Rajasthan Electricity Regulatory Commission

Petition No. 2090/2023

Petition under Section 86 (1)(c) and (f) of the Electricity Act, 2003 for adjudication of disputes.

Coram:

Dr. B.N. Sharma, Chairman

Sh. Hemant Kumar Jain, Member

Dr. Rajesh Sharma, Member

Petitioner :

NTPC Vidyut Vyapar Nigam Limited (NVVN).

Respondents :

1. Rajasthan Vidyut Prasaran Nigam Limited (RVPN).
2. Central Transmission Utility of India Limited (CTU).

Date of Hearing: 20.03.2023, 08.06.2023 and 13.07.2023

Present :

1. Ms. Swapna Sheshadri, Advocate for Petitioner.
2. Ms. Ritu Apurva, Advocate for Petitioner.
3. Sh. Ribhu Dutt, Advocate for Respondent RVPN.
4. Sh. Alok Shankar, Advocate for Respondent CTU.

Order Date: **27.07.2023**

ORDER

1. M/s NTPC Vidyut Vyapar Nigam Limited (NVVN) had filed Petition no. RERC- 2090/2023 on dated 02.02.2023 under Section 86 (1)(c) and (f) of the Electricity Act, 2003 for adjudication of disputes related to rebate on prompt payment availed by the Petitioner on making timely payments of Transmission Charges to the RVPN.

2. The matter was heard on 20.03.2023. Commission Vide ROP dated 20.03.2023 granted two weeks time to Respondents to file their reply and one week thereafter to the Petitioner to file their rejoinder.

3. Respondent RVPN filed their replies on dated 05/04/2023 and 18/07/2023, Respondent CTU filed their reply on dated 09/05/2023 and Petitioner filed written submission on dated 11/07/2023.

4. Further, the matter was listed on 20.03.2023, 08.06.2023 and finally heard on 13.07.2023. Ms. Swapna Sheshadri and Ms. Ritu Apurva, Advocate appeared for Petitioner, Sh. Ribhu Dutt, Advocate appeared for Respondent RVPN and Sh. Alok Shankar, Advocate appeared for Respondent CTU.

5. Petitioner M/s NTPC Vidyut Vyapar Nigam Limited in its Petition, written submission and during hearing has submitted as under:

5.1 The Petitioner is an interstate trading licensee, having been granted a trading license by the Central Electricity Regulatory Commission. The Petitioner has been supplying from Solar project developed under national solar mission. These projects are located in the state of Rajasthan and the power is flowing to various Discoms on interstates basis.

5.2 For the purposes of Interstate Open Access, the Petitioner is also accessing the transmission system of the Rajasthan Vidyut Prasaran Nigam Ltd. (RVPN) for injection of Solar power up to interconnection of the RVPN and CTU system for solar project under Jawaharlal Nehru National Solar Mission Phase-I.

5.3 On 22.02.2013, No Objection Certificate ('NOC') was issued by RVPN in respect of 8 nos Long Term Access applications for evacuation of 210 MWS Solar Power from 24 Solar Power Plants being setup under Jawaharlal Nehru National Solar Mission (JNNSM) Phase I Batch 2.

5.4 On 31.10.2014 RVPN raised bills for transmission charges against LTA for transmission of 210 MW solar power from injection point to inter connection point of RVPN system and inter-state transmission system. The bills issued were inclusive of the rebate granted to the Petitioner.

5.5 On 09.02.2016 an Agreement for Long Term Open Access of State Transmission System was signed between RVPN and the Petitioner, providing the terms and conditions guiding the Open Access.

5.6 On 24.01.2020 RVPN issued communication to the Petitioner with regard to the Rebate on Transmission Charges for the month of September 2019 while stating that the Transmission Charges bills raised by the RVPN on 01.10.2019 having due date 14.11.2019 has been deposited on 04.11.2019 after availing rebate at 1%.

5.7 After seven years of smooth operation, a letter was issued by the RVPN stating that rebates for prompt payment on transmission charges are not applicable as the same is not mentioned in the RERC Open Access Regulations, 2016.

