

RAJASTHAN ELECTRICITY REGULATORY COMMISSION
JAIPUR

Petition No. RERC/1898/21,1899/21 and 1924/21

**Petitions filed for removal of difficulties in RERC (Terms and Conditions for
Tariff Determination from Renewable Energy Sources) Regulations, 2020.**

Coram:

Dr. B.N. Sharma, Chairman
Shri S. C. Dinkar, Member

Indian Wind Energy Association & Ors. Petitioners
M/s IB Vogt Solar Eight Pvt. Ltd.
Rajasthan Solar Association.

Jaipur Vidyut Vitran Nigam Ltd. Respondents
Ajmer Vidyut Vitran Nigam Ltd.
Jodhpur Vidyut Vitran Nigam Ltd.
Rajasthan Urja Vikas Nigam Ltd.

Dates of hearing: 12.08.2021, 30.09.2021, 07.12.2021 and 11.01.2022

Present : Sh. Vinod Bishnoi, Authorised rep. for Petitioners (1898/21)
 Sh. Kulbhusan Kumar, Authorised rep. for Petitioner
 (1899/21).
 Ms.Shikha Ohri, Advocate for Petitioner (1924/21).
 Sh. Sandeep Pathak, Advocate for Respondents.

Order Date: **28.02.2022**

Order

1. Petitioners have filed the petition under Section 86 and 94(1)(f) of the Electricity Act, 2003 (hereinafter referred to as the 'Act') and Regulations 96, 97, 98 of the RERC (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations,2020 (hereinafter referred to as the

'RE Tariff Regulations 2020') requesting for removal of difficulty in respect of the implementation of regulation 92.2 and 93.3 of the said Regulations.

2. Notices were issued to the Respondents through the online portal to file their replies.

3. Matter was listed on 12.08.2021, 30.09.2021, 07.12.2021, and finally heard on 11.01.2022, wherein, Sh. Vinod Bishnoi, Sh. Kulbhusan Kumar, Advocate, and Ms. Shikha Ohri, Advocate appeared on behalf of Petitioners- Indian Wind Energy Association & Ors., M/s IB Vogt Solar Eight Pvt. Ltd and Rajasthan Solar Association respectively. Sh. Sandeep Pathak, Advocate appeared for Respondent.

4. It is observed that the issues that arise in all the petitions for consideration and decision of the Commission are similar, accordingly, the petitions referred to in cause title are clubbed and are being disposed of by this common order. The petitioners have broadly raised issues in respect of:

4.1. Restriction on Capacity Utilization Factor ('CUF') and individual installed capacity for RE Captive Power Plants.

4.2. Banking and Energy Accounting.

5. Petitioners in their petitions, rejoinder and during hearing have mainly raised the following issues:

Restriction on Capacity Utilization Factor ('CUF') and individual installed capacity for RE Captive Power Plants:

5.1. Section 2 (28) of the Electricity Act, 2003 defines a captive generating plant, and further, under Section 9 (2) of the EA, 2003, a statutory obligation was cast upon the distribution utility to provide non-discriminatory use of its distribution system to such persons who require open access for their self-use in order to obtain power. Further, in terms of the powers conferred under Section 176 of EA, 2003, the Central Government has framed the Electricity Rules, 2005, which vide Rule 3 provides for

requirements of captive generating plants. No specific mentioning of any kind of restrictions/requirement was specified on the capacity utilization factor of the captive power plant.

5.2. As per the RERC (Terms and Conditions for determination for Tariff) Regulations, 2009 issued by the Commission, wind energy generator is entitled to self-use up to 100% of the power generated. The same approach was extended in RE Tariff Regulations, 2014. Commission vide RERC RE Tariff Regulations 2020 has put unfair and arbitrary restrictions on the RE captive plants which are not envisaged in any other regulation or policy of the State. Commission has to holistically notify the Regulations while maintaining consistency with the statutory provisions of the Electricity Act, 2003.

