

# Rajasthan Electricity Regulatory Commission

**Petition No. 2156/23**

**Suo-Motu**

In the matter of RERC (Terms and Conditions of determination of Tariff) (3<sup>rd</sup> amendment) Regulations, 2023.

**Coram:**

**Dr. B.N. Sharma, Chairman**

**Sh. Hemant Kumar Jain, Member**

**Dr. Rajesh Sharma, Member**

Date of Hearing:

14.09.2023

Present:

1. Sh. Rahul Lodha, Advocate for RVPNL.
2. Sh. Sandeep Pathak, Advocate for Discoms.
3. Sh. Ankit Sharma, Representative for RVUNL.
4. Sh. Shrikant Parashar, Representative for Discoms.

**Date of Order:**

21.09.2023

**Memo on Statement of objects & reasons and consideration of Comments/  
Suggestions, received from various stakeholders.**

**Background:**

1. The Rajasthan Electricity Regulatory Commission (RERC or Commission), in exercise of the powers conferred on it under Section 61 read with Section 181 of the Electricity Act, 2003 (No. 36 of 2003), and all other powers enabling it in this behalf, framed the following draft Regulations:

“RERC( Terms and Conditions of determination of Tariff) (3<sup>rd</sup> amendment) Regulations, 2023”

### **“1. Amendment in sub-regulation (2) of regulation 1.**

The existing sub-regulation (2) shall be amended as under:

The words and figures appearing in sub-regulation (2), “upto FY 2023-24, i.e., March 31, 2024” shall be substituted with words and figures “upto FY 2024-25, i.e., March 31, 2025”.

### **2. Amendment in regulation 4.**

The words and figures appearing in regulation 4, “five (5) financial years” shall be substituted with words and figures “Six (6) financial years”.

### **3. Amendment in sub-regulation (1) of regulation 16.**

The existing sub-regulation (1) shall be amended as under:

The words and figures appearing in sub-regulation (1), “ control period 2019-24 ” shall be substituted with words “control period”.

2. Commission has notified the Rajasthan Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2019 on 10th May 2019. The RERC Tariff Regulations, 2019, came into force from May 10, 2019 for a period of five years, i.e., from April 1, 2019 to March 31, 2024. The control period of the Regulation is up to March 24, before that new regulations have to be framed.
3. The control period for the RERC Tariff Regulations, 2019 is about to end in March 2024, & finalisation of the CERC Regulations, 2024 may take time. New Tariff Regulations have to be framed 2-3 months before the due date of filing of tariff petitions, i.e., 30th November, 23 which may not be possible under present circumstances.
4. Accordingly, these draft Regulations along with the Explanatory Memorandum and Public Notice were placed on the website of the Commission for inviting public comments. Comments from the

Stakeholders were also invited through Public Notice published in the following newspapers, on the date indicated against each:

(1) Rajasthan Patrika : 05.08.2023

(2) Dainik Bhaskar : 05.08.2023

(3) Times of India : 05.08.2023

5. The last date for submission of comments/suggestions by the Stakeholders/public was 28.08.2023.
6. The objections/comments/suggestions were received from Sh. Shanti Prasad, Rajasthan Rajya Vidyut Utpadan Limited (RVUNL), Rajasthan Rajya Vidyut Prasaran Limited (RVPNL) and Rajasthan Discoms.
7. The hearing in the matter was held on 14.09.2023. Sh. Rahul Lodha, Advocate appeared for RVPN, Sh. Sandeep Pathak, Advocate appeared for Discoms, Sh. Ankit Sharma, representative appeared for RVUNL and Sh. Shrikant Parashar, representative appeared for Discoms.
8. The main comments and views expressed by the stakeholders through their written submissions as well as during the hearing and the Commission's views thereon have been summarized in the following paragraphs. It may be noted that all the suggestions given by the stakeholders have been considered. The Commission has attempted to elaborate all the suggestions as well as the Commission's decisions on each suggestion in the Statement of Reasons, however, in case any suggestion is not specifically elaborated, it does not mean that the same has not been considered.

### **Stakeholders' Comments/Suggestions:**

#### **Sh. Shanti Prasad**

9. As per section 61(a) of the Electricity Act, in framing tariff regulations, Commission is to be guided by the principles and methodology of CERC Tariff regulations. Thus, CERC regulations are not binding and framing of RERC tariff regulations is independent of corresponding

CERC regulations and process of its revision need not wait for finalisation of CERC regulations.

