

Rajasthan Electricity Regulatory Commission Jaipur

Petition No. RERC/2130/2023

In the matter of:

Petition filed under Section 86 (1) (e), (f) and (k) of the Electricity Act 2003 challenging the illegal and unlawful conduct of Ajmer Vidyut Vitran Nigam Ltd (AVVNL) for restricting generation of a captive power plant in complete disregard to the provisions of Rajasthan Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Renewable Energy Sources - Wind and Solar Energy) Regulations, 2014 and Rajasthan Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Renewable Energy Sources - Wind and Solar Energy) Regulations, 2020.

Coram:

Dr. B.N. Sharma, Chairman

Shri Hemant Kumar Jain, Member

M/s Hindustan Zinc Limited.

Petitioner

Ajmer Vidyut Vitran Nigam Ltd., ('AVVNL')

Rajasthan Renewable Energy Corporation Ltd., ('RREC') **Respondent(s)**

Dates of hearing: 23.06.2023, 25.07.2023, 29.08.2023, 17.10.2023 and 23.11.2023.

Present : Sh. Aditya K. Singh, Advocate for Petitioner.
Ms. Parinitoo Jain, Advocate for Respondent No.1,
AVVNL.

Sh. Pawan Tanwar, Representative for Respondent
No. 2, RREC.

Date of order

02.02.2024

Order

1. The present Petition has been filed by the M/s Hindustan Zinc Limited (hereinafter called as 'Petitioner') under Section 86 (1) (e), (f) and (k) of the Electricity Act, 2003 challenging the illegal and unlawful conduct of AVVNL for restricting generation of a captive power plant in complete disregard to the provisions of Rajasthan Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Renewable Energy Sources - Wind and Solar Energy) Regulations, 2014 and Rajasthan Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Renewable Energy Sources - Wind and Solar Energy) Regulations, 2020.

2. The matter was listed on 23.06.2023, 25.07.2023, 29.08.2023, 17.10.2023 and finally heard on 23.11.2023. Sh. Aditya K Singh, Advocate appeared on behalf of Petitioner, Ms. Parinitoo Jain Advocate appeared for Respondent No.1 i.e., AVVNL and Sh. Pawan Tanwar, appeared for Respondent No.2 i.e., RREC.

SUBMISSIONS OF THE PETITIONER

3. Petitioner in its petition and during the hearing mainly submitted as under:

3.1. It is submission of the Petitioner that in the year 2014, the Government of Rajasthan issued the Rajasthan Solar Policy 2014 and para 7 of provided for promotion of solar power producers to set up solar plants of unlimited capacity. The relevant extract of the Policy is reproduced as under: -

"Utility Grid Power Projects for Captive use / sale to 3rd Party / States other than Rajasthan through Open Access for promotion of investment in Rajasthan:

The State will promote Solar Power Producers to set up Solar Power Plants of unlimited capacity for captive use or sale of power to 3rd party / States other than Rajasthan. Such Power Producer will also be eligible for RE (Solar) Certificate as per orders / regulations of appropriate Commission issued in this regard."

3.2. It is submitted by the Petitioner that Tariff Regulations, 2014 did not fix any upper limit on consumption of the energy generated by the captive power plant by the captive user. Tariff Regulations, 2014 provided following restriction on banking of the power by captive consumer: Regulation 39 (3) (b) reads as follows:

"The banked energy in a month shall not exceed the quantum of energy injected in the grid in the month. In case the energy injected in the month is lower than indicated banked energy, the banked energy would be deemed to get restricted upto the energy injected."

3.3. As per the Petitioner, the Petitioner, vide its letter dated 14.09.2018, requested the Respondent No.2 RREC for the approval of State Level Screening Committee ("SLSC") for setting up of 22 MW AC captive solar plant at village Agucha (Gulabpura), District Bhilwara ("Captive Solar Plant"), under Solar Policy, 2014. On 15.10.2018, RREC

granted them approval for setting up Captive Solar Plant, which was subsequently synchronized and commissioned on 25.02.2019.

3.4. As submitted by the Petitioner, on 02.11.2020, the Commission issued the RERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020' (hereinafter called as the "RE Tariff Regulations, 2020"). Regulation 92 of Tariff Regulations impose certain restrictions on captive generating stations which have been synchronized after 01.04.2020. Regulation 92.2 states that maximum permissible energy to be consumed from new renewable energy captive generating plant will be limited to the energy corresponding to the respective minimum capacity utilisation factor ("CUF"). The Energy generated and consumed in excess of the CUF will be considered as deemed drawl from the distribution licensee and will be billed accordingly. Further, Regulation 93 of the said Regulations imposes restrictions on existing (plants commissioned prior to 01.04.2020) and new plants (plants commissioned prior to 01.04.2020).

3.5. Petitioner also submitted that on 08.04.2021, the Commission also issued Rajasthan Electricity Regulatory Commission (Grid Interactive Distributed Renewable Energy Generating Systems) Regulations, 2021 (hereinafter referred to as the "Grid Interactive Regulations, 2021"). Regulation 3.4 of the Grid Interactive Regulations 2021 provides the applicability of the regulations to the generating systems which have been commissioned on or after 01.07.2021.