5.3. For the upcoming wind energy projects in the state of Rajasthan under captive mode or under sale to Discoms through the competitive bidding process, generation per MW would play a vital role which is actually dependent on the Capacity Utilisation Factor. In addition to this, due to unsatisfactory regulatory and policy support, the wind energy capacity addition in the State of Rajasthan has fallen to 45 MW only during the last four years. Considering this, regulatory support needs to be provided to resurrect the wind energy sector in the State of Rajasthan.

5.4. Nowadays almost all wind industry players are developing wind generators in the range of 2 MW to 2.6 MW and rotor diameter size as 111 meters or more and average hub height above 100 meters. One of the Association members who has installed wind power plants in the State of Gujarat with 2.10 MW wind energy generators with 111 meter rotor diameter and 120-meter height are capable to generate 76.00 Lacs units per annum, in terms of CUF its comes to be approximately 41.30%. If correction of wind availability of Gujarat sites vs Rajasthan sites are taken then also newly developed WEGs are able to achieve CUF of 37% to 38%. Petitioner also submitted a list indicating various models and PLF thereof in Rajasthan.

5.5. High-efficiency wind energy generators ensure optimum usage of allocated land and natural resource. Here it may be valuable to submit that putting any unrealistic and impractical CUF limits shall act as a barrier for entry of the latest technologies of wind energy generators in the State of Rajasthan.

5.6. Commission vide Regulation 92.2 has limited the energy usage of the renewable generators for captive usage corresponding to the minimum specified CUF plus five percent. The minimum CUF as prescribed by the Commission is very low when compared to the actual figures

Technology	Regulation	Minimum CUF in RE Regulations, 2020	Actual CUF in Rajasthan (Approx. Value)
Wind	26.1	21%-Jaisalmer, Jodhpur & Barmer 20%- Other districts	35-40%
Solar	30.1	20%	30-35%
Wind- Solar Hybrid	80	30%	70-80%

5.7. Further, these figures can be increased by over-loading the project at the back end while keeping the AC output equivalent to the transmission connectivity granted for the purpose of optimum design. CUF of 20% for Wind as mentioned under RERC RE Tariff Regulations 2020 was achieved in old turbines, however, with technology advancement there has been significant improvement in the CUF and nowadays a CUF of more than 35% can be achieved from a wind power project by Increase in Rated Power and Rotor Size, Development in Turbine Controls Improvement in Plant Design and Operations Increase in Design Efficiency.

5.8. As per the NIWE study the wind energy potential in the state of Rajasthan is around 18.77 GW at 80-meter hub height and unsubstantiated conditions like controlling the CUF of wind energy to 20% and 21% be only curbing the full utilization of the wind resource. In view of the above, the CUF restriction for wind energy generators may be removed. Hence, there is no

need to limit the utilization of wind energy up to the CUF determined in RERC RE Tariff Regulations, 2020, for wind energy-based captive power plants.

5.9. Similarly, in the case of solar, significant technological improvements have resulted in achieving CUF of more than 30% in present solar projects as compared to 20% CUF of old solar projects due to high Global Horizontal Irradiance (GHI) in Rajasthan, higher DC Loading, use of solar trackers, better operations & maintenance (O&M) of solar power plant High-efficiency solar panels and inverter. Further, higher CUFs are achieved using hybrid plant setup by deploying wind and solar projects at common or multiple pooling points.

5.10. Commission has further provided that the energy consumed in excess of the said limit shall be treated as deemed drawl from the distribution licensee and will be billed accordingly. This restriction of setting up a drawl limit and treating the energy consumed beyond that as deemed drawl will cause an additional financial burden on the captive generating plant users and will eventually discourage them for such investments in the future.

5.11. The maximum permissible capacity of eligible individual new RE captive plants including renewable energy- based plant installed behind the meter shall be limited to 100% of the Contract Demand. Thus, the Hon'ble Commission has already provided a restriction in Regulation 92.1 which restricts the capacity of new RE captive plant to Contract Demand. Having provided a restriction interlinked with the Contract Demand, there is no justification to provide another restriction on the RE captive plant, be it on the permissible capacity or the permissible units of consumption. This approach will hinder the growth of RE captive plants in the State.

5.12. Regulation 92 deals with the RE captive plants and is extracted below:

“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.

