

Rajasthan Electricity Regulatory Commission

Petition No. 2093/23

In the matter of Petition filed under Section 47 (4), 86 (1) (C) and (K) of Electricity Act 2003, for removal of difficulty in implementation of RERC Open Access Regulations, 2016.

Coram:

Dr. B.N. Sharma, Chairman

Hemant Kumar Jain, Member

Dr. Rajesh Sharma, Member

Petitioner: M/s Shree Cement Ltd.

Respondent: Rajasthan Rajya vidyut prasaran Nigam Ltd.

Date of Hearing: **16.03.2023 and 08.06.2023.**

Present:

1. Sh. Amarjeet Singh, Representative for Petitioner.
2. Sh. Umang Gupta, Advocate for Respondent.

Order Date: **16.06.2023**

ORDER

1. M/s Shree Cement Ltd. (SCL) filed this petition on 03.02.2023 under Section 47 (4), 86 (1) (C) and (K) of Electricity Act 2003, for removal of difficulty in implementation of RERC Open Access Regulations, 2016.

2. Commission heard the matter on 16.03.2023. Representative appearing for the Respondent requested for four weeks time for filing their reply. Commission granted two weeks time to the Respondent to file their reply.
3. Accordingly, Respondent (RVPN) filed its reply on 29.03.2023.
4. The matter was finally heard on 08.06.2023. Sh. Amarjeet Singh, Representative appeared for Petitioner and Sh. Umang Gupta, Advocate appeared for Respondent RVPN.
5. Petitioner in its Petition and during hearing has submitted as under:
 - 5.1 As per RERC Open Access Regulation, 2016 for availing the MTOA facility, consumer is required to deposit an amount equivalent to 3 months of Transmission charges as security for allotted open access capacity.
 - 5.2 For execution of MTOA agreements with RRVPNL for wheeling of power from its captive power plants situated at Ras/ Beawer to its grinding units located of Jobner, Khushkhera and Suratgarh, petitioner had deposited the amount pertaining to security against Transmission charges.
 - 5.3 The security amount of Rs 26,65,181 for Jobner, Rs 54,30,816 for Khushkhera and Rs. 27,31,104 for SCL Suratgarh unit was already lying with RRVPNL as security for short term open access and the same was carried forward as security amount towards transmission charges for wheeling of power under MTOA.
 - 5.4 SCL had represented the officials of RRVPNL to provide interest on security amount lying with RRVPNL, but till date RVPN has not credited any amount pertaining to interest on security amount lying with RRVPNL.

- 5.5 Commission vide its order dated 30.09.2021 in petition No. RERC/1900/21 had given directions to RRVPNL for providing interest on security deposited by on open access consumer of bank rate prevailing as on 1st April of Financial Year for which interest is due.
- 5.6 Section 47 (4) of Electricity Act, 2003 states that distribution licensee has to pay interest equivalent to bank rate or more, on security amount deposited by the consumer.
- 5.7 Till date no amount has been credited by RRVPNL. Therefore, this petition is filed under section 86 (l) (c) & (k) and 47 (4) of the Indian Electricity Act, 2003 for Removal of Difficulty In implementation of RERC Open Access Regulations, 2016.
- 5.8 It is, therefore, prayed to direct RVPN for providing interest on security amount towards transmission charges lying with RVPN.
6. Respondent RVPN in its reply and during the hearing submitted as under:
- 6.1 The Commission vide its order dated 30.09.2021 in the Petition No. 1900/2021 (Hindustan Zinc Ltd vs RVPNI, & AVVNL) directed the Respondents to provide for the interest on cash security deposit of the consumer at the bank rate prevailing as on 1st April of Financial Year and also directed RVPN to make necessary amendments in the procedure.
- 6.2 CE (NPP&RA) RVPN issued a letter dated 04-01-2022 requesting the concerned offices of RVPN to take necessary action in the matter of payment of interest on security deposit in respect of Long and Medium Term Open Access consumers in view of RERC order dated 30-09-2021.
- 6.3 The Discoms later filed review petition No. 1998/2022 before RERC in the above matter. After seeking Legal advice RVPN had issued revised

directions vide letter dated 22.04.2022 to the concerned offices of RVPN to not pay any interest on security deposit in respect of Long Term and Medium Term open Access consumers till the pendency of the review petition filed by the Discoms before the Commission.

- 6.4 The RERC vide its order dated 19.09.2022 rejected the said Review Petition seeking review of the order dated 30.09.2021 passed by the Commission in Petition No. 1900/21.
- 6.5 RVPN had issued a letter dated 10.10.2022 whereby it was informed that the directions issued vide letter dated 22.04.2022 to the concerned offices of RVPN stands withdrawn and thereby requesting to take necessary action for payment of interest on security deposit to open access consumers.
- 6.6 Jaipur Discom & others later challenged the orders passed by the Commission before the Hon'ble APTEL, which is pending before Hon'ble APTEL.
- 6.7 In view of above appeal pending before the Hon'ble Tribunal, no case is made out by the petitioner as if the appeal and prayer sought by the Discoms are allowed, the Petitioner would not be entitled to any relief before the Commission and the amendments made in the regulations would accordingly have to be modified. In light of above, the above petition may be dismissed.

Commission's View/Decision:

- 7 Commission has considered the submissions, reply and oral arguments made on behalf of the Petitioner and Respondent.

