Rajasthan Electricity Regulatory Commission
Jaipur

Petition No. RERC/2143/2023

In the matter of

Petition u/s. 94(1) (f) of the Electricity Act, 2003 for review the ceiling levelised tariff fixed for PV Solar Power Plant to be set-up under PM KUSUM Yojna Component-C vide order dated 16.06.2023 in the JVVNL petition No. 2126/2023

and

In the matter of petition filed by JVVNL under Section 63 (Determination of Tariff By Bidding Process) of the Electricity Act 2003, read with regulation 19 And 21 of RERC (Transaction Of Business), Regulations, 2021, for Approval of Levelized Tariff discovered through transparent Competitive Bidding carried out by JVVNL for Solar Power Projects with aggregate capacity of 52.66 MW under Component-C (Feeder Level Solarization) of PM-KUSUM Scheme.

Coram:

Dr. B.N. Sharma, Chairman

Shri Hemant Kumar Jain, Member

Dr. Rajesh Sharma, Member

Sh. Rakesh Singh. **Petitioner**

Jaipur Vidyut Vitran Nigam Limited **Respondent**

Date(s) of hearing: **18.08.2023 and 21.09.2023.**

Present : Sh. Rakesh Singh, Petitioner.

Sh. Sandeep Pathak, Advocate for Respondent.

Date of order **17.11.2023**

Order

1. The Petitioner, Rakesh Singh filed this petition u/s. 94(1) (f) of the Electricity Act, 2003 for review the ceiling levelised tariff fixed for PV Solar Power Plant to

be set -up under PM Kusum Yojna Component-C vide order dated 16.06.2023 in the Jaipur Vidyut Vitran Nigam Limited ('JVVNL') petition No 2126/2023 and petition filed by JVVNL under Section 63 (Determination of Tariff By Bidding Process) of The Electricity Act, 2003, read with regulation 19 and 21 of the RERC (Transaction of Business), Regulations, 2021, for approval of Levelized Tariff discovered through transparent Competitive Bidding carried out by JVVNL for Solar Power Projects with aggregate capacity of 52.66 MW under Component-C (Feeder Level Solarization) of PM-KUSUM Scheme.

2. The matter was listed on 18.08.2023 through video conferencing and finally heard on 21.09.2023. Sh. Rakesh Singh appeared as Petitioner and Sh. Sandeep Pathak, Advocate, appeared for Respondent.

3. Petitioner in its petition, rejoinder and during hearing has mainly submitted as under:

3.1. Petitioner is a consumer of JVVNL having domestic connection with K.No-210472006637. Applicant is regularly paying his electricity bill raised by JVVNL. Increase and decrease in the tariff, directly effects the financial health of the applicant. In case JVVNL pays higher tariff of power purchase, this also affects the sale price and thus, affects the financial burden on the applicant.

3.2. Respondent has filed a petition having No. 2126/2023 for approval of the ceiling tariff for the PV solar projects to be set up under PM KUSUM Scheme component-C and Commission vide order dated 16.06.2023 has approved the ceiling levelized tariff as Rs. 3.55 per unit as per petition filed by the respondent.

3.3. The projects under PM-KUSUM Scheme under component-A or under component-C are similar in the area of Operational and financial parameters.

3.4. The present petition has been filed by the petitioner for consideration of the following factors which need the attention and indulgence of the Commission with regard to the tariff applicable to the solar power plants to be set up under PM KUSUM Scheme component-C.

3.5. Review of the Order dated 16.06.2023: Under Section. 94 (1) (f) of the Electricity Act, 2003 (hereinafter 'Act') read with Order XLVII Rule 1 of the Civil Procedure Code is necessary because some relevant facts was not produced by the respondent on the face of record.

(i) Discovery by the applicant of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or

(ii) On account of some mistake or error apparent on the face of the record, or

(iii) For any other sufficient reason.