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:

92.3 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.”

5.13. Regulation 93 provides for Banking and the relevant provisions are extracted below:

'93. Banking

93.1

93.2

92.4 Banking of Energy subject to a maximum ceiling of 25% of the energy injected by Renewable Energy Captive generating Station during 15-minute time block basis at consumption end shall be allowed only for captive consumption within the State:

92.5 Provided that no banking facility shall be allowed for Renewable Energy plants supplying power to third party under open access and for consumption from the Renewable Energy plant installed behind the meter without any bi-directional meter in the same premises:

.....

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93.5 Notwithstanding anything contrary contained in any other Regulations time being in force the Energy Accounting shall be under.

The banking as well as withdrawal of banked energy shall be subject to scheduling as required.

If in any 15-minute time block, injected energy is more than the energy drawn, the excess energy subject to maximum 25% of energy injected during the time block shall be computed and

cumulated till the end of the month. The excess energy so computed shall be set off after adjusting the banking charges against the cumulative drawl of energy from Discoms in the same month except drawl during peak hours.

5.14. The aforementioned Regulations pertaining to the RE captive plants and the banking facility for RE captive plants are inimical to the growth of RE captive plants in the State and are neither in sync with the prevailing laws nor the actual workings of the renewables and are in complete contrast with the principles recognized under the Electricity Act, 2003. Section 61 (c) of the Electricity Act, 2003 mandates the consideration of factors that encourage competition, efficiency and economical use of the resources whereas the instant Clauses 92.2 and 92.3 of the Regulations are in the teeth of the principles of promotion of renewable energy and encouraging competition and efficiency.

5.15. There is no rationale or reason given for limiting the amount of power a consumer can consume from a wind captive power plant to be 21% of the contracted capacity, 20% for a solar captive power plant, and 30% for a hybrid power plant, plus five percent. It doubly benefits the distribution licensee by coercing the consumers to consume energy from the distribution licensee instead of from their captive plants and also gives the Discoms the undue benefit of the power that will be injected by the captive power plant over and above its CUF, which the Discoms will absorb for free.

5.16. The concept of CUF was relevant in the time of the Feed-in tariff and perhaps continues to be relevant only in the context of generators who are selling power to the Discom wherein they have to declare a minimum CUF and are penalized if they generate below a certain percentage of declared CUF. In the context of a captive power plant providing a limitation on the amount of Power a consumer can consume from a captive plant discourages the developers from installing efficient machines.

5.17. It is consumer-unfriendly, renewable energy unfriendly, and discourages efficiency in the generation of electricity. that such a restriction is unique to the State of Rajasthan and no other State Commission, or the Central Commission has put a restriction similar to Regulation 92.2.

5.18. Any restriction on the consumption of energy generated by a RE captive plant is contradictory to the provisions of open access under Section 42 (2) of EA, 2003 which does not envisage any restriction on such consumption. Thus, any provision which is not consistent with EA, 2003 merits to be omitted from the Regulations.

5.19. The limitations on consumption have no correlation whatsoever with any benefit to the consumers or to the renewable generators. Therefore, the linkage of limitation on consumption from RE captive plant to the CUF of the plant is unreasonable.

5.20. The Regulations in this manner coerce the consumers to purchase more power from the distribution licensee, defeating the objective of an RE captive plant and completely demolishing the mechanism of a group captive under the Electricity Act, 2003.

5.21. The limitations specified in the RE Tariff Regulations, 2020 also defeat the envisaged mechanism of Open Access from renewable generators completely and discourage the consumers in the State from setting up RE captive plants. The Regulations in this manner also coerce the consumers to purchase more power from the distribution licensee, defeating the objective of an RE captive plant and completely demolishing the mechanism of a group captive under the Electricity Act, 2003.

5.22. The limitation specified in the Tariff Regulations, 2020 is contrary to the spirit and objectives of the Electricity Act, 2003 in so far as it discourages efficiency in generation because it limits the quantum of power a consumer can consume from a captive plant to the minimum CUF plus 5% fixed for the

plant and thereby discouraging the developers in the State from setting up efficient plants with high efficiency.