- 8 Petitioner submitted that they have deposited the amount pertaining to security against Transmission charges for execution of MTOA agreements with RRVPNL for transmission of power from its captive power plants situated at Ras/ Beawer to its grinding units located at Jobner, Khushkhera and Suratgarh.
- 9 Petitioner submitted that Commission vide its order dated 30.09.2021 had given directions to RRVPNL for providing interest on security deposit of the consumer at the bank rate prevailing as on 1st April of Financial Year for which interest is due.
- 10 Petitioner requested to direct RVPNL for providing interest on security amounts towards transmission charges lying with RVPNL.
- 11 Per contra, RVPN submitted that Jaipur Discom & others have challenged the orders passed by the Commission before the Hon'ble APTEL. In view of above appeal pending before Hon'ble APTEL, no case is made out by the petitioner as if the appeal and prayer sought by the Discoms are allowed, the Petitioner would not be entitled to any relief before the Commission.
- 12 We observe that the relief claimed in the present case is similar to that of M/s Hindustan Zinc Limited case, therefore, Commission looked into the order dated 30.09.2021 in the matter of M/s Hindustan Zinc Limited V/s . Rajasthan Vidyut Prasaran Nigam Ltd. & ors.. The relevant abstract is reproduced as under:

“12 XX.....The first relief sought by petitioner is regarding cash deposit as security amount. Commission found it reasonable to allow for interest on the cash security deposit which is in line with section 47(4) of Electricity Act,2003. The commission, therefore, directs Respondents to provide for the interest on security deposit of the consumer at the bank Rate prevailing as on 1st

April of Financial Year for which interest is due. Necessary amendments in the procedure shall be done by RVPN."

- 13 It is clear from the order dated 30.09.2021 that Commission has directed the respondents RVPN and AVVNL for providing interest on cash security deposit of the consumer at the bank Rate prevailing as on 1st April of Financial Year and also directed RVPN to amend the procedure and agreement.
- 14 In compliance of the order dated 30.09.2021, RVPN has amended clause 5(iii) of section 4-"General Instructions" and Clause 8 (viii) "agreement for Long/Medium Term Open Access" in Open access Regulation, 2016 (Third Amendment) as under:-

"Clause 5 (iii) of section 4-"General Instructions" and Clause 8(viii) of Annexure-2 (Agreement for Long Term/Medium Term Open Access) of Section 5-"Formats" shall be replaced as under:-

"Interest shall be payable on aforesaid security deposit at the Bank Rate prevailing as on 1st April of Financial Year for which interest is due"

- 15 Now, since the RVPN has amended the procedure and standard agreement, the petitioner is entitled for interest on security as per law. We observe that respondent RVPN has prayed to dismiss this petition only on the ground that Rajasthan Discoms have filed an appeal before Hon'ble APTEL with prayer to set aside the RERC orders dated 19.09.2022 and 30.09.2021.
- 16 It is settled position of law that the order passed by a competent Court/Authority continue to operate for its period till it is set aside/modified/stayed. It is not in dispute that Hon'ble APTEL has not stayed the orders of the Commission dated 30.09.2021 and 19.09.2022.

17 In this regard, the Hon'ble APTEL in its judgment in appeal no. 112, 113 and 114 of 2013 dt. 11.02.2014 in similar situation has directed as below:

"16. Thus principles of law and dictum laid down and directions given by this Tribunal in the aforesaid judgment dated 13.12.2006 and 08.11.2010 are not being implemented by the Orissa Commission on the pretext that the Civil Appeals against those judgments are pending before the Hon'ble Supreme Court even though the operation of the said judgments passed by this Tribunal has neither been stayed nor any interim order has been passed by the Hon'ble Supreme Court as yet. Likewise, the learned Orissa Commission is also said to have filed appeal against the judgment dated 03.07.2013 of this Tribunal passed in Appeal no. 26-28 of 2009 & batch which is said to be at the stage of admission.

17. The relevant provisions in this regard are given in Order XLI Rule 5 of The Code of Civil Procedure, 1908, which is reproduced below:

"5. Stay by Appellate Court – (1) An appeal shall not operate as stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay or execution of such decree. [Explanation. – An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from Judgment in Appeal Nos.112, 113 and 114 of 2013 Page (26) the Appellate Court of the order for the stay or execution or any order to the contrary, be acted upon by the Court of first instance.]"

18. The Hon'ble Supreme Court in *Ratansingh v Vijaysingh & Ors.* reported in (2001) 1 Supreme Court Cases 469 in para 9 observed as follows:

"9. Filing of an appeal would not affect the enforceability of the decree, unless the appellate court stays its operation. But if the appeal results in a decree that would supersede the decree passed by the lower court then it is the appellate court decree which

becomes enforceable. When the appellate order does not amount to a decree there would be no supersession and hence the lower court decree continues to be enforceable.”

19. The Hon'ble Supreme Court again in Atma Ram Properties (P) Ltd. v Federal Motors (P) Ltd. reported in (2005) 1 Supreme Court Cases 705 in para 8 has observed as follows:

“8. It is well settled that mere preferring of an appeal does not operate as stay on the decree or order appealed against nor on the proceedings in the court below.”

20. The settled law on the aforementioned point is that mere pendency of an appeal in the higher court against the judgment or order of the lower Appellate Court/Tribunal shall not be a ground to stay the enforcement of the said judgments or orders passed by the lower court/Regulatory Commission.”(emphasis added)

- 18 In light of the above position of law, we are of the view that order of the Commission, in absence of any stay, has to be complied with and mere filing of an appeal cannot be a ground for non-compliance.
- 19 In consideration of above, Commission deems it appropriate to direct Respondent RVPN to pay interest on security deposits towards transmission charges lying with RVPNL to the petitioner as per order passed on 30.09.2021, within two months from the date of this order.
- 20 Petition is disposed of accordingly.

(Dr. Rajesh Sharma)
Member

(Hemant Kumar Jain)
Member

(Dr. B.N. Sharma)
Chairman