Further, Regulation 10.14.3 of the Grid Interactive Regulations, 2021 provides that the maximum energy consumed from the renewable energy generator shall be limited to minimum CUF /PLF with additional 5% in terms of the Tariff Regulations 2020.

3.6. It is the contention of the Petitioner that AVVNL had been complying with the terms of RE Tariff Regulations, 2020 till issuance for the billing month April 2023. Prior to issuance of the bill for the billing month April 2023, AVVNL had not put any restriction on the consumption of the electricity from the electricity generated from the Captive Solar Plant. AVVNL on 07.04.2023 raised the bill for the supply of the electricity for the billing month of April 2023 and raised an arbitrary bill for an amount of INR 56,00,000/-. It did not only consider electricity supplied by it, however, it also added additional bill for the electricity generated by the Captive Solar Plant beyond the CUF (calculated on monthly basis) allegedly relying upon Regulation 93 of the RE Tariff Regulations, 2020.

3.7. According to the Petitioner in response to the invoice issued by the Respondent for the month of April 2023, the Petitioner issued a letter dated 17.04.2023 in favour of the Respondent pertaining to arbitrary levy of the additional amount amounting to INR 56 lakhs in the invoice of April 2023 and to revise the billing without considering the deemed drawl. The Petitioner in its Letter mentioned that the CUF is calculated on annual basis instead of calculating it monthly. Further, the Petitioner also explained as to how the Plant of the

Petitioner does not come under the purview of RE Tariff Regulations 2020. Respondent issued a letter dated 25.04.2023 in favor of the Petitioner intimating that the invoices issued for the period of March & April 2023 for the Petitioner's generating plant are in accordance with the provisions of Tariff Regulations, 2020 and other applicable provisions of tariff in force.

3.8. Petitioner further responded to the Respondent No.1 vide Letter dated 27.04.2023 reiterating that the RE Tariff Regulations, 2020 are only applicable on the projects that were commissioned after 01.04.2020 and the Project of the Petitioner was commissioned on 25.02.2019. However, the Petitioner, reserving its right to approach this Hon'ble Commission, requested the Respondent No. 1 to consider calculating CUF on annual basis.

3.9. It is also the submission of the Petitioner that on the basis of the representation issued by the Petitioner, the Respondent No. 1 revised the Invoice and issued a new invoice bearing No. 11025301363988 while calculating the CUF on annual basis on 05.05.2023.

3.10. In view of the above facts and circumstances, the Petitioner has filed the present Petition seeking directions against AVVNL that the additional billing raised in the monthly billing of April 2023 against deemed consumption for excess generation beyond the CUF specified in the Tariff regulations, 2020 is arbitrary and illegal and further restraining AVVNL from raising such bills on account of

deemed drawl from AVVNL for excess generation beyond the Capacity Utilization Factor of 25%.

3.11. Petitioner also submitted the Relevant provisions of the Tariff Regulations, 2020 as mentioned herein below:

"2. Definitions

2.1 In these Regulations, unless the context otherwise requires:

New Generating Station" means a generating station with a COD after coming into effect of these Regulations;

5. Control Period

5.1 The Control Period under these Regulations shall be of four (4) financial years starting from April 1, 2020 till March 31, 2024:

Provided that the tariff determined as per these Regulations for the RE projects commissioned during the Control Period, shall continue to be applicable for the entire duration of the Tariff Period as specified in Regulation 6 below:

Provided further that the tariff norms specified in these Regulations shall continue to remain applicable until notification of the revised norms through subsequent re-enactment of these Regulations.

30. Capacity Utilisation Factor

30.1: The minimum Capacity Utilisation Factor for the purpose of determination of tariff for Solar PV plants shall be 20%.

92. Renewable Energy Based Captive Power Plants

92.1 The maximum permissible capacity of eligible individual new renewable energy-based captive power plant including renewable energy based plant installed behind the meter shall be limited to 100% of the Contract Demand: Provided that eligible co-located individual renewable energy based captive power plant shall utilise the same service line and installation for injection of power into the grid as well as drawal of power from the distribution licensee.

92.2: The maximum permissible energy to be consumed and banked from new renewable energy captive generating

plant shall be limited to the energy corresponding to the minimum Capacity Utilisation Factor/Plant Load Factor in percent as applicable for respective technology as specified in these Regulations plus 5 percent:

Provided the energy consumed in excess of the above limit shall be treated as deemed drawl from the distribution licensee and will be billed accordingly.

93. Banking

93.1 The terms and conditions of Banking specified in these Regulations shall be applicable for both existing Renewable Energy based plants and new Renewable Energy based plants."

3.12. Petitioner submitted that the bare reading of the aforementioned provisions enunciates that the Regulation 92 of the RE Tariff Regulations, 2020 is not applicable to project of the Petitioner since the Petitioner's project was commissioned and synchronized on 25.02.2019, which is before these RE Tariff Regulations, 2020 came into force.