5.23. The CUF fixed for these renewable plants is an arbitrary number arrived at without any study and without taking into account. It is submitted that the CUF percentage limit fixed in the Tariff Regulations, 2020 ought to be removed.

5.24. The actual CUF of RE plants has improved over the past few years owing to technological advancement and is, therefore, presently much higher than as prescribed under Tariff Regulation 2020. In any event, there is no reason whatsoever for the Tariff Regulations, 2020 to limit the amount of power that a consumer can consume from its RE captive plant. The objectives of the EA, 2003, in allowing the consumers to set up RE captive plants or set up a group captive is that the consumers should be free to consume power from their captive generating plants. The sole purpose of freely allowing captive generation enables industries to access reliable, quality, and cost-effective power. The same has also been in-principle recognized in the National Tariff Policy, to the extent that such captive plants do not pose any threat or risk to the grid stability. There is absolutely no reason for the Commission to limit the amount of power the consumer can consume from such captive plants.

5.25. Considering the above, the latest model of wind energy generators are having CUFs in the range of 35% to 40%. All wind energy developers have designed the WTGs in order to harness max possible available wind which leads towards high efficient models with the same rated capacities. Hence, there should not be any restriction on the PLF on wind power projects for Captive as well as third-party users.

Banking and Energy Accounting:

5.26. Banking is very much essential for Solar/ Renewable energy power plants. The Hon'ble APTEL also in Judgement in Appeal no. 59 of 2013 and

116 of 2013, has categorically observed that the banking facility is very much essential for wind energy.

5.27. Hon'ble APTEL vide its judgments in Appeal No. 191 of 2018, Appeal No. 195 of 2019 & IA No. 896 of 2019, Appeal Nos. 265 of 2019 & IA Nos. 1170 of 2018 & 529 of 2020 and Appeal No. 406 of 2019 & IA No. 1029 of 2019 has reaffirmed the importance of banking mechanism for the renewable generators in India and reiterated that the banking mechanism cannot be altered by the State Commissions without conducting a detailed study on the impact of the mechanism on the renewable generators who are dependent on the mechanism. Hon'ble APTEL has set aside the directions issued by TNERC related to banking. In the imputed order therein, the TNERC had limited banking of power to the wind energy projects to month, however, the Hon'ble APTEL has retained the earlier approach of banking facility, i.e., 12 months banking period.

5.28. Considering the above Judgements of the Hon'ble APTEL related to banking facility for wind energy, it can be easily driven that for making wind power projects viable, banking facility is of utmost importance.

5.29. Solar and wind both are part of renewable energy and solar energy is also infirm in nature same as wind energy, considering the above judgment of Hon'ble APTEL on wind energy the same principle for banking should be applicable to solar energy as well.

5.30. The energy generation from wind is in-firm in nature, depends upon the weather cycle. A major part of total annual generation happens only during the monsoon period. During that time, the generation from wind turbines may be in excess of consumption needs of open access consumers and therefore, in the absence of appropriate banking arrangements, the significant part of generation from wind energy will be lapsed.

5.31. RE captive plants, the generation cannot be accurately predicted even with the latest scheduling and forecasting techniques and therefore it will be very difficult to plan consumption for consumers in sync with generation on a 15-minute time block basis. It is submitted that the energy accounting and commercial settlement of wind energy transactions on a 15-minute basis for each time block is not feasible.

5.32. Banking is provided under the State Policy and promoted by all possible measures and, therefore, there is no justification whatsoever for the demand that power banking and ancillary reliefs be abolished. As has been explained by the Hon'ble APTEL, the quantum of production of electricity from the RE Projects cannot be predicted and is dependent on uncontrollable factors such as wind speed, velocity, direction, irradiance, cloudiness, climate, etc., and therefore, the lean periods/seasons have to be taken into account while making policies concerning renewables. The Commission may take into consideration the acute difference in generation during high season/low season and during day/night and accordingly remove all restrictions in Regulation 93.3 and make it an annual banking mechanism instead of the monthly banking mechanism that it currently is.

