Comments on RVUNL's Review Petition Against the Suo Motu Order (5 May 2026) Regarding FGD Systems

CEEP
CENTRE FOR ENERGY, ENVIRONMENT & PEOPLE

Submission to Rajasthan Electricity Regulatory Commission | Aug 2026

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1. Introduction

The Rajasthan Electricity Regulatory Commission has invited public comments on the Review Petition filed by Rajasthan Rajya Vidyut Utpadan Nigam Limited (RVUNL), which seeks a review of the Commission's Suo motu Order dated 5 May 2026 in the matter of its earlier directions issued on 9 March 2026 regarding the installation of Flue Gas Desulphurization (FGD) systems at RVUNL's Plants.

Centre of Energy, Environment and People, Jaipur, submits the following comments on the review petition. It is requested that these comments may kindly be admitted and taken on record, and that we may be given an opportunity to present these submissions during any of the hearings.

2. General Comments

2.1. Adherence to CEA's Draft Guidelines

The Central Electricity Authority (CEA), in its draft "Guidelines for Review of FGD Projects in View of the Revised Applicability of SO_2 Norms", recommend the suspension of FGD-specific activities pending a decision on the continuation or termination of such projects. The draft guidelines also proposed a decision-making framework based on the extent of financial progress, distinguishing projects with financial progress of up to 50% from those exceeding 50% and is also presented along with the review petition as supporting documentary evidence.

Therefore, the Petitioner's actions taken in light of the proposed CEA framework are material to the present proceedings, particularly with respect to the timing of any suspension of FGD-related activities and the financial progress of the projects at the relevant time. Accordingly, the Petitioner is requested to clarify whether it became aware of the proposed CEA framework while the financial progress of the concerned projects was still below the 50% threshold. If so, the Petitioner may explain why timely suspension of the projects was not considered or undertaken. Such clarification is necessary to assess whether the lower-cost option of contract termination, as contemplated under the CEA's proposed framework, could have been preserved, thereby mitigating the eventual financial burden on consumers.

2.2. Suo Motu Action by the Commission

We welcome the Commission's proactive exercise of its *suo motu* powers under the Rajasthan Electricity Regulatory Commission (Transaction of Business) Regulations, 2021, to ensure compliance with the directions issued in its tariff orders. The Commission's efforts to prevent avoidable expenditure by regulated entities, which ultimately burdens electricity consumers and the public exchequer, are consistent with the objectives of the Electricity Act, 2003, which, *inter alia*, seeks to "*...take measures conducive to... protecting the interests of consumers...*"

It is submitted that the Commission may continue to exercise its regulatory and *suo motu* jurisdiction, wherever warranted, to ensure compliance by all regulated entities, including the

Petitioner, the distribution licensees (Discoms), and Rajasthan Rajya Vidyut Prasaran Nigam Limited (RVPNL). Such proceedings may, *inter alia*, address non-compliance with the Commission's directions issued in its orders, as well as other applicable regulatory provisions that are not consistently adhered to by these utilities.

2.3. Comprehensive Net Cost Analysis, Including Benefits and Unanticipated Costs

The decision on whether to continue or terminate the FGD projects is complex and should be guided by a comprehensive assessment of the net financial implications of both options. If the Commission ultimately permits completion of the FGD projects, the suspension will increase project costs due to delays, cost escalation and additional financing costs. Conversely, if the Commission ultimately directs termination, the delay will increase preservation costs, contractual liabilities, compensation claims and other termination-related expenses. In either scenario, the continued suspension increases the financial burden on consumers without affecting the final decision.

This concern is consistent with the Central Electricity Authority's (CEA) deliberations. During its meeting with FGD vendors on 8 August 2025, vendors highlighted that prolonged suspension of projects without a final decision would lead to significant financial implications, including compensation claims, litigation and other contractual liabilities. The CEA's subsequent draft “Guidelines for Review of FGD Projects in View of the Revised Applicability of SO_2 Norms” similarly envisaged suspension only as an interim measure pending a decision on whether projects should be continued or terminated. As per the Petitioner's submissions, the three-member committee constituted on 22 April 2026 estimated the incremental financial implication of completing the FGD projects at approximately ₹2,800 crore and terminating them at approximately ₹2,900 crore. Continued suspension is likely to increase the cost under either alternative.

It is therefore submitted that the Commission may take an expeditious decision only after evaluating the net financial implications of both options. Such an assessment should account for capital and contractual costs, delay-related costs, damages, interest during construction (IDC), salvage value of equipment and materials, and other relevant financial considerations.