3.13. Petitioner stated that Respondent No.1- AVVNL has wrongfully raised the additional bill of Rs. 56 Lakhs in the month of April 2023 placing its wrongful reliance upon Regulation 92.2 of the Tariff Regulations. However, AVVNL has failed to understand that the Regulation 92.2 is applicable only on the "new renewable energy captive generating plant".

3.14. The Petitioner is also culled out the Regulation 93.1 herein below:

"93.1 The terms and conditions of Banking specified in these Regulations shall be applicable for both existing Renewable Energy based plants and new Renewable Energy based plants."

3.15. It is the submission of the Petitioner that the intention of the Commission can be inferred from the conjoint reading of Regulation 92 and 93. Regulation 93 is applicable for both existing and new projects, whereas Regulation 92 is applicable only for new projects. It clearly draws a difference between a new generating captive power plant and an already existing plant. Therefore, as specified in Regulation 92.2 that the energy consumed in excess of the CUF specified, it shall be treated as deemed drawl from the distribution licensee and will be billed accordingly is not applicable on the project of the Petitioner.

3.16. According to the Petitioner, it is a well settled law that when a statute describes a thing or requires a thing to be done in a particular manner, it has to be done in that particular manner. Therefore, when Regulation 92.2 specifies that it is applicable on the new generating plants, then the same is applicable only on new generating plants and not the existing ones i.e., the Petitioner.

3.17. The Petitioner also culled out the Relevant provisions of the Grid Interactive Regulations, 2021 herein below:

“Regulation 3.4: These Regulations shall be applicable to all Grid interactive Distributed Renewable Energy generating systems that are commissioned on or after 1st July 2021.

Regulation 10.14.3: The maximum permissible energy that can be consumed from Renewable Energy generating system installed behind Consumer's meter shall be limited to the energy corresponding to the minimum Capacity Utilisation Factor/Plant Load Factor in percent as applicable for respective technology as specified in the Rajasthan

Electricity Regulatory Commission (Terms and Conditions for
Tariff determination from Renewable Energy Sources)
Regulations, 2020 plus 5 percent."

3.18. The Petitioner further submitted that on the bare reading of the relevant regulations of Grid Interactive Regulations 2021, it is submitted that the Petitioner does not fall under the purview of Grid Interactive Regulations 2021 as well. Regulation 3.4 of the Grid Interactive Regulations 2021 clearly provides that the Regulations are only applicable on the generating systems which have been commissioned on or after 01.07.2021. In the present case, the Petitioner commissioned its generating system on 25.02.2019 which is before Grid Interactive Regulations, 2021 came into force. This further gives clarity that the commissioning date is a relevant date to figure the applicability of the Regulations.

3.19. As per the Petitioner, it is necessary to note herein that the Tariff Regulations, 2014 shall be applicable to the Project of the Petitioner since the project of the Petitioner was commissioned under the control period of April 2014 to April 2019 as described under the said Regulations and these Regulations do not contain any such restriction on the projects.

3.20. It is the submission of the Petitioner that it is settled law that "*Expressio Unius Est Exclusio Alterius*" which means that the expression of one thing is the exclusion of the other. Regulation 92 of the RE Tariff Regulations, 2020 expressly states that this Regulation will be

applicable on the new renewable energy plant, therefore, this regulation has expressly excluded existing power plant from the ambit of Regulation 92 of the Tariff Regulations, 2020. Further, Grid Interactive Regulations 2021 have also expressly excluded the Petitioner's projects from complying with conditions imposed by the Grid Interactive Regulations, 2021 and Tariff Regulations, 2020.

3.21. According to the Petitioner in the alternate, even if it is accepted but not conceded that Regulation 92 of the RE Tariff Regulations, 2020 is applicable to the Petitioner's Captive Solar Project then also the bill issued by AVVNL is arbitrary for the reasons that AVVNL has calculated CUF on monthly basis in complete disregard to the fact that CUF an annual average of the generation, and it cannot be assessed on month basis.

3.22. Petitioner further submitted that Guidelines issued by Ministry of Power being Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects (hereinafter referred to as "MOP Guidelines") defines CUF as the ratio of actual energy generated by SPV project over the year to the equivalent energy output at its rated capacity over the yearly period. CERC and other SERCs such as MERC & JERC also define CUF on actual basis.

3.23. It is submitted by the Petitioner that CUF is defined under the Tariff Regulations, 2014 as capacity utilisation factor for Solar PV

plants shall be 20% with deration factor of 0.5% of CUF every year after second year." A bare reading of the same clarifies that the CUF has to be calculated annually than monthly. The Commission while deciding a Petition for non- compliance of Renewable Energy Purchase Obligation filed by RREC being Petition No. 867 of 2016 has itself dealt with the CUF aspect considering it on an annual basis.

