

Rajasthan Electricity Regulatory Commission

Petition No. RERC/1816/20

Petition filed in the matter of issuance of instructions to distribution licensee using powers of Commission under Section 86 of the Electricity Act, 2003 to counter impending losses due to Covid-19 pandemic and amendment in RERC Tariff Regulations, 2019.

Coram :

Dr. B.N. Sharma,	Chairman
Sh. S.C. Dinkar,	Member
Sh. Prithvi Raj,	Member

Petitioner : Sh. Anshuman Gothwal and Anr.

Respondents :

1. Jaipur Vidyut Vitran Nigam Ltd.
2. Ajmer Vidyut Vitran Nigam Ltd.
3. Jodhpur Vidyut Vitran Nigam Ltd
4. Rajasthan Urja Vikas Nigam Ltd.
5. Rajasthan Vidyut Utpadan Nigam Ltd.
6. Rajasthan Vidyut Prasaran Nigam Ltd.
7. M/s JSW Energy (Barmer) Ltd.

Date of hearing : 06.07.2021

Present :

1. Sh. Simran Grover, Petitioner
2. Sh. Bipin Gupta, Advocate for Discoms
3. Sh. Sandeep Taneja, Advocate for RVUNL
4. Sh. Umang Gupta, Advocate for RVPNL
5. Sh. Aman Anand, Advocate for JSW Energy

Order Date:

23.07.2021

ORDER

1. Petitioners have filed this petition on 13.10.2020 for issuance of instructions to distribution licensee using powers of Commission under Section 86 of the Electricity Act, 2003 to counter impending losses due to Covid-19 pandemic and for amendment in RERC Tariff Regulations, 2019 considering impact of lockdown due to covid-19 pandemic by the state commission u/s 61 of the electricity act 2003 for distribution of losses between generation, transmission and distribution companies as per assessment.
2. Notices were issued to Respondents on 14.10.2020 for filing the reply in petition. Accordingly, M/s JSW Energy (Barmer) Ltd. on 05.11.2020, Rajasthan Vidyut Utpadan Nigam Ltd. (RVUNL) on 28.12.2020, Rajasthan Vidyut Prasaran Nigam Ltd. (RVPNL) on 05.01.2021 and Discoms on 22.02.2021 filed their reply to the petition.
3. The matter was heard on 06.07.2021. Sh. Simran Grover appeared as Petitioner. Sh. Bipin Gupta, Advocate appeared for Discoms, Sh. Sandeep Taneja, Advocate appeared for RVUNL, Sh. Umang Gupta, Advocate appeared for RVPNL and Sh. Aman Anand, Advocate appeared for M/s JSW Energy.
4. Petitioner in its petition and during hearing has mainly submitted as under:
 - 4.1. Petitioners are consumers in the state of Rajasthan advocating for energy equity and climate action in Rajasthan.
 - 4.2. Lockdown imposed due to Covid-19 pandemic led to decline in industrial and commercial activities because of which Discoms witnessed drastic reduction in electricity demand. Experts are forecasting that the

pandemic is likely to have a long-lasting impact on economy and subsequently on demand for electricity.

- 4.3. Petitioner estimated the potential net loss in the range of Rs. 400 to 926 Crores on a projected revenue loss of Rs. 835 to 1795 Crores for JVVNL alone. This amounts to an overall average tariff impact of 17 paise per unit to 41 paise per unit. The estimate is based on impact on electricity demand only, and the actual impact because of project delays, fall in collection efficiencies and cost of short-term borrowings is likely to be much higher.
- 4.4. Amongst the three primary business verticals in power sector i.e. Generation, Transmission and Distribution, the distribution companies bear a disproportionately higher risk. Such risks extend beyond the technical and operational risks inherent to the business of electricity distribution and include difficulty to manage risks associated with electricity demand. Typical structure of power purchase agreements is such that even in case of a natural disaster such as Covid-19 pandemic has unleashed, distribution licensees are liable to shoulder the burden of the impact and eventually pass it on to the electricity consumers. Such impact should be equitably and realistically spread throughout the value chain, and not borne by Discoms alone.
- 4.5. Distribution licensees are liable to pay fixed charges to Generating Companies, including for deemed generation. While demand has fell significantly due to the lockdown and impact of pandemic, the generation and transmission companies are assured fixed returns on their equity investments as none of the risks linked to electricity demand are shared by them.
- 4.6. While true picture of impact of Covid-19 shall only be realized in near

future, it is critical that electricity consumers of Rajasthan are not further burdened by possible impact on electricity tariffs. Given the impact on economy, it is already evident that Rajasthan shall be struggling to bridge their fiscal deficit. Hence, it is pertinent that suitable measures are taken to safeguard electricity consumers of Rajasthan from impact of Covid-19 pandemic.

