 (c), shall be assessed as follows:
 - A. For 12.2 (c) (i) – In proportion of higher tariff load to total load.
 - B. For 12.2 (c) (ii) – quantum of exceeded load.
 - C. For 12.2 (c) (iii) – In proportion of extended load to other premises to total load (including extended load).
 - D. For 12.2 (c) (iv) – On entire consumption.
 - E. For 12.2 (c) (v) – On entire consumption.
 - F. For 12.2 (c) (vi)- On entire consumption.

iii. Rate of charge

The assessment shall be made at rate of charge as under:

- A. For 12.2 (c) (i) – at twice the tariff applicable to the higher tariff category of service.
- B. For 12.2 (c) (ii) – At twice the fixed charges on excess load applicable for the relevant category of service connection
- C. For 12.2 (c) (iii) at twice the tariff applicable for the relevant category of service connection or extended load, whichever is higher.
- D. For 12.2 (c) (iv) to (vi) – at twice the tariff applicable for the relevant category of service connection."

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10. Petitioners submitted that in view of above Regulation, assessment in cases of unauthorized use of electricity and theft of electricity is made on *twice the rate as per applicable tariff*.
11. Petitioners also submitted that the RERC(Terms and Conditions for Determination of Tariff)Regulations, 2019 defines the term "Tariff" as under:

"2. a) (64) "Tariff" means the schedule of charges for generation, transmission, wheeling and supply of electricity together with terms and conditions for application thereof"
12. Petitioners submitted that as per provisions of the prevalent Supply Code Regulations, the Discoms have been preparing the assessment bill in cases of unauthorized use of electricity and theft of electricity, at two times the rate as per applicable tariff i.e. twice the applicable Energy and Fixed charges as approved by the Commission.
13. Petitioners submitted that Regulation 88 of the RERC Tariff Regulations, 2019 deals with the computation of Fuel Surcharge Adjustment (FSA). As per above Regulation, the Fuel Surcharge is computed on quarterly basis, as per actuals of power purchase and sales of the previous quarters.
14. Petitioners also submitted that earlier the Fuel Surcharge component was not being considered while preparing the assessment in case of unauthorized use and theft. However, JVVNL vide its circular dated 10.02.2020 has started for charging of fuel surcharge in assessment of VCR theft cases.
15. Presently, this recovery process however is only followed by JVVNL, AVVNL & JdVVNL are still not recovering any amount of fuel surcharge adjustment in cases of unauthorized use & theft of electricity.
16. Petitioners submitted that assessment period in such cases of unauthorized use of electricity and theft of electricity is specified as 12 months. In the existing scenario, Fuel Surcharge orders for all four quarters (as per the assessment period of 12 months) may not have been issued at the time of such assessment. Once the provisional notice, based on the assessment made, is issued to the consumer, it is practically not feasible to revise the same as per the FSA order issued post that.
17. Petitioners also submitted that In case of unauthorized use, if the period of unauthorized use of electricity can be conclusively established, the assessment shall be done for the entire period for which the unauthorized use was taking place and if the period of such

unauthorized use is not known or cannot be conclusively established, the period of assessment shall be limited to 12 (twelve) months immediately preceding the date of inspection. In theft cases, the period of assessment for theft of electricity shall be for a period of 12 (twelve) months preceding the date of detection of theft of electricity or the exact period of theft if determined, whichever is less.

18. Petitioners also submitted that in view of above the period of assessment is upto 12 months. Since, Fuel surcharge for last three quarters would have already been decided, it may be recovered on the units so assessed on consumption of the period for which it is decided:

- (i) For recovering the Fuel Surcharge for the period for which it is not decided may be recovered provisionally on the basis of Fuel Surcharge decided for the last quarter and final adjustment be made in succeeding bills of the consumer after finalization of Fuel Surcharge of fourth quarter of assessment period.
- (ii) In case of non-consumer, Fuel Surcharge decided for the quarters may be considered on actual basis and for the rest of the period, fuel surcharge shall be recovered on the basis of average of fuel surcharge already decided.

19. Accordingly, Discoms are seeking clarity that, if FSA is to be recovered in case of assessment made in case of unauthorized use of electricity and theft of electricity and Commission finds it appropriate for such charges to be included in assessment bill of such cases, the same may be made only for the period for which FSA has been finalized. Hence, clear guidelines is requested on the incorporation of FSA charges in the assessment of vigilance cases under unauthorized use and theft cases.

20. The petitioners in the petition prayed as under:

The Petitioners prayed the Commission to admit and approve the Petition so that the difficulties faced by the Petitioners regarding charging of Fuel Surcharge in case of unauthorized use of electricity and theft of electricity may be clarified and laid to rest.

Commission's analysis & views:

21. The commission has considered the submissions of Petitioner in the petition, written submission and arguments made during the hearing by the petitioners.

