

Rajasthan Electricity Regulatory Commission

Petition No. RERC-2099/2023

Petition filed for amendment in Regulation 45, 46, 50 and 55 of the Rajasthan Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2019 with regard to the determination of fixed or capacity charges of Thermal Generating Stations.

Coram:

Dr. B. N. Sharma, Chairman
Sh. Hemant Kumar Jain, Member
Dr. Rajesh Sharma, Member

Petitioners :
1. Jaipur Vidyut Vitran Nigam Ltd.
2. Ajmer Vidyut Vitran Nigam Ltd.
3. Jodhpur Vidyut Vitran Nigam Ltd.

Respondents :
1. Rajasthan Rajya Vidyut Utpadan Nigam Ltd. (RVUN)
2. JSW Energy (Barmer) Limited (JSWEL).

Date of hearing : 04.05.2023, 08.06.2023, 01.08.2023 & 12.09.2023

Present :
1. Sh. Sandeep Pathak, Advocate for Petitioners
2. Sh. Kartik Seth, Advocate for Respondent RUVN
3. Sh. AmanAnand, Advocate for Respondent JSWEL

Date of Order: 10.10.2023

ORDER

1. Rajasthan Discoms have filed the instant Petition for amendment in Regulation 45, 46, 50 and 55 of the Rajasthan Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations,

2019 with regard to the determination of fixed or capacity charges of Thermal Generating Stations.

2. Notices were issued through RERC e-filing portal to the Respondents to file reply on the petition. Accordingly, Respondent RVUN submitted its reply on 26.05.2023 and Respondent M/s JSW Energy (Barmer) Limited (JSWEL) submitted its reply on 05.06.2023.
3. The matter was heard finally on 04.10.2023. Sh. Sandeep Pathak, Advocate, appeared for the Petitioners, Sh. Kartik Seth, Advocate appeared for RVUN and Sh. Aman Anand Advocate appeared for JSW Energy.
4. Petitioners in their petition and during hearing have submitted as under:
 - 4.1. RUVNL/Discoms have long term PPA with Respondent RVUN and JSW Energy Barmer Ltd for meeting the power requirement of the Discoms.
 - 4.2. These power plants of RVUN and JSW Energy are responsible for supply of firm power (Round-the- Clock) to the RUVNL/Discoms for meeting the base load power requirements of Discoms. The thermal power plants of RVUN and JSW Energy are capable of supplying 7013 MW and 955.80 MW power, respectively, when they operate at their full load capacities.
 - 4.3. The "RERC (Terms and Conditions for Determination of Tariff) Regulations, 2019" are applicable for the period of 5 years starting from 01.04.2019 to 31.03.2024.
 - 4.4. Discoms pay tariff in two-part comprising of Fixed Charges and Energy Charges. Fixed Charges are paid based on the Actual Availability declared by the power plants and Energy Charges are paid for the actual capacity scheduled.

- 4.5. The RERC Tariff Regulations, 2019 don't have any separate consideration for plant availability during the peak demand periods and allows the recovery of annual fixed charges based on cumulative availability during the year providing the state generators with the opportunity to recover fixed charges even without being reasonably available during the peak period/ high demand season.
- 4.6. Hence, generators generally don't declare full/higher availability during the high/ peak demand periods. To meet the Norms prescribed in the RERC Tariff Regulations, generators often tend to declare higher availability during low and/ or off-peak demand period and declare lower availability during the high and/ or peak demand period.
- 4.7. Lower capacity declaration during the peak demand season, further force Discoms to arrange power from short term markets which are costly and availability is also not sure which leads to load- shedding. Due to this the power purchase cost of the Discoms has an increasing trend over the last few years. The cost has increased from Rs 4.38/ unit in FY 2017-18 to Rs 4.65/unit in FY 2021-22.
- 4.8. In Rajasthan State, demand pattern is such that during peak summer periods (June to August) deviation between night and day power demand is very less as compared to winter months (November to February). Such flat demand curves require higher contribution from the base load plants (thermal power plants).
- 4.9. As per category wise consumption of electricity, Agriculture is the biggest consumer of electricity in Rajasthan. Maximum demand for electricity is observed during the 'Rabi Season' when agriculture activities are at peak levels and the demand of power is also at peak levels, however, this demand is mostly during day hours (6 AM to 6 PM) which can be met

through must run RE projects (solar power projects) which supply much cheaper electricity as compared to thermal power plants. In the evening and night hours (6:00 PM to 6:00 AM), demand is very low and hence requiring little contribution from thermal power plants. If thermal power plants operate at full capacity during these period Discoms would be forced to sell this power at cheaper rates on exchange.