3.6. The rate of Rs.3.55/- approved by the Commission on account of new and important matter or evidence which, after the exercise of due diligence, was not brought in to the knowledge of the Commission and also not be produced by the respondent at the time when the matter was heard or before the order was passed.

3.7. The Respondent in its petition no. 2126/2023 has considered some different operational and financial parameters different than considered by the Commission its order dated 11.02.2020 for determination of prefixed levelised tariff under component-A and computed the tariff as Rs. 3.14 per kWh. This is an error apparent on the face of record. Further, there are some relevant facts which were not produced by the Respondent, so this petition attracts the provisions of review.

3.8. The project cost considered by the Respondent is on the higher side, as the present market trend of the prices of solar plant material is decreasing. In the last four months the solar panels prices have reduced from Rs. 25/- per watt to Rs. 19/- per watt. At present solar panels of polycrystalline technology are available for the price of Rs. 19/- per watt. Respondent has not considered the prevailing market trends.

3.9. In PM KUSUM Scheme component-A, this Commission has considered 20% CUF, however, the respondent has calculated the tariff 19% CUF. The fact is that there is no difference in the generation conditions of the Project established either under component-A or under component-C. It is a settled law that provision of regulations should prevail over and above on any assumptions MNRE email, MNRE requirement of maintenance of minimum CUF which is not as per Regulations in force at the point of time.

3.10. The Commission has also considered interest rate as 10.53% while determining the ceiling tariff of the projects under component A, whereas, while passing the impugned order, the Commission has based its approval on the interest rates as submitted/calculated by JVVNL, which is much higher as 12%. At present Loan is available on the interest rate in tune of 9.5% to 10.5% based on credit ratings of individuals.

3.11. Further, Respondent at its own has considered O& M expenses of Rs. 5 Lakh per MW with escalation of 3.84%. Respondent has considered depreciation as per with Regulations but different from value considered by the Commission.

3.12. The result of considering lower CUF, higher interest rate, higher project cost and higher O&M expenses, is that the levelized tariff computed by JVVNL has gone on higher side.

3.13. Commission vide order dated 07.03.2022, approves the levelized tariff of Rs. 2.89 per unit for 25 years for the pilot project of 4.24 MW solar power plant for feeder level solarization under component-C of PM-KUSUM Scheme. When the successful bidder filed Petition No.2026/2022 to consider the increased cost, the same was rejected by the Commission vide order dated 27.01.2023 and thereafter there was no change in the situation which calls for increase in the tariff. When the Commission itself has rejected the Petition stating that there is no increase in cost so as to give the benefit to the said RPG, the present increase in tariff is unwarranted, unnecessary and only at the behest of JVVNL, who is blowing hot and cold at the same time. The Discom in Petition No.2026/2022 has vehemently opposed the increase in tariff and therefore, since the situation remains the same, the increase of the tariff by way of the present order is illegal, whimsical and arbitrary to favour the parties of JVVNL's choice and therefore, liable to be set aside.

3.14. In the petition no 1989/2022 of JVVNL for tariff approval of above pilot project, JVVNL has stated that the lowest tariff discovered in component-A of PM- KUSUM scheme is Rs.2.890 per unit, whereas truth was that the lowest tariff discovered was Rs.2.790 per unit and not Rs. 2.890 per unit. JVVNL has given misleading information to the Commission and got approval higher tariff Rs. 2.89 per unit in place of Rs. 2.79 per unit.

3.15. In the interest of justice, equity and fair play the present review petition may be allowed and the impugned order dated 16.06.2023 may be set aside.

3.16. It is prayed that Commission may be pleased to:

(1) Review the levelised tariff approved vide order dated 16.06.2023 and refix the tariff on the basis of the criteria prescribed vide order dated 11.02.2020.

(2) To pass any such other order/s and/or direction which the Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

4. Respondent JVVNL in their reply and during hearing submitted as under:

4.1. There is a preliminary objection that by way of the present petition, petitioner is seeking review of the order passed by the Commission, however, there is no error apparent on the face of the record so as to attract provisions of review, as contemplated u/s 94(1)(f) of the Electricity Act, 2003 and also principles emanating from Order 47 of CPC of 1908.