5.8 The Petitioner explained that the rebate on prompt payment is part of the various Tariff Regulations i.e. 2009, 2014 & 2019 and in light of the same the Petitioner has been availing the benefit of rebate on prompt payment. Further, that the imposition of such additional cost at such a late stage would be a burden which would penalize the Petitioner.

5.9 The RERC Tariff Regulations 2009, 2014 and 2019 clearly stipulates that the rebate is applied to 'payment of bills of capacity charges and energy charges of generation tariff or of transmission charges or of wheeling charges', which are independent to RERC Open Access Regulations, 2016 power, its pricing and related Regulations.

5.10 Commission has trued up the Transmission Tariff of the RVPN for FY 2018-19 wherein the Transmission Tariff has been reduced, again in the tariff for the period April 2021 to November 2021 Tariff reduction was done by RERC.

5.11 The Petitioner wrote a letter to RVPN to give Credit note against the reduction of transmission charges for the period April 2021 to November 2021 by the RVPN.

5.12 RVPN has incorrectly adjusted the reduced Transmission Charges for FY 2018-19 due to the Truing up Order, reduced amount of excess provisional billing for the period April 2021 to November 2021 and part deduction of refundable amount towards terminal benefit share for FY 2019-20 passed by the Commission in respect of the Transmission Tariff of the RVPN.

5.13 Instead of resolving the issue of prompt payment rebate by filing an appropriate petition before this Commission, the RVPN has unilaterally adjusted the amounts which it had to pass on to the Petitioner by way of reduced tariff against the prompt payment rebate which was disputed between the parties.

5.14 The Petitioner and RVPN having clearly understood and acted upon the LTA Agreement in a consistent manner and interpreting the RERC Tariff Regulations, 2009, 2014 and 2019 to be applicable in so far as prompt payment of bills is concerned, the RVPN in the month of September,2021 changed its position on a hyper technicality that the RERC Open access Regulations 2016 does not deal with the issue of prompt payment rebate.

5.15 Prompt payment rebate and late payment surcharge are the terms and conditions of tariff and have to necessarily be governed by the provisions of the Tariff Regulations and not by the provisions of the Open Access Regulations. The RERC Tariff Regulations, 2009, 2014 and 2019, clearly states that it is applicable to all Intra-State transmission of electricity.

5.16 It is further submitted that the terms and conditions of tariff include rebate and late payment surcharge, this position has been settled by the Hon'ble Tribunal in Appeal Nos. 94 and 95 of 2012 in BSES Rajdhani

Power Limited vs Delhi Electricity Regulatory Commission dated 04.09.2012. The relevant portion of the Judgement dated 04.09.2012 is quoted below:-

"…….32. Section 61 and 79 not only deal with the tariff but also deal with the terms and conditions of tariff. The terms and conditions necessarily include all terms related to tariff. Determination of tariff and its method of recovery will also depend on the terms and conditions of tariff. For example, interest on working capital which is a component of tariff will depend on the time allowed for billing and payment of bills. This will also have an impact on terms and conditions for rebate and late payment surcharge. Similarly, billing and payment of capacity charge will depend on the availability of the power station. Therefore, the scheduling has to be specified in the terms and conditions of tariff….."

5.17 Petitioner has been consistently making the payments within the specified time as per the RERC Tariff Regulations 2009, 2014 and 2019 from the date of the receipt of monthly bill from the period August 2013 onwards, RVPN also accepted the above without any protest or demur.

5.18 The Petitioner and RVPN understood and performed the LTOA from August 2013, till June 2022. It is well settled that, where the parties to a contract have understood and interpreted it in a particular manner for several years, the same would be binding and the said principle was laid down by the Hon'ble Supreme Court in Transmission Corporation of Andhra Pradesh Ltd. and Others vs M/S. GMR Vemagiri Power Generation Ltd. and another (2008) 3 SCC 716. The relevant para of the said Judgment is reproduced herein below:-

"……10. A contract document had to be interpreted in accordance with the language used, with reference to the context in which it came to be prepared. A technical view of an agreement, torn out of context, cannot be taken to reinterpret the agreement and arrive at a new finding with regard to the intendment of the parties by including something which was never intended to be included, to the prejudice of a party to the contract, while giving an undue advantage to the other. A primary consideration will also be the understanding of the parties of the terms of the contract and what was intended, as reflected inter alia from their conduct. The contract being a commercial document, utmost importance had to be given to its efficacy.....".