5.33. Hence, considering the above, a 15-minute banking settlement is not feasible, and considering the APTEL recent directions, the twelve-month blanking period may be provided to renewable energy generators with certain modifications.

5.34. Hon'ble APTEL, and the specific provision of unrestricted banking in the State policy, it is abundantly clear that banking is considered as necessary and a part and parcel of the policies to promote renewable generation. Commission ought to endeavor to work in tandem with the State policies and the principles enunciated by the Hon'ble APTEL. In the present case, the interest of the stakeholders requires that no artificial

restrictions be placed on banking that will not take into consideration the manner of functioning of the RE captive Generators.

5.35. It is requested to provide the annual banking facility to solar captive projects with a monthly accounting of banked energy in place of 15 minutes' basis. It is also requested that new Renewable Energy based Captive Generating Stations may be allowed to opt for monthly banking as per regulation 93.7 of the RE Tariff Regulations 2020 as applicable to the old plants.

5.36. Further, regulation 93.3 of the Tariff Regulations, 2020 has imposed multiple limits on the Banking and Energy Accounting mandating settlement to be on 15 minutes basis. Besides this, where the injected energy exceeds the energy drawn, the regulation allows only a maximum of 25% of the injected energy to be treated as excess energy and considered to be banked till the end of the month, which will then be set off against the cumulative drawl of energy from the Discom in the same month except drawl done during peak hours.

5.37. The present petition is maintainable, and Commission has the jurisdiction to grant the reliefs as prayed. The petitioner has invoked the powers of the Commission to amend the RE Tariff Regulations under regulation 97 and in alternate the power to relax under regulation 97 and in alternate the power to remove difficulties under regulation 98. The said regulations are part and parcel of the RE Tariff Regulations 2020.

5.38. The said regulations are part and parcel of the RERC RE Tariff Regulations and confer powers to the Commission to amend/to relax/to remove difficulties in the said Regulations. Regulations 96,97 and 98 are extracted below:

“96. Power to amend

96.1 The Commission may, at any time, vary, alter, modify or amend any provisions of these Regulations.

97 Power to Relax

97.1 The Commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected, may relax any of the provisions of these Regulations suo-motu or on an application made before it by an interested person.

98 Power to remove difficulties

98.1 If any difficulty arises in giving effect to the provisions of these Regulations, the Commission may either suo-motu or on a petition, by general or specific order, make such provisions not inconsistent with the provisions of the Act as may appear to be necessary for removing the difficulty”.

5.39. Further, as per Regulations 18 and 19 of the RERC (Conduct of Business) Regulations, 2000, this Commission may initiate proceedings not only suo-motu but also on a petition filed by an affected person. The petitioner being an aggrieved/affected party has rightly exercised its rights to approach this Commission seeking reliefs under regulation 96 or in the alternate under regulation 97 and in the alternate under regulation 98.

6. In view of the above, Petitioners have prayed as under:

6.1. Commission may exercise its power under Regulation 96 to amend Regulation 92.2 of the RERC RE Tariff Regulations, 2020 and remove the limitation of the energy corresponding to the minimum CUF plus 5 % Imposed on consumption and banking of power from renewable energy captive power plants.

6.2. In the event the Commission is not inclined to grant the prayer above then in the alternate it is prayed, that this Commission may exercise its power to relax under Regulation 97 of the RERC RE Tariff Regulations, 2020 and direct that Regulation 92.2 shall not be applicable on the solar, wind and wind-solar hybrid renewable captive power plants in the State.

6.3. Exercise its power under Regulation 96 and amend Regulation 93.3 to remove the restriction on banking by the RE captive plants of the maximum ceiling of 25% of the energy injected by RE captive plants during the 15-minute time block basis at consumption end and provide that the RE captive plants shall be permitted yearly banking with no restriction.