4.2. Further, the Prayer made by the Petitioner would result in overhaul change to the order passed by the Commission. Commission cannot sit as an Appellate Authority over its own order. The petitioner is virtually seeking completely new direction from the Commission, which is not permissible in the eyes of law.

4.3. The Commission vide its order dated 11.02.2020 has submitted the ceiling tariff applicable under Component-A of PM-KUSUM Scheme. As per Part-III (Financial principles for computing costs and return) of RERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 (hereinafter 'RERC RE Tariff Regulations, 2020') vide Regulation 15.1 the normative Capital Cost shall be as specified in the subsequent technology specific chapters. Further, as per Part V (Technology specific parameters for Solar PV Power Project) of the Regulations, vide Regulation 29.1, the Commission shall determine only project specific capital cost considering the prevailing market trends.

4.4. In view of the above, JVVNL has considered the prevailing market trends including inputs received from various stakeholders. Additionally, considering the levelized tariff as finalized in recent JVVNL tenders, there is still potential savings of up to Rs. 2.05 per unit in power purchase cost (variable) of Rajasthan Discoms through feeder level solarization under PM-KUSUM scheme which shall be passed on consumers through approved retail tariffs in coming years. Therefore, variation in discovered tariff are bound to be witnessed over a due course of time considering the impact of various market forces and after a prudence check by the Commission required for determining tariff for the period of 25 years.

4.5. On 11.01.2023, JVVNL published Request for Selection (RfS) vide TN-01 for design, survey, supply, installation, testing, commissioning, operation & maintenance for 25 years (unless extended by both the parties on mutual agreement) from COD of 43 nos. grid connected solar power plants through RESCO mode, its associated 33 kV or, 11 kV line to connect the plant with respective 33/11 kV sub-station and RMS of solar power plants for solarization of agriculture consumers connected on 11 kV feeders of 39 nos. GSS in JVVNL under KUSUM Scheme component-C (Feeder Level Solarization).

4.6. On 05.04.2023, CE level meeting held for discussion on technical bid evaluation and recommendation on GSS and plant wise bidder's eligibility and qualification status where all 30 bidders were found to be responsive and qualified. After detailed deliberations, discussions & recommendation on the responsiveness and qualification of the respective bidders, on 06.04.2023 financial bids were opened. Lowest quoted tariff was discovered as Rs. 3.330 per kWh against 3.76 MW of solar power capacity. Overall, the quoted tariff ranged from Rs. 3.330 per kWh till Rs. 4.990 per kWh for the solar power plants of capacity ranging from 0.55 MW to 4.9 MW.

4.7. On 24.04.2023 and 25.04.2023, based on the provisions of the Rajasthan Transparency in Public Procurement Act / Rules 2013 and of the RfS, the competent authority of JVVNL negotiated on the quoted levelized tariff with the L1 bidders within the computed levelized tariff range of without lease rent' and 'with maximum lease rent'. Subsequently, the Committee decided to give a counteroffer and finally the levelised tariff in the range of Rs. 3.330 per unit to Rs. 3.550 per unit were finalized.

4.8. On 10.05.2023, JVVNL filed the petition before RERC for adoption of levelized tariff for the 20 nos. solar PV projects with total capacity of 52.66 MW including all the supporting documents and/or required by Commission for approval.

4.9. Commission after exercise of due diligence has approved the discovered levelised tariff (Rs. 3.33/kWh to Rs. 3.55/kWh) for 20 nos. of solar power plants for the period of 25 years vide its order dated 16.06.2023. Therefore, the contention of the Petitioner that complete facts were not brought before the Commission is misconceived.

4.10. The petitioner has compared the pre-fixed levelised tariff rate of Rs. 3.14 per kWh (based on certain operational and financial parameters) for component-A under PM-KUSUM Scheme as per the Commission's Order dated 11.02.2020 with the Order dated 16.06.2023 passed in Petition No.- 2126/2023 which in any case is not valid as prefixed levelised tariff rate of Rs. 3.14 per kWh was approved earlier in the year 2020 with different parameters.