5.19 There is no express provision under the RERC Open Access Regulations, 2016 which indicates that the rebate provided in the RERC Tariff Regulations is not applicable to the Petitioner whereas the provision for rebate provided in the RERC Tariff Regulations expressly provides that it is applicable to all transmission charges. The relevant provisions of the RERC Tariff Regulations, 2019 is extracted hereunder:-

"38. Rebate for prompt payment

(1) For payment of bills of capacity charges and energy charges of generation tariff or of transmission charges or of operating charges of SLDC or of wheeling charges effected through the letter of credit or by cash/cheque or through electronic transfer within 5 working days of presentation of bills, a rebate of 1.5 % shall be allowed.....

(2) If payments are made beyond 5 working days through Letter of Credit or by cash/cheque or through electronic transfer but within a period of 30 days of presentation of bills, a rebate of 1% shall be allowed."

5.20 Petitioner further submitted that it is a settled law that what is not expressly prohibited is permissible and applying the same in the present case, the provisions of rebate provided for in the RERC Tariff Regulations is applicable to the Petitioner.

5.21 There is no provision with regard to Billing and Payment under RERC Open Access Regulations, 2016 and the procedure for the Open Access Regulations only provide for the manner in which the billing and payment has to be done. In absence of any provision under RERC Open Access Regulations, 2016, the provision with regard to Billing and Payment provided for under the RERC Tariff Regulations will prevail.

5.22 Petitioner further stated that RVPN has adjusted the disputed amount of Rs 4.97 crores unilaterally from the Petitioner. RVPN cannot be an adjudicature of its own case. The correct way of resolution of any dispute that may arise on the interpretation of the Regulations framed by this Commission, or the contracts entered into between the parties is by approaching this Commission for such adjudication under Section 86(1)(f) of the Electricity Act, 2003.

5.23 In considerations to above the Petitioner prayed for the following reliefs:-

i. The issue of prompt payment rebate is to be governed by the provision of the RERC Tariff Regulations 2009, 2014 and 2019.

ii. Direct the RVPN to pay to the Petitioner the amount of Rs 4.97 crores which has been incorrectly adjusted by it and admitted vide its letter dated 02.09.2022.

iii. Direct the Respondent to give rebate on transmission/ SLDC charges for future bill.

iv. Direct the payment of interest by RVPN to the petitioner from the date of wrongful adjustment i.e. 02.09.2022 till the payment is made to the petitioner at the rate of 18% per annum.

v. In case of any future dispute the RVPN should approach this Commission instead of making unilateral deductions.

6. Respondent No. 1 Rajasthan Vidyut Prasaran Nigam Ltd. (RVPN) in its replies and during hearing has submitted as under:

6.1 The Petitioner has applied to RVPN, for grant of NOC for inter-state long term open access for supply of power from solar power projects developed in the state of Rajasthan, under Jawaharlal Nehru National Solar Mission Phase-I, to other states. The NOC's issued in the favour of the Petitioner contains condition that the NTPC Vidyut Vyapar Nigam Limited would enter into an agreement with RVPN before commencement of LTA. The proposed agreement would have suitable provisions for timely payment of necessary charges determined by RERC from time to time.

6.2 The entire matter is arising out of agreement dated 09.02.2016 entered between the Petitioner and the RVPN. The Petitioner has entered into the agreement as an "Open Access Customer".

6.3 The agreement was entered between the Petitioner and the RVPN in the year 2016 for long term open access. Any payment, penalty or rebate has to be governed by the terms of the said agreement. Clause 1.0 of the said agreement states that the Long Term Open Access on RVPN's system is allowed as per provisions of Rajasthan Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulation, 2004 as amended from time to time.

6.4 The terms of the said agreement does not provide for applicability of RERC (Terms and Conditions for Determination of tariff) Regulations, 2009/2014/2019.

6.5 After entering into a legal agreement, terms and conditions of the agreement are binding on both the parties and any other provision/ condition beyond the agreement shall not be binding on any of the parties. The provision of the Tariff Regulation quoted by the Petitioner is not applicable on the facts of the present case as the same nowhere states that it shall be applicable even on the open access consumers.