3.24. Petitioner also submitted that the Respondent No.1 AVVNL itself in "Tender Document for empanelment of vendors for design, supply, erection, testing and commissioning including warranty, Comprehensive operation & maintenance of Grid-Connected Rooftop Solar Plant of various capacities under the Phase-II of Grid Connected Rooftop Solar Scheme of MNRE in Rajasthan under Ajmer Discom, Jaipur Discom & Jodhpur Discom issued on 12.04.2022 considered annual generation for calculation of CUF.

PRAYER:

3.25. Petitioner prayed to the Commission to adjudicate upon the present petition to:

- a. Hold and declare that the Regulation 92 of Rajasthan Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 and Regulation 10.14.3 of Rajasthan Electricity Regulatory Commission (Grid Interactive Distributed Renewable Energy Generating Systems) Regulations, 2021 is not applicable on the Petitioner's Project;

- b. Hold and declare that the Capacity Utilisation Factor to be calculated on annual basis;
- c. Hold that the Bill bearing No. 11025301363988 dated 05.05.2023 raised upon the Petitioner by Ajmer Vidyut Vitran Nigam Limited for deemed drawl due to excess generation is arbitrary and is liable to be quashed;
- d. Issue directions against Ajmer Vidyut Vitran Nigam Limited and restrain it from raising bills for deemed drawl due to excess generation from CUF in their future invoices.
- e. Pass any other order/direction as the Commission may deem fit in the interest of justice.

SUBMISSIONS OF THE RESPONDENTS

4. Respondent No. 1, i.e., AVVNL in its reply and during the hearing mainly submitted as under:

4.1. According to the Respondent No.1 the petitioner commenced its plant on 25.02.2019 and therefore by way of this petition has emphasized that neither RERC (Terms and Conditions for Determination of Tariff for Renewable Energy Sources - Wind and Solar Energy) Regulations, 2014 would be applicable nor the RERC (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations, 2020. It would be appreciated that if neither the Regulations 2014 nor 2020 would apply to the petitioner then it has to be stated that petitioner is covered/falls under which Regulations.

4.2. It is submitted by the Respondent No.1 that as per the Tariff Regulations, 2014, Regulation 27 states the CUF which is 20% plus 0.5% increase in every year after second year, then as per these Regulations since the COD of the plant of the petitioner is 25.02.2019 then the CUF which would be applicable as per Regulation 2014 to the petitioner would be 20% plus 2.0% in Feb. 2019.

4.3. According to the Respondent No.1 the RE Tariff Regulations, 2020 notified in December 2020 but made effective from 01.04.2020 specify the CUF at regulation 30.1 as 20% and the Commission has not increased the CUF every year by 0.5%. However, at regulation 92.2, Commission has specified the CUF as 20% plus 5% for solar plants.

4.4. As per the Respondent No.1 in accordance with the RE Tariff Regulations, 2020 the answering Respondent/ Discom on the basis of the Regulations 30.1 and 92.2, applied the CUF in the Petitioner's case, i.e., for 1 kW equal to 6 units per day for generation, and raised a bill for the deemed drawl in excess of the above limit generation by the petitioner. If the respondent would have raised bill as per the Tariff Regulations, 2014 then the petitioner would have been under an obligation to pay more because as per Regulations 2014, for 1 kW the limit of 5.28 units per day would become applicable in Feb. 2019.

4.5. It is the submission of the Respondent No.1 that the anomalous situation which has arisen for the Discom is that since the petitioner is

having old solar power plant, commissioned before coming into force of RE Tariff Regulations, 2020 then the Discom should apply the CUF of Regulations 2014 i.e., 20% plus 2.0%.

4.6. As submitted by the Respondent No.1, the Discom requires necessary advisory/ clarity from the Commission on the issue of applicability of Regulations and the applicability of the CUF on the plants commissioned in 2019 and thereafter.

4.7. It is contented by the Respondent No.1 that the Commission has very thoughtfully made a provision for capping on the solar generation plants. It gives the impression that despite the allowance of generation and consumption by the generator, yet the Discom has not been eliminated from the loop and the infrastructure and the grid of the Discom is being mandatorily used by the generator, therefore, Discom is an indispensable and inevitable part of the power sector. Further, more the capping is for the purpose that the bilateral contracted power from central generating stations and self-generation of Discom should not go waste and therefore, if the interpretation proposed by the petitioner is adopted then the whole purpose of capping would become otiose and the Discom will be unable to control power position in the Rajasthan State. Therefore, the Discom is an integral part of any welfare state, responsible for the generation and distribution of power in the State.

4.8. According to Respondent No.1 the RE Tariff Regulations, 2020 were strictly applied by the Respondent and there was no reason for not considering the deemed drawl from Discom. The response of the Discom dated 25.04.2023 is a self-speaking response. Further, the issue of applicability of CUF monthly / annual is pending adjudication before the Hon'ble Commission in other cases.

4.9. Respondent No.1 has prayed that the petition be dismissed, and the petitioner be directed to pay the drawl charges due to excess generation in accordance with RE Tariff Regulations 2020. Further, Discom be granted permission to recover the necessary dues for the earlier years as per the provisions laid down in Tariff Regulations, 2014.