4.11. Further, the parameters such as eligible CFA, variations in scope of work, deposition of bank guarantee, land lease rent & its procurement, use of domestic content requirement of cells & modules were some of the contributing factors impacting the levelized tariff of Rs. 2.890 per unit under component-C (feeder level solarization).

4.12. As submitted earlier, as per the Regulations, for solar PV power projects, the Commission is to determine only project specific capital cost considering the prevailing market trends. JVVNL has considered the prevailing market trends including inputs received from bidders during pre-bid meeting dated 19.01.2023 and negotiation meetings held with bidders held on 24.04.2023 and 25.04.2023 for determination of total project cost. Since all 31 Nos tendered solar PV plants are of different capacities, JVVNL has computed the capital cost of each solar PV project comprising of variable component and fixed component, where variable cost component increases proportionately with increase in plant size, whereas, fixed component is fixed in nature irrespective of plant size but linked to the connectivity voltage.

4.13. However, JVVNL in its petition No.2126/2023 has considered different values of the parameters such as CUF, O& M Expenses, tenure of loans, interest on loan and Depreciation.

4.14. Regulation 30.1 of the RERC RE Tariff Regulations, 2020 provides for the minimum CUF of 20% for the purpose of determination of tariff for solar PV plants. However, MNRE in its clarification dated 07.02.2022 on capacity & CFA approval for 113.19 MW capacity for feeder level solarization under Component C (Feeder Level Solarization) clarified that the CUF of 17% is low, particularly in Rajasthan, which is endowed with a good solar resource. CUF of at least 19% may be considered in the calculation of project capacity and CFA. It may also be noted that the agencies are allowed to install higher DC capacity resulting in even higher CUFs. In view of the above, JVVNL has considered CUF of 19% without any derating factor (i.e., fixed for 25 years) for computation of levelized tariff. Therefore, the Commission may not consider the petitioner's request in this regard.

4.15. JVVNL has considered the parameters strictly in accordance with the Regulatory provisions stipulated in the RERC RE Tariff Regulations, 2020 and regulation 17.2 which states that for the purpose of computation of tariff normative interest rate 200 basis points above the base rate prevalent during the last available six months is to be considered. The SBI base rate with effect from 15.03.2023 (source: www.sbi.co.in) is 10.10%, JVVNL has considered interest rate of 12% per annum for computation of levelized tariff.

4.16. JVVNL issued Letter of Award (LOA) dated 10.05.2022 at the approved tariff, for which unconditional acceptance dated 13.05.2022 and unconditional acceptance dated 19.05.2022 of the issued work orders were accepted by the successful solar power developers. After the unconditional acceptance, solar power developer filed the 'Change in Law' Petition on dated 22.06.2022 before the Commission where Commission vide order dated

15.12.2022 disallowed any compensation to it. Upon disallowance of compensation, JVVNL requested solar power developer for project initiation, however even after multiple reminders the project didn't get started and finally committee members decided to penalize the solar power developer as per Rules, RfS and LoA. Also, directed for re-tendering work of 4.24 MW solar power project.

4.17. On 09.07.2021, JVVNL floated tender vide NIT No. TN-06 for the work of pilot project of 4.24 MW solar power project for feeder level solarization. Letter of Intent (LoI) was issued to successful solar power developer on 19.01.2022. Subsequently, letter of intent was accepted by the solar power developer. On 24.01.2022,JVVNL filed Petition before the Commission for approval of discovered tariff under which RERC approved the quoted levelized tariff of Rs. 2.890 per unit vide order dated 07.03.2022.

4.18. In view of the above, it is to highlight that JVVNL has followed MNRE Guidelines and adopted parameters for determination of levelized tariff as per market prevailing rates at the time of bidding process (i.e. 09.07.202!). Therefore, the contention of the petitioner that the present increase in tariff is unwarranted and unnecessary is misconceived.