6.6 RERC (Terms and Conditions for Determination of Tariff) Regulations, 2019, contains provisions applicable for the determination of tariff of a transmission, distribution or generating company in Rajasthan specially where there are not open access consumer. Further, the Petitioner does not fall in any of the above categories and therefore cannot insists on being regulated by the said regulation.

6.7 RERC (Terms and Condition for Open Access) Regulations, 2016, is a special law for open access consumers and contains all the provisions applicable upon open access transmissions. The regulation making body specifically intended to make a clear distinction between the transactions governed by Tariff Regulations 2019 & Open Access Regulations.

6.8 RERC (Terms and Conditions for Open Access) Regulations, 2016 provides that, the open access customer shall pay the transmission charges and wheeling charges as determined from time to time. These charges are determined by the Commission every year and declared in the Annual Tariff Order issued by RERC. RERC (Terms and Conditions for

Open Access) Regulations, 2016 provides that, other commercial conditions for transmission charges, wheeling charges shall be as provided in the detailed procedure.

6.9 Neither the RERC (Terms and Conditions for Open Access) Regulations 2004/2016 nor the procedure for grant of open access has any provision for rebate on prompt payment, the Petitioner is not entitled for the same.

6.10 The Bills issued for transmission charges had no provision/condition for allowing rebate on prompt payment though the provision for Late payment surcharges (LPS) @ 1.25% per month for delay in payment is mentioned in the bill. It is denied that the amount reflected/demanded via the said bill was inclusive of any rebate whatsoever.

6.11 Further, it is submitted that the long-term open access with M/s NTPC Vidyut Vyapar Nigam Limited (NVVN) initiated in Aug-2013. Before Sept-2017, no rebate was either allowed or availed by NVVN. Petitioner started to suo -moto deduct rebate on prompt payment from Sept- 2017 prior to which no such rebate was availed by the Petitioner.

6.12 Petitioner was requested not to deduct the rebate on prompt payment and to pay full amount of monthly bills otherwise same shall be treated as short payment and LPS shall be applicable. Since, despite of repeated request, M/s NVVN continued to deduct rebate while making payment of monthly bills, RVPN was left with no other option but to recover the short payment received from the amount to be refunded to the Petitioner.

6.13 The amount suo-moto deducted by NVVN on account of rebate for the period Sept. 2017 to June 2022 and LPS thereon was treated as short payment towards monthly bills and was adjusted against the refundable amount of revenue surplus of FY 2018-19, excess provisional billing made for the period of April 21 to Nov. 21 and refundable amount of revenue surplus for FY 2019-20.

6.14 The demand raised by RVPN is totally in consonance with the Regulations of 2016 and the agreement entered between the parties to the present lis and can by no stretch of imagination can be termed as unfair financial gain. RVPN never acknowledged the illegal suo-moto deductions made by the petitioner in the garb of wrongful interpretations of regulations which are not applicable upon the parties to the agreement.

6.15 It is further submitted that amount has been adjusted when the petitioner failed to deposit the same inspite of repeated requests on the part of the RVPN.

6.16 Even, if it is assumed that the Petitioner was entitled to get rebate on prompt payment then also the petitioner was not authorized to deduct it on its own at the time of making payment and he was liable to make full payment. It was for the RVPN to grant that rebate, if applicable and adjust the same in the next billing cycle. Therefore, even the act of the petitioner to deduct the amount of alleged rebate on its own account is also per say illegal.

6.17 The petitioner has by-passed the statutory remedy available to him as per RERC (Terms and Conditions for open access) Regulations, 2016 and has directly approached this Commission.

6.18 In considerations to above the Respondent RVPN has prayed to dismiss the Petition and direct the Petitioner not to deduct the rebate on prompt payment and to pay, full amount of monthly bills along with the amount deducted on account of rebate on prompt payment so far.