6.4. In the event the Commission is not inclined to grant the prayer above then in the alternate it is prayed, that this Commission may exercise its power to relax under Regulation 97 of the RERC RE Tariff Regulations, 2020 and direct that Regulation 93.2 shall not be applicable on the solar, wind, and wind-solar hybrid renewable captive power plants in the State and that the aforesaid renewable generators shall be permitted yearly banking

6.5. Alternatively, it is prayed, that the Commission may exercise its power to remove difficulties under Regulation 98 of the RERC Tariff Regulations, 2020 and remove the difficulties with respect to the restrictions imposed on account of the maximum ceiling of 25 % on the banking of energy by RE captive plants by directing that RE captive plants shall be permitted yearly banking with no restriction, and modify Regulations in a manner as prayed for by the Petitioners so as to be consistent with the mandate under the Electricity Act, 2003.

6.6. Alternatively, it is also prayed, that the Commission may exercise its power under Regulation 98 of the RERC Tariff Regulations, 2020 and remove the difficulties with respect to the restrictions imposed on account of energy based on the corresponding CUF in percentage plus 5 % on the consumption and banking of energy by RE captive plants and modify Regulations 92.2 in a manner as prayed for by the Petitioner Association so as to be consistent with the provisions of Electricity Act, 2003.

6.7. Also, the option may be given to the new Renewable Energy based Captive Generating Stations to opt for monthly banking as per regulation 93.7 of the RE Tariff Regulations 2020.

Respondents submissions:

7. Respondents in their reply and during hearing submitted as under:

7.1. Present petitions filed under Section 86 & 94(1)(f) of the Electricity Act, 2003 (for short 'EA-2003') are not maintainable, as the existing and effective Regulations cannot be amended by way of individual petition or by filing a review petition, since the process of framing Regulations involves all the stakeholders. Admittedly, the RE Tariff Regulations, 2020 have been framed after inviting suggestions from the public at large, and the said process cannot be bypassed at the instance of the Petitioner by filing the present petition. The only recourse available to the Petitioner is to challenge the Regulations so framed, in case Petitioner has any grievance.

7.2. The form in which the present petitions have been filed clearly indicates that the Regulations have not been challenged and by adopting indirect tactics, the Regulations are now being tried to be made ineffective qua the Petitioners, which is not permissible.

7.3. The petitions are also liable to be dismissed on the ground that the Commission under its Regulatory Authority has wide powers to frame the Regulations and such Regulations have the nature of delegated legislation. The Petitioners have not challenged the Regulations and, therefore, are not entitled to seek amendment or corrections or insertions by adopting indirect means. It is a settled proposition of law that any legislation, Rule, regulation, etc., cannot be challenged by citing individual difficulties of any person or entity.

7.4. The correctness of the Regulations, on the whole, can only be judged when such Regulations are challenged before a competent forum under competent provisions of law. Firstly, the Petitioner has not challenged these Regulations, and therefore, no relief can be granted to it. Secondly, the basis for seeking any amendment can only be non-availability of jurisdiction or authority for framing the Regulations or if it is stated that the said Regulations are contrary to the provisions of law.

7.5. In the present case both these conditions are not fulfilled and therefore, only because these Regulations do not fulfill the expectation of the Petitioner or its Members, the same cannot be challenged.

7.6. Regulations are applicable to all stakeholders in relation to all issues other than Tariff Determination from the date of notification, i.e., 02.11.2020. It is clearly spelt out under Regulation 3.4 of the Regulations. Therefore, Petitioners cannot seek amendment or changes in the Regulations merely because certain provisions of the Regulations are causing hardship to the Petitioners. The Regulations are uniformly applicable to all the stakeholders. Thus, the petition is misconceived and is liable to be dismissed.

7.7. Petitioners have failed to appreciate that there has been substantial growth in renewable sources of energy in the State of Rajasthan. Initially, the incentives granted by the Commission were to boost the growing Renewable Energy Sector. However, now there is sufficient development in this area. Presently, there are 134 Captive Power Projects (Solar) in the State of Rajasthan as compared to seven (7) in the year 2003. Thus, the reliance of the petitioners on the earlier factual scenario Petitioner is misconceived.

7.8. RERC RE Tariff Regulations 2020 have prescribed the CUFs after taking note of the overall conditions in the State of Rajasthan. Any Policy/regulation framed or applicable provides for general guidelines

and it is the duty and authority of the Commission, being a regulator to frame specific regulations in relation to every sector by taking into consideration the benefit and balance to all its stakeholders.