- 4.7. In light of the impact of the Covid-19 pandemic on the economy, it is imperative for Discoms to look for suitable emergency provisions in the Companies Act 2013, Indian Contract Act 1872 and the mutually signed Power Purchase Agreements which absolve them of all or some of their obligations towards the Generator and Transmission Companies to an extent that such absolutions are governed by principles of fairness.
- 4.8. It is submitted that the PPA allows exemption from performance of obligations under the PPA due to any event or circumstance ("Force Majeure Event") beyond the reasonable control of the party. The agreements signed between RVUNL and the Discoms and its subsequent amendments also have the provision of Force Majeure in it. The Discoms may be directed to invoke Force Majeure to renegotiate PPA terms for a limited liability period of 2 years, based on assumption that such period shall be necessary for full recovery of the economy and the Commission may extend or shorten such an agreed period on prudence basis.
- 4.9. In addition to this, CERC had announced some relief in its order dated 3rd April 2020 in Suo-moto petition 6/SM/2020 by reducing Late Payment Surcharge to 1% from 1.5%. The terms and conditions of PPAs are guided by 'RERC (Terms and Conditions for Determination of Tariff) Regulations, 2019' and the Commission may also relax provisions contained therein for a certain period as per precedent set by CERC in its order dated 3rd April 2020.

4.10. In view of above, Petitioner prayed to-

- a) Set-up an independent committee, including at least 2 experts in the field of economics and public policy or representatives from esteemed consumer organizations with suitable domain expertise, to institute a framework for estimating and monitoring impact of the pandemic on Discom's revenues during next 2-3 years.
- b) Issue a framework to distribute the losses because of the pandemic fairly between generation, transmission and distribution companies by invoking of suitable provisions in the agreements/acts or by exercising powers vested with the Rajasthan Electricity Regulatory Commission.
- c) Reduce Return on Equity for generation and transmission companies to 10% or as deemed appropriate by the Commission for a period of at least 2 years.

5. Respondent RVUNL in its reply and during hearing has submitted as under:-

5.1. Petitioners have filed the petition in the nature of public interest. The Petitioners have sought to invoke the jurisdiction of the Commission in wake of public interest. Electricity Act, 2003 does not contain any provision for filing of public interest litigation by any person before the Commission. Various judicial precedents have established that public interest litigation is not maintainable before the Electricity Commission/Tribunal. The above petition being in the nature of public interest litigation is, therefore, not maintainable before the Commission under Section 86 of the Electricity Act, 2003.

5.2. Petition has been filed while elaborating concerns over the alleged losses incurred to the Discoms during the lockdown period on account of Covid-19 and thereafter. However, the lockdown was observed only from

24.03.2020 to 17.05.2020 i.e. in total 54 days. Thereafter, the unlocking was commenced. Therefore, averments pertaining to losses incurred to the Discoms are vague and baseless. The Petitioners have not substantiated their claims and have not provided any month wise comparative details of fixed charges recovered for the period April to September in the FY-19-20 and FY 20-21. The petition, therefore merely based on conjectures and surmises deserves to be dismissed.

- 5.3. Petition is premised on the ground that the consumers of Rajasthan may be burdened due to increase in losses of the Discoms on account of impact of Covid-19 pandemic. The Petitioners, to buttress their contentions, have referred to excerpts of certain reports. The said reports are mere estimation, inferences or forecasting of effect of pandemic on the electricity sector. It does not have any authentic data narrating the confirmed impact of the Covid-19 on the electricity tariff.
- 5.4. Petitioners are seeking relief qua the PPAs executed between the Generating Company and the Discoms. It is submitted that the matters pertaining to the PPAs are purely contractual in nature. The Petitioners being stranger to the said agreements have no locus standi to seek any relief in respect thereof.
- 5.5. Petitioners have grossly failed to consider that the Ministry of Power, Government of India has already taken cognizance of the situation and the impact of Covid-19 and consequently vide letter dated 28.03.2020 has issued directions to the Chairman, Central Electricity Regulatory Commission (CERC) under Section 63 and 107 of the Electricity Act 2003 to specify a reduced rate of Late Payment Surcharge (LPS) for payments which has become delayed beyond a period of 45 days during the period 24.03.2020 to 30.06.2020.

