

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 80 of 2018

Dated : 14th July, 2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

Rajasthan Rajya Vidyut Utpadan Nigam Ltd

Vidyut Bhavan, Janpath,
Jyoti Nagar, Jaipur - 302005

...Appellant

Versus

- 1. Jaipur Vidyut Vitran Nigam Limited**
Through its Managing Director,
Vidyut Bhawan, Jaipur – 302005, Rajasthan
- 2. Ajmer Vidyut Vitran Nigam Limited**
Through its Managing Director,
Hathi Bhata, City Power House,
Ajmer – 305001, Rajasthan
- 3. Jodhpur Vidyut Vitran Nigam Limited**
Through its Managing Director,
New Power House, Industrial Area,
Jodhpur – 342003, Rajasthan
- 4. Rajasthan Electricity Regulatory Commission**
Through its Secretary,
Vidyut Viniyamak Bhawan,
(Near State Motor Garage),
Sahakar Marg, Jaipur – 302005, Rajasthan ...Respondents

Counsel for the Appellant(s) : Ranjitha Ramachandran
Pulkit Agarwal
Poorva Saigal
Anushree Bardhan
Shubham Arya
Arvind Kumar Dubey for App. 1

Counsel for the Respondent(s) : Anand K. Ganesan
Swapna Seshadri
Ashwin Ramanathan
Amal Nair for Res. 1 to 3

Zoheb Hossain for Res. 4

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The Appellant – Rajasthan Rajya Vidyut Utpadan Nigam Ltd. has, in this appeal, assailed the order dated 9th January, 2018 passed by 4th Respondent – Rajasthan Electricity Regulatory Commission (hereinafter referred to as “the Commission” in Review Petition No. 1240 of 2017 filed by the Appellant seeking a review of the order dated 20th June, 2017 passed by the Commission in Petition No. 1035 of 2017. The Commission has partly allowed the Review Petition while disallowing the claim of the Appellant on the aspects of additional capitalization and deemed generation.

2. The Appellant was one of the five successor companies of the erstwhile Rajasthan State Electricity Board and has succeeded to the

activities of generation of electricity. The Appellant undertakes the generation of electricity from its following generation stations in the State of Rajasthan :-

- | | | |
|------|--|----------|
| i. | Kota Thermal Power Station (KTPS)(Unit 1 to 7) | 1240 MW |
| ii. | Suratgarh Thermal Power Station (STPS) (Unit 1 to 6) | 1500 MW |
| iii. | Ramgarh Gas Thermal Power Station (RGTPS). | 110.5 MW |
| iv. | Dholpur Combined Cycle Gas based Thermal Power Plant (DCCPP) | 330 MW |
| v. | Mahi Hydel Power Project (MAHI). | 140 MW |
| vi. | Chhabra Thermal Power Plant (CTPP)(Unit 1 & 2). | 500 MW |

3. The Appellant supplies electricity from its above mentioned generating stations to the three Distribution Licensees in the State of Rajasthan which have been impleaded as Respondent Nos. 1 to 3 in the appeal.

4. In the exercise of power vested under the Electricity Act, 2003, the Commission notified Rajasthan Electricity Regulatory Commission (terms and conditions for determination of tariff) Regulations, 2009 (hereinafter referred to as "Tariff Regulations, 2009") on 23rd January, 2009 applicable for the control period from 1st April, 2009 to 31st March, 2014.

5. Vide order dated 6th June, 2013 read with order dated 10th December, 2013, the Commission approved the true-up of the financials for the generated stations of the Appellant namely KTPS, STPS, RGTPS, DCCPP and MAHI for the Financial Year 2009-10. Vide subsequent orders dated 24th February, 2014, the Commission approved tariff for the Financial Year 2013-14 in respect of KTPS, STPS, RGTPS, DCCPP, CTEP and MAHI.

6. Vide orders dated 9th October, 2014 and 17th September, 2015, the Commission trued up the financials of the Appellant for the Financial Year 2011-12 and Financial Year 2012-13.