7.9. Commission has the jurisdiction and authority to frame Regulations and power to prescribe minimum CUF, which has been done. Merely because Petitioner or its members feel that the CUF prescribed is inappropriate, the same cannot be challenged by way of review petition seeking amendment in the prevailing Regulations.

7.10. It is denied that Commission has not taken note of technological advancement or growth of efficiency of the Solar Plants, on the contrary, the recent technological developments have been taken note of by the Commission and to balance the rights of all the stakeholders, the limit in terms of CUF has been prescribed. It is known to all the stakeholders that the plants function on more than the declared capacity and therefore, the balance of CUF is disturbed. Considering the misuse of the solar plants and also taking note of the geographical and climatic conditions of Rajasthan, regulation 92.2 of the RE Tariff Regulations 2020 has been framed. Further, the contentions raised by the petitioners do not provide any legal reason on account of which the petition seeking amendment of provisions can be entertained by the Commission.

7.11. Every State Commission of each State has the power to exercise its jurisdiction considering the climatic and geographical condition of each State. It is irrational for the Petitioner to compare the exercise of power to frame regulations by different State Commissions.

7.12. Regulations if read in totality would reveal that they further the cause of promotion of renewable energy in the State. However, the Petitioner cannot claim the financial benefit to the extent that it creates an imbalance to other stakeholders.

7.13. The banking arrangement prescribed under the Regulations is for the benefit of all the stakeholders including the consumers. Commission in its wisdom considering appropriate specified the ceiling limit of 25%. This limit has been imposed considering the technological advancement of the plants as well as the misuse by the generators. It came to the notice of the Commission that various plants installed higher than the declared capacity and due to this improper installation, the generators try and unjustly enrich themselves by way of the banking arrangement. Therefore, Commission has prescribed the ceiling limit in the banking arrangement to balance the rights of all the stakeholders and as such, there is no illegality committed in the framing of this regulation.

7.14. Commission has rightly converted the monthly banking mechanism into annual banking and Petitioner cannot claim as a matter of right to challenge Regulation 93.3, which prescribes a ceiling on banking capacity.

Commission's View:

8. We have considered the submissions made on behalf of petitioners and respondents.

9. In essence the Petitioners have raised two issues as flagged at para 4 of this order seeking amendment/relaxation in the Regulations.

10. It is the submission of the Petitioners that restrictions specified under the Regulations regarding capacity and consumption are unreasonable and will discourage the consumers in the State from setting up RE captive plants. This will not only limit the optimal optimization of the available resources but also provide a superfluous incentive to the Discoms.

11. It is the contention of Respondents that the Commission finalized the Regulations after following a procedure after hearing the stakeholders.

Now one cannot seek any amendment in them through filing the present Petitions. Further, Petitioners cannot seek amendment or changes in the Regulations merely because certain provisions of the Regulations are causing hardship to them. One of the Petitioners has submitted that it has sought relief under Regulations 96,97 and 98 and the petition is maintainable, and the petitioner has duly complied with the procedures.

12. After considering the rival contentions from the petitioners and respondents, we are of the view that the provisions of the Regulations have been finalized after following the due procedure laid down under the Electricity Act, 2003 and the Rules framed thereunder. Any further amendment in the Regulations so finalized, by way of the order would not be appropriate. For amendment in the Regulations, the prescribed procedure needs to be followed.

13. We, at this juncture, deem it appropriate that the proposal of amendment in the RERC RE Tariff Regulations 2020 may be considered if the amendment in the Regulations is initiated after following the prescribed procedure in the future.

14. Accordingly, Commission has noted the suggestions of the Petitioner regarding seeking amendments in RE Tariff Regulation, 2020 stated as above by the Petitioner. As and when Commission initiates the process for amendment in the matter, it would treat the proposal of the Petitioner as a suggestion/input. However, Petitioner should also give more inputs when Commission invites comments/suggestions on the draft Amendment in the RERC RE Tariff Regulations 2020.

15. The petitions stand disposed of accordingly.

(S. C. Dinkar)
Member

(Dr. B.N. Sharma)
Chairman