4.19. Further, the lowest levelized tariff (Rs. 2.890/kWh) discovered through reverse bidding under KUSUM component-C for which Power Purchase Agreement (PPA) executed for period of 25 years which were also highlighted at the time of filing the petition dated 24.01. 2022.Therefore, the contention of the petitioner that JVVNL has given misleading information to the Commission is also misconceived.

Commission's view:

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

6. Petitioner has mainly prayed for review of the levelised tariff approved vide order dated 16.06.2023 and refix the tariff on the basis of the criteria prescribed vide order dated 11.02.2020. Commission vide order dated 16.06.2023 has approved the ceiling levelized tariff as Rs. 3.55 per kWh as per petition filed by the Respondent. According to the Petitioner, Respondent, JVVNL in its earlier petition no. 2126/2023 has considered some different operational and financial parameters than considered by the Commission in its order dated 11.02.2020 and due to consideration lower CUF, higher interest rate, higher project cost and higher O&M expenses by the Respondent the levelized tariff computed by JVVNL has gone on higher side. It is also submission of the petitioner that after order dated 27.01.2023, there is no change in the situation calling for such increase in the tariff.

7. Per contra the Respondent JVVNL in their reply submitted that JVVNL has considered the prevailing market trends including inputs received from bidders during pre-bid meeting, MNRE Guidelines and adopted parameters for determination of levelized tariff as per market prevailing rates at the time of bidding process (i.e., 09.07.2021) for the period of 25 years. According to the Respondent, Commission after exercise of due diligence vide its order dated 16.06.2023 has approved the discovered levelised tariff (Rs. 3.33/kWh to Rs. 3.55/kWh) for 20 nos. of solar power plants for the period of 25 years.

8. It is observed that the petitioner vide its instant Petition is seeking review of the Commission order dated 16.06.2023 and request to refix the tariff as per the criteria prescribed under Commissions order dated 11.02.2020. It is well settled that review jurisdiction of the Commission under section 94 of the Electricity Act 2003 is very limited and following conditions prescribed under Order 47 Rule 1 of CPC are to be satisfied for review i.e.,

i. Discovery of new and important matter or evidence which after exercise of due diligence was not in the knowledge of the applicant and could not be produced by him at the time when the decree or order was passed.

ii. Some mistake or error apparent on the face of the record, and

iii. For any other sufficient reason.

9. It is the main contention of the petitioner that Respondent has ignored the prevailing market conditions and have considered the parameters different from the Commission's Regulations/order, whereas, the Discom has worked out the rates for their reference purpose and not for awarding tariff. In this case the Discom has conducted the bidding process and approached the Commission for adoption of tariff u/s 63 of the Act.

10. The Commission has passed the Order u/s. 63 of the Act for component-C of the KUSUM Scheme on 16.06.2023 based on the transparent bidding conducted by the Respondents as per the guideline issued by MNRE, whereas the petitioner is seeking refixation of tariff based on parameters considered in the Commission's Order dated 11.02.2020 passed for component-A of the KSUM Scheme as per Regulations u/s 62 of the Act. In our view, Petitioner has mixed the process of tariff determination under Section 62 and Section 63 of the Electricity Act, 2003, which is not permissible under the law.

11. It is also observed that the ground urged by the petitioner would relate to the merit of the matter and by way of requesting for refixation of the tariff u/s 62 of the Act a fresh decision is being sought, which in our view is not permissible under the review jurisdiction.

12. In light of the above discussions, it is observed that Petitioner has failed to raise any error apparent on the face of the record or any other sufficient ground for review under Section 94 of the Electricity Act, 2003 and Order No. XL VII Rule 1 of CPC in the Commission's Order dated 16.06.2023. Hence, the Commission is of the considered view that the review petition, filed by the

Petitioner, is devoid of any substance and deserves to be rejected, hence rejected.

13. Accordingly, this review petition stands dismissed in the above terms.

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