- 4.10. It would be appropriate to consider and choose summer season months as high demand season for the purpose of this petition. Therefore, the Petitioners have considered the months of June, July and August as high demand season and balance nine (9) months as low demand season.
- 4.11. The current framework of recovery of fixed cost based on target availability achieved on an annual basis, does not necessarily guarantee availability of generating stations during hours and months of their needs and that the Regulations should ensure such availability through appropriate mechanism.
- 4.12. The pricing framework should encourage generators to plan and adjust their generation resources to cater to diurnal variation/seasonal variation in demand of its beneficiaries and also should facilitate power system operations to achieve load-generation balance in most optimal and efficient manner.
- 4.13. CERC has also made provisions in the Tariff Regulations to encourage the generating stations to optimally utilize the fuel during Peak Hours. As per CERC Tariff Regulations, Generators will have to meet the plant Availability requirements during peak hours and off-peak hours separately for recovery of 100% of their Fixed Charges. 20% of the total fixed charges are linked to availability during the peak demand period and 80% to the off-peak demand periods.

- 4.14. Section 6.2 of the National Tariff Policy, 2016 also provides that the Appropriate Commission shall introduce differential rates of fixed charges for peak and off peak hours for better management of load within a period of two years.
- 4.15. Petitioners have filed the present petition for amendment in Regulation 45, 46, 50 and 55 of RERC Regulations, 2019 and to introduce the Capacity Charge under two segments of the year, i.e., High Demand Season (period of three months) and Low Demand Season (period of remaining nine months), and within each season in two parts viz., Capacity Charge for Peak Hours of the month and Capacity Charge for Off-Peak Hours.
- 4.16. Petitioners stated that any under-recovery or over- recovery of Capacity Charge as a result of underachievement or over-achievement, vis-à-vis the Normative Annual Plant Availability Factor (NAPAF) in Peak and Off-Peak Hours of a Season (High Demand Season or Low Demand Season, as the case may be) may not be adjusted with under-achievement or over-achievement, vis-à-vis the NAPAF in Peak and Off- Peak Hours of the other Season.
- 4.17. Further, within a Season, the shortfall in recovery of Capacity Charge for cumulative Off-Peak Hours derived based on NAPAF, may be allowed to be off-set by over-achievement of Plant Availability Factor (PAF), if any, and consequent notional over-recovery of Capacity Charge for cumulative Peak Hours in that Season. Also, within a Season, the shortfall in recovery of Capacity Charge for cumulative Peak Hours derived based on NAPAF, may not be allowed to be off-set by over- achievement of PAF, if any, and consequent notional over-recovery of Capacity Charge for cumulative Off-Peak Hours in that Season.

- 4.18. In the view of above submissions Petitioners have prayed to adopt the methodology for computation of Plant Availability for payment of Fixed Charges to the generators as per CERC Tariff Regulations and to suitably amend RERC (Terms and Conditions for Determination of Tariff) Regulations, 2019 as deemed fit.
5. Respondent RVUN in its reply and during the hearing has submitted as under:
- 5.1. The Petitioners are required to submit proper and requisite details before this Commission such as pros and cons of implementation of introduction of such a system as suggested by them and impact of implementation in other States and at Centre level. The Petitioner Discoms have merely presented its own unilateral data which does not support implementation of the new system in tariff.
- 5.2. Further, prior to notifying the RERC (Terms and Conditions for Determination of Tariff) Regulations, 2019, this Commission issued Explanatory Memorandum on draft Tariff regulations in February, 2019 wherein this proposed regulation was dealt with in detail and thus, the Tariff Regulations in its present form conform to all the grievances of the Petitioners.
- 5.3. Commission vide Explanatory memorandum also stated that recovery of fixed charges as per the CERC Regulations based on peak and off-peak demand period may not be suitable for the State of Rajasthan and that the said issues shall be monitored and analysed in the next control period, i.e., FY 2024-25 to FY 2028-29.
- 5.4. Respondent submitted that CERC Tariff Regulations, 2019 was issued on 07.03.2019 but the said Regulation 42 with regard to recovery of fixed or capacity charges based on peak and off-peak hours have been made

effective from 01.04.2020 only, i.e., one year margin was allowed to the Power Generators so that outages can be planned accordingly.

5.5. Petitioners have filed the present Petition at the belated stage as the control period, i.e., FY 2019-20 to FY 2023-24. Thus, the Petitioners are not entitled to be entertained at such a belated stage towards the fag end of the control period. Commission has also issued tariff order for FY 2023-24 on 12.05.2023, wherein recovery of fixed or capacity charges for FY 2023-24 has been allowed as per existing Regulation 45, 46, 50 and 55 of RERC Tariff Regulations, 2019 and Respondent has already planned its outages for FY 2023-24. Thus, the proposed amendment in existing Tariff Regulations 45, 46, 50 and 55 in terms with the CERC Regulation 42 at this stage should not be accepted.