7. On 24th February, 2014 itself, the Commission notified the Rajasthan Electricity Regulatory Commission (terms and conditions for determination of tariff) Regulations, 2014 hereinafter referred to as “Tariff Regulations, 2014” applicable for the control period from 1st April, 2014 to 31st March, 2019.

8. The Commission vide order dated 17th October, 2016, determined tariff for the Financial Year 2016-17 as per the Tariff Regulations, 2014 and trued up the financials of the Appellant for Financial Year 2013-14.

9. In the year 2017, the Appellant filed petition No. 1035 of 2017 for determination of tariff for Financial Year 2017-18 and trued up of annual

performance review for Financial Year 2014-15 and 2015-16 in accordance with the provisions of Tariff Regulations, 2014 as well as Tariff Regulations, 2009. The petition was disposed off by the Commission vide order dated 20th June, 2017.

10. Aggrieved by certain portions of the order dated 20th June, 2017, the Appellant preferred Review Petition No. 1240 of 2017 before the Commission on 19th July, 2017 seeking a review of the said order. The Review Petition was partially allowed by the Commission vide order dated 9th January, 2018 thereby modifying some portion of the order dated 20th June, 2017 as sought by the Appellant but rejecting the claim of the Appellant on following two aspects :-

- (a) Additional capitalization for Financial Year 2014-15 and 2015-16;
- (b) Deemed generation for RGTPS 110.5 mw for Financial Year 2014-15.

11. Aggrieved by the rejection of its claim on above mentioned two aspects by the Commission in the order dated 9th January, 2018, the Appellant is before us in this appeal.

12. We have heard Learned Counsel for the Appellant as well as learned Counsel for the Respondents. We have also perused the impugned order as well as the written submissions filed by the Learned Counsels.

13. At the outset, we may note that during the course of arguments, it was stated by the Learned Counsel for the Appellant that issue (b) related to claim for deemed generation for RGTPS is not being pressed by the Appellant as the same has been duly considered by the Commission in subsequent order dated 21st October, 2019 passed in Petition No. 1485 of 2019 while approving the annual performance review for RGTS generating station. The affidavit dated 17th March, 2025 has also been placed on record in this regard on behalf of the Appellant.

14. Hence, we are now concerned only with the claim of the Appellant with regards to the additional capitalization for Financial Year 2014-15 and 2015-16.

15. Reasoning of the Commission for rejecting the claim of the Appellant regarding additional capitalization can be found in paragraph Nos. 4.100 to 4.101 of the order dated 20th June, 2017, which are extracted herein below :-

“4.100. Regarding the additional capitalisation claimed towards KTPS (Unit 7) STPS (Unit 6) and CTPP (Unit 1-2), the Commission is of the view that in accordance with Regulation 2(17) of RERC Tariff Regulations, 2014, the cut-off date of all these units has already been over as KTPS Unit 7 achieved COD on 30.05.2009, STPS (Unit 6) achieved COD on 30.12.2009, CTPP (Unit 1) achieved COD on 11.06.2010 and CTPP (Unit 2) achieved COD on 15.10.2011. Regulation 2 (17) of the RERC, Tariff Regulations, 2014 states as follows:

"2. Definitions

(17) "cut-off date" means 31st march of the year closing after 365 days from the date of commercial operation of the project, and in case the project is declared under commercial operation in the last quarter of a year, the cut-off date shall be 31st march of the year closing after 730 days from the date of commercial operation:

Provided that the cut-off date may be extended by the Commission if it is proved on the basis of documentary evidence that the capitalisation could not be made within the cut-off date for reasons beyond the control of the project developer"

4.101. Further, the Petitioner has not taken any in-principle approval for the additional capitalisation claimed for FY 2014-15 and FY 2015-16 for KTPS (Unit 7), STPS (Unit 6) and CTPP. Therefore, the Commission in this order has not approved any additional

capitalisation for KTPS (Unit 7), STPS (Unit 6) and CTPP for FY 2014-15 and FY 2015-16.”