2.4. Communication Prior to Suo Motu Order dated 05 May 2026

The Review Petition states that the Petitioner was not provided an opportunity to be heard before the *suo motu* Order was issued, despite the provisions of the Rajasthan Electricity Regulatory Commission (Transaction of Business) Regulations, 2021, which contemplate the issuance of a notice or public notice prior to the initiation of *suo motu* proceedings.

Therefore, the Petitioner is requested to clarify whether, following its submission dated 8 April 2026 and prior to the issuance of the Order on 5 May 2026, it made or received any submissions, notices, or communications relating to the proposed *suo motu* proceedings and copies of all such documents and correspondence may be provided to us.

3. Procedural Lapses in the Suo Motu Order

Subject to the clarification sought from the Petitioner in Section 2.1., the initiation of the *suo motu* proceedings raises issues regarding compliance with the RERC (Transaction of Business) Regulations, 2021 and the principles of natural justice. Substantively, the Order departs from the Commission's own approach adopted while granting in-principal approval for the FGD projects and overlooks the existing safeguards under the RERC Tariff Regulations, 2025 for protecting consumer interests at the stage of tariff determination.

- Apparent Non-Compliance with the Procedure Prescribed under the RERC (Transaction of Business) Regulations, 2021: The Review Petition states that the Petitioner was not afforded an opportunity to be heard before the Commission passed the Suo Motu Order dated 05 May 2026. Regulation 20(1) of the RERC (Transaction of Business) Regulations, 2021 contemplates initiation of *suo motu* proceedings through issuance of a notice or public notice, while Regulation 20(2) provides for issuance of consequential directions for service upon affected parties and inviting their responses. Further, Regulation 20(3) read with Regulation 21 envisages conduct of proceedings through a structured process of pleadings, hearing and consideration of material before passing final or interim directions. The material presently available on record does not indicate compliance with the above procedural requirements, including issuance of notice under Regulation 20(1) or opportunity to respond under Regulations 20(2) and 21 prior to passing of the Suo Motu Order.

- Departure from the Approach Adopted in the In-Principle Approval Order: While granting in-principle approval for the FGD projects vide order dated 21 August 2019, the Commission called for the recommendations of the CEA (para 3 of said order), considered the proposal in light of those recommendations (para 4 of said order), and permitted the Petitioner to proceed after noting that the proposal had already been approved by the Petitioner's Board of Directors (para 5 of said order).

  The Suo Motu Order adopts a different approach by requiring approval of the Government of Rajasthan before the projects can proceed, without recording why the Board approval, which was considered sufficient in the in-principle approval order, no longer serves that purpose. Similarly, unlike the in-principle proceedings, no consultation with the CEA appears to have preceded the decision to suspend the projects, despite the significant technical and financial implications of such suspension.

- Existing Safeguards under the Tariff Regulations Adequately Protect Consumers: The Commission's principal concern in the Suo Motu Order is to ensure that consumers are not burdened with imprudent expenditure on the FGD projects. However, the RERC Tariff Regulations, 2025 already provide the Commission with adequate safeguards to achieve this objective at the stage of tariff determination. Regulation 16(2)(c) provides that capital cost shall not include the cost of assets "not put to use or not in use", while Regulation 16(4) requires that additional capital expenditure, including expenditure incurred for compliance with revised environmental norms, shall be admitted only after a prudence check and subject to the conditions specified therein.

Further, the in-principle approval order itself expressly reserved determination of the admissible capital expenditure to the true-up stage, where the Petitioner was directed to approach the Commission after completion of works for approval actual expenditure incurred and the Commission retained the power to admit only such expenditure as found prudent.

In view of the above, the Commission should focus on expeditiously decide whether the FGD projects should be completed or terminated based on a comprehensive assessment of the net implications of both alternatives. The assessment should holistically consider all relevant tangible and intangible factors, including public health and environmental benefits, alongside financial parameters such as capital and contractual costs, delay-related costs, damages, interest during construction (IDC), preservation and termination costs, salvage value of equipment and materials, and all other consequential financial implications. Considering the time-sensitive nature of the matter, the Commission may consider RVUNL's Board of Directors (BoD) approval and its own in-principle approval granted in 2019 to address any legal and administrative gaps in the proceedings. The final decision should be guided by the option that delivers the greatest overall public interest and the least-cost outcome for consumers.