- 5.6. Subsequent to above, Finance Minister on 13.05.2020 announced liquidity infusion by PFC/REC of Rs. 90,000 crores to Discoms against receivables and loans to be given against state guarantee for exclusive purpose of discharging liabilities of Discoms to Power Generating Companies. In view of the above, where the Central Government has already issued directions to provide relief to the Discoms, the present petition does not survive and the same is liable to be dismissed.
- 5.7. As per the Force Majeure clause of PPA between RVUN and Discoms, no party is liable for any claim for any loss or damages whatsoever arising out due to force majeure events. In this regard it will not be out of place to mention here that vide letter dated 28.03.2020 RUVNL conveyed to all that no cause of action for breach or liability will arise on account of any impossible performance of PPA, as a result of consequences of the said Force Majeure event. In view of above, the claim of the Petitioners being without any justification is liable to be rejected.
6. Respondent RVPNL in its reply and during hearing has submitted as under:-
- 6.1. Commission has already passed a suo-moto order dated 15.04.2020 for mitigating the impact of Covid-19 on electricity distribution licensees and consumers of Rajasthan. Commission vide said order have issued certain directions to the Generators, Transmission Licensee as well as the Discoms. These directions are sufficient to deal with the present situation and hence call for no interference by the Commission.
- 6.2. RUVN had issued notice dated 03.04.2020 invoking the provisions of Force Majeure clause provided in the PPA and notified the lockdown due to Covid-19 as the Force Majeure event. In response, RVPN replied that no force majeure is applicable on RVPN's payment. However, it was stated that all payments which fall before 22.03.2020 or after 30.06.2020 would

attract LPS as per applicable Regulation 33 of the RERC Tariff Regulations, 2019.

6.3. Petitioners have requested to reduce the Return on Equity (RoE) for generation and transmission companies to 10% or as deemed appropriate by the Commission. In this regard, it is submitted that RVPN is already taking only 2% RoE in its ARR.

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

7.1. Petitioners are not affected parties and have no locus to maintain the present petition seeking, inter-alia, amendments to the approved PPA and the Tariff Regulations which govern the determination and recovery of generation tariff between the JSW Energy and the Distribution Licensees.

7.2. Petitioners are two individual consumers who purportedly claim that they are advocating for energy equity and climate action in Rajasthan. From the description of the Petitioners, it is apparent that the petition is really in the nature of a Public Interest Litigation; and as per settled law is not maintainable before the Commission.

7.3. The essence of the petition is that the Commission should change the risk allocation relating to electricity demand, as provided under the approved PPA and the Tariff Regulations, purportedly, basis a Force Majeure event. It is submitted that the consequence of a Force Majeure cannot be an amendment of the approved PPA and Tariff Regulations. Such relief cannot be granted by the Commission.

7.4. Further, the Petitioners desire that the settled and implemented principle of the tariff framework, that full capacity charges would be recovered at

Target Availability have to be varied by the Commission which cannot be permitted. Still further, the techno-commercial reasons, which led to the principle being adopted and implemented by the ERC's all across the country, have not been traversed at all by the Petitioners.

- 7.5. Petitioners have placed reliance on the CERC order dated 03.04.2020 and requested to follow a similar course. In this context it is submitted that the Petitioners have completely ignored the passing of the suo-moto order dated 15.04.2020 by the Commission wherein similar relief has already been afforded to consumers.
8. Respondent Discoms in its reply and during hearing has submitted as under:-
 - 8.1. There has been a significant impact of Covid-19 pandemic on the Discoms, owing to lockdown announced by the Government of Rajasthan and subsequently by the Central Government. Discoms faced with drastic dip in commercial and industrial consumers consumption which led to financial loss to the Discoms. The dip in the power requirement of State also affected the Discoms ability to schedule full quantum of power from generator besides forcing generators to shut down the units. This also led underutilization of transmission system.
 - 8.2. Discoms are liable to pay the fixed charges to generators and transmission companies as per contracted capacity even when power is not scheduled. Due to lockdown the Discoms vide their letter dated 28.3.2020 issued notice to the generators under Force Meajure clause in respect PPA's between seller, generators and State Discoms buyer.
 - 8.3. Various generators have rejected the Force Meajure notice stating therein that the power generation has been recognized as essential even in the lockdown period. Ministry of Home affairs had also passed an order

dated 24.3.2020 wherein it had been specifically recognized that electricity is an exception from lockdown.