10. Draft RERC tariff regulations can be issued just with the issue of CERC drafts and finalised. In the past, time difference between the date of notifications of CERC tariff regulations and RERC tariff regulations was a maximum of 2 months and 10 days. In considerations of the above, the proposed extension by 1 year, besides its linking with CERC regulations not being as per the spirit of the Electricity Act, is for a too long period and not justified.
11. Tariff regulations are not subject to overall revision during the control period. These are revised during the control period only for specific provisions. The Stakeholders namely consumers, generating companies and licensees may be observing difficulties / anomalies etc, in the implementation of tariff regulations and only during their overall revision at the end of the control period, they get the opportunity to submit these for considerations of the Commission. It is submitted that a one year extension will be a long period of waiting for review of these.
12. The Govt. of India has notified the Electricity (amendment) Rules 2022. Its provisions require changes in tariff regulations (e.g. in respect of fuel and power purchase adjustment surcharge, cross subsidy surcharge, parity of energy storage system with generating stations, resources adequacy assessments, etc).The Govt. of India has also issued draft Electricity (amendment) Rules 2023 on 28.06.23 . This amendment has provisions inter-alia in respect of ARR, wheeling charges and additional surcharge. Rules are notified by the Govt. of India under the power vested under section 176 of the Electricity Act and these are placed before the parliament as per section 179 of the Electricity Act. They are thus subordinate legislation and are binding on the Commission and consequently, amendments to RERC tariff regulations will have to be undertaken immediately and much before 31.03.24.

13. These can be clubbed with a comprehensive revision of tariff regulations for the next control period and thus one year extension will not be appropriate.
14. In considerations to these, extension of existing tariff regulations 2019 may be for very short period not exceeding 3 months.

#### **Rajasthan Rajya Vidyut Utpadan Nigam Limited (RVUN)**

15. RVUN has submitted "Nil" comments.

#### **Rajasthan Rajya Vidyut Prasaran Nigam Limited (RVPN)**

16. The main reason stated in the memorandum for extending the validity of the Regulations of 2019 is that CERC is currently in process of formulating the terms and conditions for determination of tariff for the period starting 01.04.2024.
17. There is no mandate of law that the process of formulating and finalizing the tariff regulations can only be initiated after formulating terms and conditions for determination of tariff by CERC.
18. The CERC (Terms and Conditions of Tariff) Regulations, 2019 were notified on 07.03.2019 whereas RERC had published the draft regulations, 2019 in newspaper for inviting public comments on 09.02.2019, i.e., prior to notification of CERC (Terms and Conditions of Tariff Regulations, 2019).
19. Furthermore, as per Section 61 of Act of 2003, RERC shall be guided by the principles and methodologies specified by CERC. The approach Paper on Terms and Conditions of Tariff Regulations has been published by the CERC for the tariff period 01.04.2024 to 31.03.2029 and thus the process of formulating and finalizing the new tariff regulations by RERC can be commenced as the relevant aspect of the matter have been included in the approached paper by learned CERC.

20. Delay in formulation and implementation of new regulations cannot be a reason for not formulating the regulations. Regulations of 2004 and 2019 came into force from 01.04.2004 and 01.04.2019 respectively, in spite of the same being notified on 15.10.2004 and 10.05.2019 respectively.
21. Even if the Regulations are formulated and notified on a later date the same can be implemented from the start of the financial year as has been done previously.
22. RERC has no power to extend the validity of the said Regulation. More so, the rationale behind formulation and implementation of new Regulation after every five years is to meet the need of the hour by taking into consideration the change in circumstances which has arose on account of passage of time as well as other factors such as inflation, difference in manpower, changing technology etc. However, RERC by amending the validity of the Regulations of 2019 has ignored all these factors which are of utmost importance and has cascading effects on all concerned by the Regulations of 2019.
23. That a bare perusal of material available on record makes it evident that in case the draft Regulations are implemented, the same will cause huge financial loss to RVPN as the actual O&M expenses is much higher than the normative O&M expenses allowed in Regulations, 2019.
24. Current Tariff Regulations are stringent, effecting adversely to RVPN and are not in line with CERC tariff Regulations.
25. The blanket extension of validity of Regulations 2019 without considering other aspects have rendered RVPN remediless as on one hand the normative O&M expenses are not increased and on the other hand the actual expense only up to the extent of normative O&M expense are being approved. The aforesaid situation is causing great financial loss to RVPN inspite of no fault of its.