16. Similarly, the reasons given by the Commission in disallowing the said claim of the Appellant vide order dated 9th January, 2018 passed on the Appellant's Review Petition are extracted hereinbelow :-

“Commission's Analysis

15. Commission has considered the submissions of both the parties.

16. The Commission in the order, sought to be reviewed, had approved the additional capitalization in accordance with the Tariff Regulations of 2014 based on the submissions of RVUN. Regulation 17(2) of 2014 Regulations does not provide for the approval of the additional capitalisation towards the original scope of works, after the cut-off date. Further Regulation 17(2) of the Tariff Regulations, 2014 provides for the approval of additional capitalisation beyond the cut-off date subject to satisfying the grounds provided in the Regulation. Petitioner had not submitted in the True up petition the ground on which the expenditure beyond the cut-off date shall be allowed. Commission had disallowed the additional capitalisation claimed towards the original scope of work, as RVUN had not sought for prior approval for the same.

17. As regards applicability of cut-off date, Tariff Regulations, 2009 specifically define cut-off date as the date of the first financial year

closing after three hundred and sixty-five days (365) days of the date of commissioning of a generating station. Tariff Regulations, 2014 defines cut-off date as the 31st March of the year closing after 365 days from the date of commercial operation of the project and in case the project is declared under commercial operation in the last quarter of a year, the cut-off date shall be 31st March of the year closing after 730 days from the date of commercial operation. Therefore, the cut-off date in the present petition shall be the date of commercial operation and not the date of applicability of the Tariff Regulations as being interpreted by the Petitioner. Therefore, the prayer of the Petitioner to determine the cut-off date from the date of applicability of the Tariff Regulations has no merits and has to be rejected.

17. It is thus evident that while disallowing the claim of the Appellant for additional capitalization for its KTPS (Unit 7), HTPS (Unit 6), CTPP (Units 1 & 2), the Commission has applied Tariff Regulations, 2014. Regulation 17 of these Tariff Regulations which deals with additional capitalization is extracted hereinbelow :-

“17. Additional capitalization

(1) The following capital expenditure, actually incurred after the date of commercial operation and upto the cut-off date and duly audited,

may be considered by the Commission against the original scope of work, subject to prudence check:

(a) Due to undischarged liabilities;

(b) On works deferred for execution:

(c) To meet award of arbitration or satisfaction of order or decree of a court;

(d) On account of change in law;

(e) On procurement of initial spares included in the original project costs subject to the ceiling norm laid down in regulation 16.

Provided that the details of the work included in the original scope of work along with estimates of expenditure shall be submitted along with the application for provisional tariff:

Provided further that a list of the undischarged liabilities and work's deferred for execution shall be submitted along with the application for final tariff after the date of commercial operation of the generating station.

(2) The capital expenditure incurred on the following counts after the cut-off date may, at its discretion, be admitted by the Commission, subject to prudence check:

(i) Liabilities to meet award of arbitration or for compliance of the order or decree of a court;

(ii) Change in law;

- (iii) *Deferred works relating to ash pond or ash handling system in the original scope of work;*
- (iv) *Any additional works/ services, which have become necessary for efficient and successful operation of a generating station or transmission system but not included in the original capital cost.”*

18. Thus, as per Regulation 17 of Tariff Regulations, 2014, the capital expenditure falling within the categories mentioned in Clause (1) and actually incurred by the generating stations after the date of commercial operation and up to the cut off date can be considered by the Commission if the same is duly audited and subject to prudence check. Clause 2 of Regulation 17 confers discretion upon the Commission to consider the capital expenditure incurred by the generating station even after the cut off date but subject to prudence check and only with regards to the categories mentioned herein.

19. Regulation 19 of Tariff Regulations, 2009 deals with additional capitalization and is reproduced hereinbelow:-

“19. Additional capitalization

(1) *The following capital expenditure, actually incurred after the date of commercial operation and duly audited, may be considered by the Commission, subject to prudent check*

(a) *Due to deferred liabilities within the original scope of work,*

(b) *On works within the original scope of work, deferred for execution*

(c) *To meet award of arbitration or satisfaction of order or decree of a court arising out of original scope of works,*

(d) *On account of change in law,*

(e) *On procurement of initial spares included in the original project costs subject to the ceiling norm laid down in Regulation 18,*

(f) *Any additional works/ services, which have become necessary for efficient and successful operation of a generating station or a transmission or a distribution system but not included in the original capital cost:*

Provided that original scope of work along with estimates of expenditure shall be submitted along with the application for provisional tariff:

Provided further that a list of the deferred liabilities and works deferred for execution shall be submitted along with the application for final tariff after the date of commercial operation of the generating station.”