- 8.4. It is further submitted that the Ministry of Power had announced various rebates of fixed charges payable to generating company and transmission company for power scheduled from CPSUs during lockdown period. Further fixed charges for the unscheduled power were to be deferred and recovered in three monthly installments after lockdown period. It is submitted that generator and transmission companies while passing the above mentioned relief to the Discom had imposed condition of withdrawal of Force Meajure notice by the Discom in order to avail benefit and rebates of deferral. In such circumstances, it is prayed to the Commission to issue a frame work to distribute the losses on account of pandemic fairly between generating, transmission and distribution companies as suggested by the Petitioners.
- 8.5. Maximum impact of pandemic has been suffered by the State Discoms in form of reduced revenue as well as cash flow. Generation and transmission companies are assured fixed return on their equity investment as none of risks are linked with electricity demands and risk is not shared by them therefore, in that view Discoms agrees with suggestion of Petitioners that risk faced by the Discoms specially during Covid-19 period ought to be shared by the generation and transmission companies. The Return on Equity charged by these entities ultimately burdens the consumers of electricity in the State and therefore, the Return on Equity of transmission and generation companies may be reduced.

Commission's view

9. Commission has carefully considered the submissions made by Petitioner

and the Respondents.

10. According to Petitioner, lockdown imposed due to Covid-19 pandemic led to revenue loss of Discoms which amounts to an average tariff impact of 17 paise/unit to 41 paise/unit. Discoms would eventually pass it on to the electricity consumers of Rajasthan. Therefore, such impact should be equitably and realistically spread throughout the value chain, and not borne by Discoms alone.
11. Petitioners suggested that suitable measures should be taken to safeguard electricity consumers of Rajasthan from impact of Covid-19 pandemic.
12. Respondent RVUNL, RVPN and M/s JSW Energy opposed the petition and submitted that petition is in nature of public interest litigation. Electricity Act, 2003 does not contain any provision for filing of public interest litigation by any person before the Commission, therefore, petition is not maintainable under Section 86 of the Electricity Act, 2003.
13. Respondents further submitted that Commission has already passed a suo-moto order dated 15.04.2020 for mitigating the impact of Covid-19 on electricity distribution licensees and consumers of Rajasthan. Commission vide said order have issued certain directions to the Generators, Transmission Licensee as well as the Discoms. These directions are sufficient to deal with the situation.
14. Discoms while supporting the petition submitted that generation and transmission companies are assured fixed return on their equity investment therefore, risk faced by the Discoms specially during Covid-19 period ought to be shared by the generation and transmission companies. Further, Return on Equity charged by these entities ultimately burdens the consumers of electricity in the State and therefore, the Return of Equity of transmission and generation companies may be reduced.

15. Commission observes that the circumstances due to Covid-19 were unforeseen and unprecedented, which required the Commission to act for balancing the interest of consumers and utilities. Each constituent of the Power Sector has been affected by the Lock-down.
16. The prime function of the Commission is to protect the interest of the consumer and at the same time ensuring recovery of cost by utilities. The Commission therefore vide its orders dated 15.04.2020 and 03.06.2020 issued certain directions to the Licensee/Generating Companies to mitigate hardships to the sector.
17. Commission observed that Government of Rajasthan, to address the difficulties faced by distribution licensee on account of the lockdown imposed due to Covid-19, announced various measures and also announced financial support which inter-alia includes deferment of the fixed Charges for industrial and non-domestic consumers.
18. In view of above, Commission is of considered view that there is no need to entertain the prayer of petition at this stage. Commission has noted the suggestions of Petitioners and considers to address these issues at appropriate time.
19. Petition stands disposed accordingly.

(Prithvi Raj)
Member

(S. C. Dinkar)
Member

(Dr. B.N. Sharma)
Chairman