5. Respondent No.2, RREC during the hearing submitted that they are the proforma party in the matter and issue raised pertain to the Respondent No.1, Discom.

REJOINDER FROM THE PETITIONER

6. Petitioner in its rejoinder to the Reply filed by Respondent No.1 mainly submitted as under:

6.1. Petitioner submitted that the project of the Petitioner commissioned on 25.02.2019 and the Tariff Regulations 2020 have been made effective from 01.04.2020, therefore, Tariff Regulation, 2014 should be applicable, as admitted by the Respondent itself. The Petitioner is not denying (and cannot deny as well) that those

portions of RE Tariff Regulations, 2020 which have been meant to be applicable for plants commissioned prior to issuance of Tariff Regulations, 2020 will be applicable on the Petitioner's plant as well.

6.2. The Petitioner also submitted that Hon'ble Supreme Court of India in *Nagindas Ramdas v. Dalpatram Ichharam*, (1974) 1 SCC 242 has held that the statements admitted in the pleadings are not required to be proved in the proceedings before the Court. In the present case, admission by Respondent No. as regards to the applicability of Tariff Regulations, 2014 on the project of the Petitioner, has been answered in favor of the Petitioner. It is submitted that the Hon'ble Commission is under no obligation to proceed with further inquiry when admission in pleadings has been made. The admission made in the pleadings are the foundation of rights and are binding on the parties and thus require no evidentiary proof to conclude the matter. It is further submitted that once the admission in the pleadings has been made by a party then repudiation of the admission is not admissible as held by the Hon'ble Supreme Court of India in *Modi spg. & Wvg. Mills Co.Ltd. v. Lodha Ram & C.* (1976) 4 SCC 320.

6.3. According to the Respondent No.1 the additional billing of INR 56 lakhs raised by Respondent No. 1 in May 2023, is based on wrongful reliance on Regulation 92.2 as it is clearly applicable on 'new renewable energy captive generating plant' and not on existing RE projects. Respondent No.1 has wrongfully interpreted RE

Tariff Regulations 2020 and issued additional billing invoices. Regulation 92 has expressly excluded the existing power plant from the ambit of the said regulation. It is a settled principle of law that expression of one thing is exclusion of the other. ('*Expressio unius est exclusion alterius*') Regulation 92 in clear terms mentioned that it will be applicable on all those plants which have got commissioned post issuance of RE Tariff Regulations, 2020 and Respondent is also calculating CUF on monthly basis against the settled norms of calculation on annual basis.

6.4. It is the submission of the Petitioner that Regulation 93 clearly draws a difference between a new generating station and an existing generating plant. Therefore, if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner only and in no other manner as held by Hon'ble Supreme Court of India in *Dipak Babaria v. State of Gujarat*, (2014) 3 SCC 502.

6.5. Petitioner submitted that as regards the contention of the Respondent in terms of Regulation 27 of the Tariff Regulations, 2014 the CUF is 20% plus 0.5% increase in every year after second year and if the Respondent would have raised the bill under Tariff Regulations, 2014. then the Petitioner would have had to pay more because as under the Tariff Regulations, 2014, 1 kW was equal to 5.28 units per day in February 2019, it is submitted that the Tariff Regulations, 2014 do not provide any restriction on the CUF consumption limit for captive power plants. As per Regulation 27, the

CUF for solar PV plants shall be 20% with deration factor of CUF every year after second year. This implies that the interpretation of the Respondent at Para 2 and 4 of the Regulation 27 of the Tariff Regulations, 2014 is incorrect and without any basis. Respondent has considered an increased CUF instead or decreased CUF in the terms of the said regulation. Respondent itself has calculated the CUF annually and not monthly. Therefore, the whole basis of raising the invoices on a monthly basis is incorrect and against the applicable legal and regulatory framework.

6.6. It is contended by the Petitioner that even if assuming but not conceding that the invoices for deemed drawl were to be raised on the Petitioner in terms of the Tariff Regulations, 2020, then additional invoices issued by Respondent No.1 to the Petitioner were raised by calculating CUF on monthly basis, whereas CUF is the annual average of generation, and it cannot be assessed on monthly basis, therefore, the basis of the calculation itself is wrong.

6.7. Petitioner submitted that as regards the submission of Respondent No.1 that for the period from COD till January,2023, the Tariff Regulations, 2014 and RE Tariff Regulations,2020 were inadvertently not applied in the case of Petitioner, but that does not bar the recovery for the earlier years also because there is no concept of unjust enrichment of the Petitioner at the cost of Discom, it is submitted that Respondent No. 1 cannot be permitted to raise a new plea of recovery of the dues for earlier years under the garb of

filing the Reply. Respondent is attempting to make a bald allegation without providing any documents/submission supporting its claim how applicability Tariff Regulations, 2014 will lead to further recovery. Tariff Regulations, 2014 do not provide any limit on consumption. The Respondent is put to provide reference of any provisions of Tariff Regulations, 2014 which enables it to restrict consumption of captive users from its generating plant.