26. RVPN may be allowed to claim O&M expense of RVPN on actual basis or alternatively the limit of normative O&M expense may Kindly be increased to 1,000 Crores, in the interest of justice.
27. Alternatively, Commission may further be pleased to invite objections/suggestions and thereafter to carryout amendment in Regulation 64 of RERC (Terms and Conditions for Determination of Tariff) Regulation, 2019 with regard to increasing of normative O&M expense and alternatively to allow the transmission licensee to claim expense over and above normative O&M expense after prudent check by RERC.
28. Further, relaxation in regulation 58(3) regarding TBCB limits, for project of uprating & upgrading of existing EHV lines & substations and financed through concessional funding /aid/grant must be allowed.

### **Rajasthan Discoms**

29. For recovery of full capacity charges by the power plant, it must achieve Normative Availability on average basis during the financial year, in accordance with the RERC Tariff Regulations. To meet Normative requirements, generators often tend to declare higher availability during low and/ or of-peak demand period and declare lower availability during the high and/ or peak demand period.
30. Lower capacity declaration during the peak demand season forces Discoms to arrange power from short term markets which are costly and availability is also not sure which leads to load-shedding and not in the interest of the state and its people as state is transiting to achieve 24x7 power for all.
31. The current framework of recovery of fixed cost based on target availability achieved on an annual basis, does not necessarily guarantee availability of generating stations during hours and months of their needs and that the regulations should ensure such availability through appropriate mechanism. To address this concern and also to introduce "value" of electricity, recovery of Fixed Cost at differential

rates during Peak Periods and Off-Peak Periods, while assigning higher weightage to Peak Periods may be introduced in the State of Rajasthan.

32. The mechanism may provide for recovery of fixed cost of generation under two segments of the year, ie. High Demand Season (period of three months) and Low Demand Season (period of remaining nine months) and for each day of the season in two parts, viz., Peak Period (4 hours fixed) and Off-Peak Period (20 hours fixed).
33. In terms of CERC Tariff Regulations, Generators will have to meet the plant Availability requirements during peak hours and off-peak hours separately for recovery of 100% of their Fixed Charges. 20% of the total fixed charges are linked to availability during the peak demand period and 80% to the off-peak demand periods. The number of hours of "Peak" and "Off-Peak" periods during a day shall be four and twenty respectively. The hours of Peak and Off-Peak periods during a day shall be declared by the concerned RLDC at least a week in advance. Also, 12 months of a year is divided into 3 months (consecutive or non-consecutive) of high demand season and 9 months of low demand season.
34. Section 6.2 of the National Tariff Policy, 2016 also provides that "The Appropriate Commission shall introduce differential rates of fixed charges for peak and off-peak hours for better management of load within a period of two years".
35. Separate Petition has already been filed on this matter detailing out the issue along with supporting facts and figures.
36. Due to extension the duration of current Regulations by another year, Discoms shall have to bear the negative financial implications.
37. Discoms have requested to amend Regulation 45, 46, 50 and 55 of RERC Regulations, 2019 and introduce the Capacity Charge under two segments of the year, i.e. High Demand Season (period of three months) and Low Demand Season (period of remaining nine months),



and within each season in two parts viz., Capacity Charge for Peak Hours of the month and Capacity Charge for Off-Peak Hours.

38. The formula and the methodology for computation of Fixed Charges have also been submitted.
39. RERC (Terms and Conditions for Determination of Tariff) Regulations 2019 specifies the norms for the determination of Operation and Maintenance expenses for the Discoms. Discoms further submitted that norms as specified by the Commission for the determination of A&G and R&M expenses in the is on a lower side as compared to actual A&G and R&M expenses over the years from FY-20 to FY-22.
40. Due to the dynamic nature of the power sector, the sector has undergone significant changes over the last 5 years which have an impact on the A&G and R&M expenses. A significant expenditure of the Discoms is being done on totex mode which get reflected under O&M expenses. The prevailing norms, which are based on historical expenditure prior to FY 2019-20, no longer reflect the actual expenditure being incurred by the Discoms.
41. The Discoms, therefore, request the Commission to reassess the norms for A&G Expenses and R&M Expenses. Continuing with the existing norms for another year shall bear further negative impact on the Discoms' financials.

**Commission's Views/Decision:**

42. The Commission has considered the objections/suggestions and oral arguments made on behalf of the Stakeholders.
43. The Stakeholders mainly submitted that CERC regulations are not binding and framing of RERC tariff regulations is independent of corresponding CERC regulations and process of its revision need not wait for the finalisation of CERC regulations.