7. Respondent No. 2 Central Transmission Utility of India Limited (CTU) in its reply and during hearing has submitted as under:

7.1 The Petitioner has not raised any claim or sought any relief against CTU. The claims and reliefs sought by the Petitioner are directly related to RVPN and does not affect any rights or obligations of CTU. The CTU merely performs the functions of planning and co-ordination relating to inter-state transmission system. Further, CTU under the present petition cannot provide any observation or comments on the rebate on prompt payment or the SLDC charges under the RERC Regulations.

7.2 CTU is neither a necessary party nor a proper party to the present petition. Further, CTU shall be deleted as a party since the instant petition can be effectively adjudicated without CTU and that no relief can be granted under the cause of action of the present petition against CTU.

7.3 In considerations to above, the Respondent CTU has prayed to delete Respondent No. 2 (CTU) as party to the present petition.

Commission's view

8. Commission has considered the submissions, replies and oral arguments made on behalf of the Petitioner and Respondents.

9. The Petitioner is an interstate trading licensee and the Petitioner has been supplying from Solar project developed under national solar mission. These projects are located in the state of Rajasthan and the power is flowing to various Discoms on interstates basis.

10. The Petitioner submitted that the Petitioner and RVPN acted upon the LTA Agreement in a consistent manner and interpreting the RERC Tariff Regulations, 2009, 2014 and 2019 to be applicable in so far as prompt payment rebate on bills is concerned. The RVPN in the month of September, 2021 changed its position that the RERC Open access Regulations 2016 does not deal with the issue of prompt payment rebate.

11. Further, Petitioner submitted that the prompt payment rebate is as per the terms and conditions of tariff and have to be necessarily governed by the provisions of the Tariff Regulations. There is no express provision under the RERC Open Access Regulations, 2016 which provides that the rebate as per the RERC Tariff Regulations is not applicable to the

Petitioner. Whereas the provision for rebate as per the RERC Tariff Regulations is applicable to all transmission charges.

12. Per contra, RVPN submitted that the entire matter is arising out of agreement dated 09.02.2016 entered between the Petitioner and the RVPN. The Petitioner has entered into the agreement as an "Open Access Customer".

13. Further, RVPN submitted that the terms of the said agreement does not provide for applicability of RERC (Terms and Conditions for Determination of tariff) Regulations, 2009/2014/2019. Neither the RERC (Terms and Conditions for Open Access) Regulations 2004/2016 nor the procedure for grant of open access has any provision for rebate on prompt payment.

14. RVPN submitted that before Sept-2017, no rebate was either allowed or availed by NVVN. Petitioner started to suo-moto deduct rebate on prompt payment from Sept- 2017 prior to which no such rebate was availed by the Petitioner.

15. Commission observes that Petitioner has raised the issue for the amount of Rs 4.97 crores which has been incorrectly adjusted by RVPN and to further provide prompt payment rebate on transmission/ SLDC charges for future bill.

16. The only issue in the petition is that whether prompt payment rebate is applicable on transmission charges in Open Access transaction. For analysing the issue, Commission looked into Rajasthan Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2004 and 2016. The relevant regulation is reproduced below:-

Terms and Conditions for Open Access Regulations, 2004

"*14. Charges for open access*

(1) (a) Transmission charges and wheeling charges payable by an open access customer shall be determined by the Commission in terms of the regulations framed by the Commission for determination of tariff."

Terms and Conditions for Open Access Regulations, 2016

"15. Charges for Open Access

(1) The open access customer shall pay the transmission charges and wheeling charges as determined from time to time.
......."

17. From the above it is clear that transmission charges payable by open access customer shall be as determined by Commission which are determined in terms of the "Tariff Regulations". Further it is also established fact that the term "tariff" includes not only the fixation of unit rates but also the terms and conditions relating to it.

18. Hon'ble Supreme Court Of India in the judgment on March 15, 2010 in Civil Appeal No. 3902 of 2006, PTC India Ltd. versus Central Electricity Regulatory Commission, has held as under:-

"17. The term "tariff" is not defined in the 2003 Act. The term "tariff" includes within its ambit not only the fixation of rates but also the rules and regulations relating to it. If one reads Section 61 with Section 62 of the 2003 Act, it becomes clear that the Appropriate Commission shall determine the actual tariff in accordance with the provisions of the Act, including the terms and conditions which may be specified by the Appropriate Commission under Section 61 of the said Act...."