6.8. It is also submission of the Petitioner that the counter-claim raised by the Respondent amounts to a separate cause of action and should be pursued by way of an independent petition. Further, cross-objection/counter-claim is not provided for under any provision of the Electricity Act, 2003, hence, the same cannot be entertained by this Commission. This has also been held by Hon'ble Appellate Tribunal in its order dated 01.08.2014 in *Uttar Haryana Bijli Vitran Nigam Limited vs CERC*, and which has also been affirmed by the Hon'ble Supreme Court of India in the *Energy Watchdog* judgment.

ADDITIONAL AFFIDAVIT OF RESPONDENT No.1

7. Respondent No. 1 in its Additional Affidavit submitted as under:

7.1. It is submitted and clarified by the Respondent No.1 that Regulation 27 of the Tariff Regulations, 2014 states the CUF would be 20% with deration factor of 0.5% of CUF every year after the second year. According to these Regulations since the COD of the plant of

the petitioner is 25.02.2019 therefore, the CUF applicable to the Petitioner would be less than 20% in accordance with Regulation 27 of 2014.

7.2. According to the Respondent No.1, since RE Tariff Regulations, 2020 applied inadvertently by the answering Respondent/Discom taking Regulations 30.1 and 92.2 as the basis and applied the CUF in the case of the petitioner, i.e., for 1 kW equal to 6 units per day for generation and raised a bill for the deemed drawl in excess of the above limit generation by the petitioner. If the Respondent would have raised the bill as per the Tariff Regulations, 2014, which were to be applied to the petitioner, then the petitioner would have been under an obligation to pay more to the Discom.

7.3. Respondent submitted that if for the sake of arguments, the afore-stated is not to be done then the Discom is required to follow the Regulation 30.1 and 92.2 of the RE Tariff Regulations, 2020 and from 01.04.2020 apply the CUF of 20% plus 5% and the energy consumed in excess of the above limit shall be treated as deemed drawl from the Discom and be billed accordingly. But the Discom inadvertently gave the benefit of 6 units per kW per day instead of 4.8 units per kW per day, so the petitioner is under an obligation to refund the excess benefit granted to the petitioner inadvertently.

7.4. It is further submitted by the Respondent No.1 that the inference drawn, and interpretation given by the Respondent No.1

for CUF as given in Tariff Regulations, 2014 and RE Tariff Regulations, 2020 is justified, which has been now fortified by the amendment brought in the Regulation 2023 by the Commission in Regulation 92.2 as under:

"92.2 The peak AC capacity (inverter capacity on AC side) of the renewable energy captive generating plant shall not exceed the contracted AC capacity. In case during any time block, if the peak AC capacity exceeds the contracted AC capacity the corresponding excess generation of 15 minute or 30 minute block, as applicable shall lapse."

7.5. According to the Respondent No.1 the methodology adopted, and calculation made by them that the CUF has to be allowed up to a particular limit and thereafter the rest has to be scrapped when the generation goes beyond the applicable CUF is justified and deserved to be upheld. Petitioner may be directed to refund the excess benefit inadvertently granted by the Discom.

7.6. It is further submitted by the Respondent No.1 that the Amended Regulation 92.2 reveals that Commission has made the Amendment bringing all the generating units (old/new) at par and further not only to reduce the losses incurred by the Discom but also to release the pressure of the Discom, it has been specifically clarified that no renewable energy captive generating plant shall exceed the contracted AC capacity and if it does then the corresponding excess generation of 15 minute/30 minute block 'shall lapse'.

COMMISSION'S VIEW

8. We have considered the submissions, replies, rejoinder and oral arguments made on behalf of Petitioners and Respondent in the petition and during the hearing and material placed on record.

9. The Petitioner has argued that as their captive solar plant has achieved COD on 25.02.2019, i.e., prior to the notification of the RE Tariff Regulations, 2020, and, thus, covered under the "Existing Generating Station". Regulation 92 of the RE Tariff Regulations, 2020 is, therefore, not applicable to their captive power plant. According to the Petitioner, even if it is accepted that Regulation 92 is applicable to their captive solar plant then CUF has to be calculated on annual basis as TBCB Guidelines issued by MoP define CUF for a solar PV project on annual basis. CERC and other SERCs such as MPERC, JERC etc., also define CUF on annual basis. Based on the above grounds, the Petitioner has contended that the additional billing raised by AVVNL in the monthly billing of April 2023 against deemed consumption for excess generation beyond the CUF specified in the Tariff regulations, 2020 is arbitrary and illegal and thus, Respondent AVVNL, may be restrained from raising such bills on account of deemed drawl from AVVNL for excess generation beyond the Capacity Utilization Factor of 25%.