22. Petitioners have mainly prayed for seeking clarity if FSA can be recovered in case of unauthorized use and theft of electricity while making assessment.
23. Commission observes that the prayer of Discom is quite practical as fuel surcharge is the part of tariff.
24. Petitioners submitted that the Commission has notified the RERC (Electricity Supply Code and Connected Matters) Regulations, 2021 Regulation 12.2 & 12.3 of the above Regulations deals with the case of Unauthorized use of Electricity as specified in the Section 126 of the Act, Regulation 12.4 deals with the cases of theft of electricity and Regulation 12.5 governs the process for the assessment to be made in case of theft of electricity.
25. Petitioners further submitted that in view of above Regulations, the assessment in cases of unauthorized use of electricity and theft of electricity has been made on twice the rate as per applicable tariff i.e. twice the applicable Energy and Fixed charges as approved by the Commission.
26. Petitioners also submitted that the Commission also notified the RERC (Terms and Conditions for Determination of Tariff) Regulations, 2019. The Regulation 88 of the above Regulations allows Discoms to recover Fuel Surcharge Adjustment (FSA) which is computed on a quarterly basis, as per actuals of power purchase and sales of the previous quarters.
27. Petitioners also submitted that earlier, the Fuel Surcharge component was not considered while preparing the assessment in case of unauthorized use and theft of electricity cases. From 10.02.2020 onwards JVVNL has started charging of fuel surcharge while making assessment of theft cases. However, AVVNL & JdVVNL are still not recovering any amount of fuel surcharge adjustment in such cases.
28. Petitioner also submitted that assessment is required for a period of upto 12 months. Since, Fuel surcharge for last three quarters would have already been decided, it may be recovered on the units so assessed on consumption of the period for which it is decided:
 - (i) For consumers recovering the Fuel Surcharge for the period for which it is not decided may be recovered provisionally on the basis of Fuel Surcharge decided for the last quarter and final adjustment be made in succeeding bills of the consumer after finalization of Fuel Surcharge of fourth quarter of assessment period.

- (ii) In case of non-consumer, Fuel Surcharge decided for the quarters may be considered on actual basis and for the rest of the period, fuel surcharge shall be recovered on the basis of average of fuel surcharge already decided.
29. Commission has looked into the Regulation 12.2, 12.3, 12.4 & 12.5 of RERC (Electricity Supply Code and Connected Matters) Regulations, 2021 which deals with assessment and procedure of cases of unauthorized use of Electricity and of theft of electricity as specified in the Section 126 and 135 of the Electricity Act, 2003. Also, Regulation 88 of the RERC (Terms and Conditions for Determination of Tariff) Regulations, 2019 provides that fuel surcharge shall be determined as per formula specified in the regulation on quarterly basis.
30. Commission has also observed section 62(4) of the Electricity Act, 2003 and reproduced as under:-
- "No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified".*
- The above Act clarify that fuel surcharge is the part of tariff.
31. In view of above, Commission observes that every consumer who uses electricity has to pay fuel surcharge which is determined in accordance with the provisions of the Act and RERC (Terms and Conditions for Determination of Tariff) Regulations, 2019 as amended from time to time. Regulation 88 of RERC (Terms and Conditions for Determination of Tariff) Regulations, 2019 also authorizes Discoms to recover fuel surcharge.
32. Regarding Fuel surcharge adjustment Commission vide its tariff order dated 31.03.2023 has also approved the base FSA as under:-
- "Accordingly, the Commission deems it appropriate to approve the determination and levy of Base FSA based on actual weighted average of FSA that was levied during all four quarters of the previous year on the monthly bills of the consumers on a provisional basis and subsequently, the Fuel Surcharge shall be computed on a quarterly basis as per Regulation 88 of the RERC Tariff Regulations, 2019 and any variation observed on account of such quarterly computation may accordingly be adjusted from the Base FSA."*
33. Accordingly, the Commission deems it appropriate to consider allowing recovery of fuel surcharge as per proposal of Discoms while assessing the case of unauthorized use and theft of electricity under Regulation 12.2, 12.3 and 12.4, 12.5 of RERC (Electricity Supply Code and Connected Matters) Regulations, 2021 as under:-

(a) For consumers:

- (i) Fuel surcharge shall be recovered on the units so assessed on consumption of the period for which it is decided. For recovering the fuel surcharge for the period for which it is not decided the same shall be recovered provisionally on the basis of average of fuel surcharge for the last four quarters for which fuel surcharge has been determined.
- (ii) However, if Discoms have determined base FSA in terms of Commission's order dated 31.03.2023, then the recovery for the period for which fuel surcharge has not been determined shall be considered on the basis of base FSA.
- (iii) Final adjustment shall be made in subsequent bills of the consumer after finalization of fuel surcharge of the relevant quarter of assessment period.

(b) For non-consumers:

- (i) In case of non-consumer, fuel surcharge for the quarters which has already been decided shall be considered on actual basis and for the rest of the period, fuel surcharge shall be recovered on the basis of average of fuel surcharge of last four quarters for which fuel surcharge has been determined.
- (ii) However, if Discoms have determined base FSA in terms of Commission's order dated 31.03.2023, then the recovery for the period for which fuel surcharge has not been determined shall be considered on the basis of base FSA.
- (iii) In case of non-consumers this assessment shall be final and no further adjustment shall be made.

34. The order of the Commission shall be applicable prospectively for the assessment being made after issue of this order. The cases where assessment has already been done will not be opened on account of this order.

35. The Petition is disposed of in above terms.

(Dr. Rajesh Sharma)
Member

(Hemant Kumar Jain)
Member

(Dr. B. N. Sharma)
Chairman