19. Hon'ble APTEL on 04.09.2012 in Appeal No. 94 and 95 of 2012 (BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission and Ors.) has also held as under:-

"32. Sections 61 and 79 not only deal with the tariff but also deal with the terms and conditions of tariff. The terms and conditions necessarily include all terms related to tariff. Determination of tariff and its method of recovery will also depend on the terms and conditions of tariff. For example, interest on working capital which is a component of tariff will depend on the time allowed for billing and payment of bills. This will also have an impact on terms and conditions for rebate and late payment surcharge...."

20. In view of above, it is clear that the term 'tariff' cannot be restricted to per unit energy charge only but includes the Terms and Conditions of Tariff as the determination of tariff is based on these terms and condition.

21. Commission also looked into the scope of Tariff Regulation 2019. The scope of Terms and Conditions for Determination of Tariff Regulation 2019 reads as under:-

> *"3. Scope of Regulations and extent of application*
> *(1) These Regulations shall apply in respect of the following cases:*
> *(a).....*
> *(b) Intra-State transmission of electricity;*
> *(c)........"*

22. From the above, it is clear that the RERC Tariff Regulation 2019, clearly states that it is applicable to all Intra-State transmission of electricity which is the case here.

23. The Terms and Conditions of tariff are specified in the 'Rajasthan Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2019'. The relevant regulation is reproduced below:-

> *"38. Rebate for prompt payment*
> *(1) For payment of bills of capacity charges and energy charges of generation tariff or of transmission charges or of operating charges of SLDC or of wheeling charges effected through the letter of credit or by cash/cheque or through electronic transfer within 5 working days of presentation of bills, a rebate of 1.5 % shall be allowed....*
> *(2) If payments are made beyond 5 working days through Letter of Credit or by cash/cheque or through electronic transfer but within a period of 30 days of presentation of bills, a rebate of 1% shall be allowed."*

24. Rajasthan Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2019 provide for Prompt Payment Rebate. The prompt payment rebate on transmission charges is to be provided by the transmission licensee on early payment of the bill in terms of RERC Tariff Regulation 2019.

25. It is further clear that the early payment of the bill also goes towards reducing the working capital requirement of the licensee and the interest burden arising from it.

26. The amount of normative working capital shall cover, as per Rajasthan Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2019 which is reproduced below :-

> *"27. Interest charges on working capital*
> *(1) The amount of normative working capital shall cover:*
> *1. Generation*
> *......*
> *2. Transmission and SLDC*
> *(i) Operation and maintenance expenses for one month; plus*
> *(ii) Maintenance spares @ 15% of operation and maintenance expenses specified in Regulation 64 for Transmission and Regulation 70 for SLDC; plus*
> *(iii) Receivables equivalent to one and a half (1½) months of SLDC Charges for SLDC /transmission charges calculated on annual target availability level for Transmission Licensee;*
> *Less*
> *Amount held as security deposits from Users except security deposits held in the form of Bank Guarantees;*
> *......."*

27. In view of above it is clear that the interest on working capital is based on one and a half (1½) months receivables which has already been incorporated into the tariff of the RVPN. If the payee fails to pay the transmission charges to the RVPN, according to the due date, then receivables of the RVPN would remain blocked in the working capital for which it has been allowed interest. However, if the payee pre-pay the bill before the due date, then such blocked receivables would reduce thereby resulting in saving in form of reduced interest cost.

28. The tariffs is determined after taking into account certain enumerated factors. Rebate is allowed so as to motivate to make timely payment of the bills. Therefore, if RVPN incurs the cost of providing the rebate it also gains as it saves on the working capital requirement and in turn reduction in the interest on working capital.

29. In view of above, Petitioner is eligible for Prompt Payment Rebate in accordance with the (Terms and Conditions for Open Access) Regulations 2004 and 2016 read with RERC (Terms and Conditions for Determination of Tariff) Regulations 2014 and 2019. RVPN is directed to pay Rs 4.97 Crore to Petitioner within 3 months from the date of this order.

30. Petition is disposed of accordingly.

(Dr. Rajesh Sharma) Member	(Hemant Kumar Jain) Member	(Dr. B.N. Sharma) Chairman