20. It is seen that there was no restriction of the additional capital expenditure having been incurred up to the “cut off date” in Tariff

Regulations, 2009 for being considered and admitted by the Commission. The only requirement under Regulation 19 of Tariff Regulations, 2009 was that the capital expenditure must have been incurred after the date of commercial operation, duly audited and within the categories mentioned therein.

21. In the instant case, the additional capitalization has been claimed by the Appellant for its generating stations namely KTPS (Unit 7), HTPS (Unit 6) and CTPP (Units 1 & 2) which had achieved commercial operation on 30th May, 2009, 30th December, 2009 and 15th October, 2011 respectively.

22. The Appellant has claimed additional capitalization for the Financial Years 2014-15 and 2015-16.

23. It is argued on behalf of the Appellant that since these generating stations of the Appellant regarding which the additional capitalization was claimed, had achieved commercial operation between the years 2009 and 2010 i.e. within the control period of Tariff Regulations, 2009, the Commission has erred in applying Tariff Regulations, 2014.

24. We are unable to countenance these arguments advanced on behalf of the Appellant. The applicability of the Tariff Regulations would depend upon the time period for which the additional capitalization was

claimed by a generating station and not with regards to the commercial operation date of the generating station. In case a generating station claims additional capitalization within the control period of Tariff Regulations, 2014, clearly the claim has to be examined in terms of the Tariff Regulations, 2014 notwithstanding the fact that the generating station may have achieved commercial operation prior to 1st April, 2014 i.e. the commencement of the control period of these Regulations. The applicability of Tariff Regulations, 2009 ceases on the expiry of its control period i.e. 31st March, 2014 and, therefore, anything done or claimed by a generating station after the said date has to be seen in the light of the subsequent Tariff Regulations i.e. Tariff Regulations, 2014.

25. Hence, the arguments advanced on behalf of the Appellant that since there was no provision of cut off date in the Tariff Regulations, 2009, the benefit of additional capitalization cannot be declined to the Appellant merely for the reason that the same has been claimed for the years 2014-15, 2015-16 is fallacious and cannot be accepted.

26. It was further argued on behalf of the Appellant that even if the Tariff Regulations, 2014 are taken to be applicable for the case of the Appellant, the Commission ought to have accepted the claim of the Appellant in view of Clause 2 of Regulation, 17 of Tariff Regulations,

2014 which confers discretion upon the Commission to admit capital expenditure incurred after the cut off date also subject to prudence check. In this regard, the Commission has noted in the review order dated 9th January, 2018 that the Appellant had not submitted in the true up petition the grounds of which the expenditure beyond the cut off date should be allowed. Therefore, it is limpid that the Appellant in its true up petition, has not provided any material at all for the Commission to consider and exercise its discretion in admitting the capital expenditure incurred after the cut off date. Even though, it was submitted by the Appellant's counsel that the Commission has failed to analyze the data provided by the Appellant, yet he was at pains to refer to the true up petition filed by the Commission to show that any such data/grounds were mentioned therein which might have been considered by the Commission in deciding whether or not to exercise its discretion under Clause 2 of Regulation, 17.

27. Evidently, the Appellant has raised its claim regarding additional capitalization after the cut off date and within the control period of Tariff Regulations, 2014, and therefore, it can not seek refuge in the Tariff Regulations, 2009 to wriggle out of threshold of "cut off date" stipulated under Tariff Regulations, 2014.

28. In view of the above discussion, we do not find any error or infirmity in the impugned order of the Commission. The appeal is devoid of any merit and is hereby dismissed.

Pronounced in the open court on this 14th day of July, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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REPORTABLE / NON-REPORTABLE

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