10. Per contra, it is the argument of Respondent that on the basis of Regulation 30.1 and 92.2 of the RE Tariff Regulations, 2020, they have applied the CUF in the petitioner's case of i.e., for 1 kW equal

to 6 units per day for generation, raised the bill for the deemed drawl in excess of the above limit generation by the petitioner. According to them If they would have raised bill as per the Tariff Regulations, 2014 then the petitioner would have been under an obligation to pay more because as per Regulations 2014, 1 kW was equal to 5.28 units per day in Feb. 2019. It is submitted by them that the RE Tariff Regulations, 2020, were strictly applied by them and there was no reason for them not considering the deemed drawl from Discom.

11. Based on the rival submissions, in our view, following two questions need to be answered to resolve the controversy in hand:

- (1) Whether regulation 92 of the RE Tariff Regulations, 2020 applicable to the Petitioner's captive solar plant?
- (2) If Question (1) is answered affirmatively, then whether CUF is to be calculated on annual basis or monthly basis?

12. For considering the rival submissions, it will be necessary to refer to some of the provisions of the RE Tariff Regulations, 2020 issued on 02.11.2020, which are as under:

"2 Definitions

2.1 In these Regulations, unless the context otherwise requires:

(k) "Existing Generating Station" means a generating station, which has achieved COD prior to the coming into effect of these Regulations ;

xxx xxx xxx

(u) "New Generating Station" means a generating station with a COD after coming into effect of these Regulations;"

XXX XXX XXX

“30 Capacity Utilisation Factor

30.1 The minimum Capacity Utilisation Factor for the purpose of determination of tariff for Solar PV plants shall be 20%.”

XXX XXX XXX

“92 Renewable Energy Based Captive Power Plants

92.1 The maximum permissible capacity of eligible individual new renewable energy-based captive powerplant including renewable energy based plant installed behind the meter shall be limited to 100% of the Contract Demand:

Provided that eligible co-located individual renewable energy based captive powerplant shall utilise the same service line and installation for injection of power into the grid as well as drawal of power from the distribution licensee.

92.2 The **maximum permissible energy to be consumed and banked from new renewable energy captive generating plant** shall be limited to the energy corresponding to the minimum Capacity Utilisation Factor/Plant Load Factor in percent as applicable for respective technology as specified in these Regulations plus 5 percent:

Provided the energy consumed in excess of the above limit shall be treated as deemed drawl from the distribution licensee and will be billed accordingly.”

XXX XXX XXX

93. Banking

93.1 The terms and conditions of Banking specified in these Regulations shall be **applicable for both existing Renewable Energy based plants and new Renewable Energy based plants.**

XXX XXX XXX

(Emphasis supplied)

13. Now we take up the Questions to be answered in the subsequent paras:

(1) Whether regulation 92 of the RE Tariff Regulations,2020 applicable to the Petitioner's captive solar plant?

14. It can thus be seen that the COD of petitioner's 22 MW AC captive solar plant was achieved on 25.02.2019. It is also undisputed that the above COD was achieved prior to the coming into force of the RE Tariff Regulations, 2020, i.e., 01.04.2020. From the above it is also amply clear from the definition given at Regulation 2.1 (k) that petitioner's plant is squarely covered under "Existing Generation Station" in contrast to the "New Generating Station" defined at Regulation 2.1 (u).

15. Further, regulation 30 defines the minimum CUF for the purpose of determination of tariff for Solar PV plants as 20%. From the plain reading of Regulation 92, it can be seen that this regulation specifies the limits for Renewable Energy Based Captive power plants in terms of maximum permissible capacity and permissible energy that can be consumed and banked from the plant. Further, such limits given at both Regulation 92.1 and 92.2 relevant to the new renewable captive generating power plant.

16. Going through the Regulation 93, it is clear that terms and conditions of banking mentioned therein shall be applicable to both existing and new renewable energy based plants in contrast to Regulation 92, which is applicable only to new renewable energy based captive power plants.

17. From above it can thus be seen that Regulation 92.2 is applicable to only new RE based power plants defined under the

Regulation and not the existing plants, more so when both types of plants have been categorically defined at Regulation 2 of the RE Tariff Regulations, 2020. Thus, the Petitioner's renewable energy based captive power plant cannot be fastened with liability arising out of Regulation 92.2.

18. It will also be relevant to refer to certain provisions of the RERC DREGS Regulations, 2021, which are as under:

7. Eligible Consumer and Individual Project Capacity

7.1 All Eligible Consumers of electricity in the area of supply of the Distribution Licensee having or proposing to install a Renewable Energy generating system may opt for grid connectivity under the Net Billing arrangement or Net Metering arrangement in accordance with these Regulations.

7.2 The maximum Renewable Energy generating system capacity to be installed at any Eligible Consumer's premises shall not exceed 100% of the Sanctioned Load/Contract Demand of the consumer:

Provided that, the capacity of the Renewable Energy generating system shall be in conformity with the provisions relating to the Sanctioned Load or Contract Demand permissible under the Rajasthan Electricity Regulatory Commission (Electricity Supply Code and Connected Matters) Regulations, 2021 and subsequent amendments thereto.