44. The Stakeholders also submitted that some Rules were notified by the Govt. of India under power vested under section 176 of the Electricity Act. They are subordinate legislation and are binding on the Commission and consequent amendments to RERC tariff regulations will have to be undertaken immediately and much before 31.03.24.
45. RVPN and Discoms have submitted that they may be allowed to claim O&M expenses on actual basis or alternatively the limit of normative O&M expenses may kindly be increased, in the interest of justice.
46. RVPN also requested to provide relaxation in regulation regarding Tariff Based Competitive Bidding limits, for project of uprating & upgrading of existing EHV lines & substations and financed through concessional funding /aid/grant etc.
47. Discoms have requested to amend Regulation 45, 46, 50 and 55 of RERC Regulations, 2019 and introduce the Capacity Charge under two segments of the year, i.e., High Demand Season and Low Demand Season for which a separate petition has already been filed.
48. As regards Stakeholders contention on CERC regulations, we observe that section 61 of the Act provides for the guiding principles to be followed by the ERCs while framing such terms and conditions for the determination of tariff. Section 61 of the Act provides as follows:-

*“Section 61. (Tariff regulations):*

*The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-*

*(a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;*

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.”*

49. Thus, it is evident from the above section of Electricity Act, 2003, the Commission shall be guided by the principles and methodologies specified by the Central Commission for terms and conditions of determination of tariff applicable to Generating companies and Transmission licensees. Thus, the RERC Tariff Regulations, for the new control period, have to be finalized in line with the CERC Tariff Regulations for the corresponding control period.
50. CERC is currently in the process of formulating the Terms and Conditions for the determination of tariff for the period beginning April 1, 2024. CERC has also issued an approach paper for the determination of tariff for the period FY 2024-25 to FY 2028-29. The last date for submitting comments/ suggestions to which was 31.07.2023. Thereafter, the draft regulations shall be published for inviting comments and finalisation of tariff regulations may take time.
51. The Commission further observes that the stakeholders have raised some other issues, e.g., increasing of normative O&M expense, implementation of Government of India rules, change in capacity charges, relaxation in regulation regarding Tariff Based Competitive Bidding limits etc. Commission at this juncture, deems it appropriate that these proposals shall be considered while framing the regulation for the next control period.
52. Commission has noted the suggestions of the Stakeholders regarding amendment in Tariff Regulations. As and when Commission initiates the process for framing Tariff Regulations for the next control period, it would treat the proposal of Stakeholders as a suggestion/input. However, Stakeholders are at liberty to give more inputs when Commission invites comments/suggestions on the draft Tariff Regulation.
53. Commission after considering all suggestions, deems it proper to extend the applicability of the RERC Tariff Regulations, 2019 for a further period of one year, i.e., upto March 21, 2025. Accordingly, the next

Control Period shall commence from April 1, 2025. The Commission finalises the draft Regulations as attached with this Memo. The same may be notified in the official gazette.

54. Copy of this memo, along with the finalised Regulations, may be sent to the State Government, CEA, concerned Utilities and other stakeholders.

(Dr. Rajesh Sharma)  
Member

(Hemant Kumar Jain)  
Member

(Dr. B.N. Sharma)  
Chairman

# RAJASTHAN ELECTRICITY REGULATORY COMMISSION

## NOTIFICATION

Jaipur, September....., 2023

**No. RERC/Reg. No. ....** - In exercise of the powers conferred on it under Section 61 read with Section 181 of the Electricity Act, 2003 (No. 36 of 2003), and all other powers enabling it in this behalf, the Rajasthan Electricity Regulatory Commission, after previous publication, hereby makes the following Regulations, namely:

### **1. Short Title and Commencement**

- (1) These Regulations shall be called the Rajasthan Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) (Third Amendment) Regulations, 2023.
- (2) These Regulations shall come into force from the date of publication of these Regulations in the official gazette.

### **2. Amendment in sub-regulation (2) of regulation 1.**

The existing sub-regulation (2) shall be amended as under:

The words and figures appearing in sub-regulation (2), "upto FY 2023-24, i.e., March 31, 2024" shall be substituted with words and figures "upto FY 2024-25, i.e., March 31, 2025".

### **3. Amendment in regulation 4.**

The words and figures appearing in regulation 4, "five (5) financial years" shall be substituted with words and figures "Six (6) financial years".

### **4. Amendment in sub-regulation (1) of regulation 16.**

The existing sub-regulation (1) shall be amended as under:

The words and figures appearing in sub-regulation (1), "control period 2019-24" shall be substituted with words "control period".

By order of the Commission,

Secretary