5.6. In view of the above Respondent RVUN has prayed to dismiss this Petition.

6. Respondent JSW Energy (Barmer) Ltd. in its reply and during the hearing has submitted as under:

6.1. The Petition is not maintainable, because amendment of the regulations is subject to the condition of previous publication as per Section 181(3) of the Electricity Act, 2003. The regulation making powers of this Commission under Section 61 & Section 181 of the EA, 2003, are legislative powers. Therefore, the process of previous publication, followed by an amendment, if any, has to be initiated by this Commission on the legislative side. The Petitioner Discoms cannot claim an amendment to the regulations, basis a Petition, invoking Sections 61 & 181 of EA, 2003. No definitive order for amendment can be passed in the present proceedings.

6.2. The RERC tariff Regulations, 2019, were framed on 27.05.2019; and while framing the regulations, a conscious departure from the CERC Regulations

was made by this Commission for the control period FY 2019-20 to FY 2023-24 and the Commission also issued Explanatory Memorandum on draft Tariff regulations in February, 2019.

- 6.3. The principal prayer in the present petition is contrary to what was considered and decided by this Commission in February, 2019. The Petitioner Discoms cannot claim a reconsideration of the above rationale and decision of this Commission, by way of the instant Petition.
- 6.4. The control period under the present regulations, has substantially elapsed. There is not even one full year left for the control period to end. The outage schedule for FY 2023-24 has also been finalized. Therefore, at this belated stage, the claim for amendment in the RERC Tariff Regulations, 2019, is highly misconceived and misplaced.
- 6.5. The allegation that generators declare higher availability during low and off-peak demand period and declare lower availability during high and peak demand period, is not supported by any data.
- 6.6. Further, The Respondent's plant commenced its operation in 2009. The boilers are CFBC technology, the plant requires an extended duration of downtime, leading to reduced operational availability and loss of production.
- 6.7. In view of the above Respondent prayed to dismiss this Petition.

Commission's view

7. Commission has considered the submissions, reply and oral arguments made on behalf of the Petitioners and Respondents.
8. Petitioners submitted that generators generally do not declare full/higher availability during the high/ peak demand periods that force Discoms to

arrange power from short term markets which are costly and availability is also not sure.

9. Petitioners also submitted that the pricing framework should encourage generators to plan and adjust their generation resources to cater to diurnal variation/seasonal variation in demand of its beneficiaries and also should facilitate power system operations to achieve load-generation balance in most optimal and efficient manner.
10. Petitioners submitted that the RERC Tariff Regulations, 2019 don't have any provision for plant availability during the peak demand periods, therefore this petition has been filed for amendment in Regulation 45, 46, 50 and 55 of the Rajasthan Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2019 with regard to the determination of fixed or capacity charges of Thermal Generating Stations.
11. Per Contra Respondents have submitted that prior to notifying the RERC Tariff Regulations, 2019, the Commission had issued Explanatory Memorandum on draft Tariff regulations in February, 2019 wherein the Commission stated that recovery of fixed charges as per the CERC Regulations based on peak and off-peak demand period may not be suitable for the State of Rajasthan and that the said issues shall be monitored and analysed in the next control period, i.e., FY 2024-25 to FY 2028-29.
12. Respondents further submitted that the present Petition has been filed at the belated stage as the control period, i.e., FY 2019-20 to FY 2023-24 and they have already planned the outages of their plants for FY 2023-24. Thus, the proposed amendment in existing Tariff Regulations 45, 46, 50 and 55 in terms with the CERC Regulation 42 at this stage should be rejected.

13. Respondents also submitted that the process of previous publication, followed by an amendment, if any, has to be initiated by this Commission. The Petitioner Discoms cannot claim an amendment to the regulations, on the basis of a Petition. No definitive order for amendment can be passed in the present proceedings.
14. We observe that by way of present petition, Petitioners are seeking amendment in Regulation 45, 46, 50 and 55 of the Rajasthan Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2019.
15. The proposal of amendment in RERC Tariff Regulations, 2019 could be considered only after following the due procedure as per Electricity Act, 2003 which includes previous publication.
16. Accordingly, Commission has noted the suggestions of the Petitioners regarding amendment in RERC Tariff Regulations, 2019. As and when Commission initiates the process for amendment in the matter, it would treat the proposal of Petitioners as a suggestion/input. However, Petitioners are at liberty to give more inputs when Commission invites comments/suggestions on the draft amendment in RERC Tariff Regulations, 2019/ issues drafts for Tariff Regulations for the next control period.
17. The petition stands disposed of accordingly.

(Dr. Rajesh Sharma)
Member

(Hemant Kumar Jain)
Member

(Dr. B. N. Sharma)
Chairman