7.3 The capacity of Renewable Energy generating system to be installed at the premises of any Eligible Consumer shall be more than one kilo watt under Net Billing arrangement or Net Metering arrangement subject to the condition as specified in Regulation 7.2:

Provided that, the capacity of Renewable Energy generating system to be installed at the premises of any Eligible Consumer shall be up to one mega-watt under Net Metering arrangement or Net Billing arrangement:

Provided further that, **in case the Eligible Consumer intends to install Renewable Energy generating system having capacity of more than one mega-watt, terms and conditions of such arrangement shall be governed as per the Rajasthan Electricity Regulatory Commission (Terms**

and Conditions for tariff determination from Renewable Energy Sources) Regulations, 2020 and subsequent amendments thereof.

(Emphasis supplied)

xxx xxx xxx

“10.14 Renewable Energy generating system connected behind the Consumer's Meter

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10.14.3 The **maximum permissible energy that can be consumed from Renewable Energy generating system installed behind Consumer's meter shall be limited to the energy corresponding to the minimum Capacity Utilisation Factor/Plant Load Factor in percent as applicable for respective technology as specified in the Rajasthan Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 plus 5 percent.**

10.14.4 The Consumer shall ensure that no energy is injected into the grid from such Renewable Energy generating system installed behind the Consumer's meter:

Provided that, any quantum of energy injected by such Renewable Energy generating system connected behind the Consumer's meter shall be considered as inadvertent injection and shall neither be paid for nor settled by the Distribution Licensee:

Provided further that, any quantum of energy injected by such Renewable Energy Generating System connected behind the Consumer's meter shall be considered as inadvertent injection and penalty shall be levied on such inadvertent injection as per the applicable relevant Regulations in force.

(Emphasis supplied)

xxx xxx xxx

19. It is noted from the above that as per Regulation 10.14.3 also, the limit in terms of maximum energy that can be consumed from the Renewable Energy generating system installed behind

Consumer's meter shall be limited to the energy corresponding to the minimum CUF/Plant Load Factor in percent as applicable for respective technology as specified in the RE Tariff Regulations, 2020 plus 5 percent. However, it is silent whether such limitation is applicable on new or existing renewable energy generating systems.

20. It is observed that Regulation 7.3 reproduced as above further provides that in case the Eligible Consumer intends to install Renewable Energy generating system having capacity of more than one mega-watt, terms and conditions of such arrangement shall be governed as per the RE Tariff Regulations, 2020 and subsequent amendments thereof.

21. From the conjoint reading of relevant provisions of both the Regulations, namely, the RE Tariff Regulations, 2020 and the Grid Interactive Regulations, 2021 as above, we are of the considered view that Regulation 92.2 of the RE Tariff Regulations, 2020 is not applicable to the Petitioner's captive solar plant and thus, it cannot be saddled with liability arising out of the breach of the limitation provided in this Regulation 92.2, which, in our view, is not applicable to the Petitioner. It is, however, admitted position of the Petitioner that Tariff Regulations, 2014 are applicable to their plant, and not disputed by the Respondent No.1.

22. The Respondent No.1 has also contended that the Commission while issuing Amendment in Regulation 92.2 bringing all

the generating stations (new/old) specifically clarified that no renewable energy captive generating plant shall exceed the contracted AC capacity and if it does then the corresponding excess generation shall lapse. We observe that the Amendment in the RE Tariff Regulations, 2020 referred by the Respondent as above has been issued on 04.09.2023 and notified in the Official Gazette on 06.10.2023. The Regulations are applicable prospectively. Thus, in our view the same is not relevant to the controversy in hand which has originated from bills raised by the Respondent No.1 on 07.04.2023 & 05.05.2023 issued before the issuance of the aforesaid Amendment.

23. In view of the foregoing discussion, we, therefore, answer Question (1) in negative and hold that Regulation 92.2 is not applicable to the Petitioner's captive solar plant and therefore, the liability arising out of bills dated 07.04.2023 and 05.05.2023 issued by the Respondent No. 1 is not payable by the Petitioner. Accordingly, the Respondent No. 1 is directed to rework the liability, if any, of the Petitioner in terms of the above and is directed to give credit of the difference amount to the Petitioner by way of equated amounts in the next four monthly bills to be issued by the Respondent No.1 after issuance of this order.

24. Considering the position being as above, in our view, Question (2) is not required to be answered by us anymore.

25. Accordingly, we order as follows:

a) Regulation 92 of the RE Tariff Regulations, 2020 and Regulation 10.14.3 of the Grid Interactive Regulations, 2021 are not applicable to the petitioner's captive solar power project.

b) In view of a) above, Respondent No.1 may rework the liability of the Petitioner and is directed to give credit of the difference amount to the Petitioner, if any, by way of equated amounts in the next four bills to be issued by the Respondent No.1 after issuance of this order.

26. Petition is disposed of in the above terms.

(Hemant Kumar Jain)
Member

(Dr. B.N. Sharma)
Chairman