BEFORE THE HON'BLE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

Petition No. 1066 of 2015

IN THE MATTER OF:

Application for determination of Annual Revenue Requirement and Tariff for FY 2016-17; and True up of ARR for FY 2013-14 under Section 64 of the Electricity Act, 2003 filed by Paschimanchal Vidyut Vitran Nigam Ltd., Meerut (PVVNL) and other Discoms i.e. PuVVNL, MVVNL, DVVNL and KESCO.

OBJECTIONS ON BEHALF OF (1) ENERGYWATCH, FEDERATION OF INDIAN MICRO AND SMALL AND MEDIUM ENTERPRISES (FISME) AND; (2) INDIAN INDUSTRIES ASSOCIATION (IIA)

The Objectioners most respectfully submits:-

1. That the present Objections are being on behalf of the (1) Energywatch, Federation of Indian Micro and Small and Medium Enterprises (FISME) and; (2) Indian Industries Association (IIA) which are representative organizations of Small and Medium level industries and are hereinafter referred to as the 'objectioners'.

2. Energywatch is an independent civil society institution promoted jointly since year 2002 by Federation of Indian Micro and Small and Medium Enterprises (FISME) - a representative organization of Small and Medium level industries, to act as a watchdog for just, transparent and sustainable energy sector in India. The avowed objective of 'Energywatch' is to facilitate access of economical and quality supply of power for the SMEs to stay competitive in global competition post WTO and it represents the vital interests of the consumers of electricity throughout the Country.

3. Further, The Indian Industries Association (IIA) is an Industry Association of Micro, Small and Medium Enterprises (MSMEs) in U.P. One of the objectives of the Association is to ensure uninterrupted, good quality and reasonably priced supply of industrial inputs to MSMEs so that they could contribute to the socio-economic development of the State;
the members of which are LMV-6, LMV-9, HV-1 and HV-2 category consumers of PVVNL and other Discoms i.e. PuVVNL, MVVNL, DVVNL and KESCO.

4. At the outset it is submitted that the inefficiencies of the Utilities should not be passed on to the consumers and the Hon'ble Commission should disallow all the cost incurred by the Utilities due to its inefficiencies. It is submitted that despite enactment of Electricity Act, 2003 which was enacted to promote private sector participation in the power sector, the Distribution business in the state of Uttar Pradesh is being carried out by Government owned entities thereby defeating the purpose of enactment of Electricity Act, 2003. The Distribution Utilities have been carrying out the business to advance the political agendas rather than supplying electricity to consumers on the basis of *cost of supply of electricity for each category of consumers*. The Industrial consumers are being made to pay higher cost to cross-subsidize the tariff of other categories which is contrary to the objective of Electricity Act, 2003, principles enshrined under *Section 61* of the Act of 2003 and Tariff Policy.

5. Without prejudice to the generality of the aforesaid objections, the Objectioners, inter-alia, are raising the following specific objections:-

5.1 The ARR for FY 2016-17 can only be fixed after voltage wise supply study has been conducted by the Utilities and tariff for each category should be in consonance with *Clause 8.2.2* of the Tariff Policy. It is submitted that Tariff of each category of the consumers ought to be within +-20% of Average Cost of Supply of electricity for that category of consumer.

5.2 As per ARR Petition, the Utility submitted that it will complete metering of all the consumers by December, 2015. By non-metering all the consumers, the Utilities are passing on its inefficiency (like theft of electricity etc.) on the consumers. *Supply of electricity to non-metered consumers is contrary to Section 55 of Electricity Act* which states as under:

> *"**55. Use, etc., of meters.** – (1) No licensee shall supply electricity, after the expiry of two years from the appointed date, except through installation of a correct meter in accordance with the regulations to be made in this behalf by the Authority:*
>
> *Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter:*
> *Provided further that the State Commission may, by notification, extend the said period of two years for a class or classes of persons or for such area as may be specified in that notification.*
>
> *(2) For proper accounting and audit in the generation, transmission and distribution or trading of electricity, the Authority may direct the installation of meters by a generating company or licensee at such stages of generation, transmission or distribution or trading of electricity and at such locations of generation, transmission or distribution or trading, as it may deem necessary.*
>
> *(3) If a person makes default in complying with the provisions contained in this section or the regulations made under sub-section (1), the Appropriate Commission may make such order as it thinks fit for requiring the default to be made good by the generating company or licensee or by any officers of a company or other association or any other person who is responsible for its default."*

As is evident from the above this clause provides that no electricity shall be supplied to any person, after the expiry of two years from the appointed date, except through a meter to be installed and operated in accordance wit the regulation made by the Authority. Hence in view of the aforesaid it is submitted that 'Metering' the consumer at feeder level is not sufficient; every consumer should be metered at his premises.

5.3 With regard to capitalization of new Assets, it is submitted that the Utilities have been procuring goods from black-listed companies. The consumers request the Commission to take appropriate steps against the utilities for such a step and also disallow the cost of such goods procured by the Utilities from black-listed companies, order dated 13.07.2012 and 31.08.2012 passed by Managing Director, PVVNL of two such companies respectivelyis filed herewith and marked as **EXHIBIT-1(Colly)**. Further, the good sought to be procured by the Utilities ought not to be capitalized without prudence check of actual procurement of the said good and also after proper quality check of the said good. In support of the obectioner's contention reliance is placed on the Newpaper report as reported in Times of India Website[1] printed on 19.05.2016 and the same is filed herewith and marked as **EXHIBIT-2**.

Further it is prayed before the Hon'ble Commission further enquiry should be made to ascertain the amount and loss incurred by the Discoms after procuring the defective products from the Blacklisted vendors.

5.4 The utilities have sought to pass on bad and doubtful debts in the ARR which has been disallowed by the Hon'ble Commission in the past, the objectioners seek the Hon'ble Commissions indulgence for this year also prays that the same be disallowed.

5.5 With regard to Trueing up for FY 2013-14, it is submitted that no carrying cost be allowed due to the delay in filing of True-Up Petition by the Utilities. The same principle was followed by Hon'ble Commission in Order dated 21.05.2013 which was upheld by Hon'ble Appellate Tribunal for Electricity by Order dated 23.11.2015. Also, no prior period expense should be disallowed by the Commission.

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[1] http://timesofindia.indiatimes.com/india/UP-govts-clean-chit-to-firms-supplying-faulty-transformers/articleshow/21381747.cms

5.6 OBJECTIONS TO ARR OF 2016-17

A. DISTRIBUTION LOSSES

Distribution Losses considered by PVVNL are very high which shows inefficiency on part of PVVNL because of which consumers are being burdened with high cost of electricity. In Tariff Order dated 18.06.2015, this Hon'ble Commission has considered year on year decrease of Distribution Losses at around 3.5% for FY 2015-16. As is evident from Tariff Order dated 18.06.2015, this Hon'ble Commission approved Distribution Losses at 19.52% for FY 2015-16 as against approved Distribution losses of 23% for FY 2014-15. Further, with the adoption of New and Upcoming technology such as installation of '*High Temperature Low Sag conductors*' (HTLS) by the Discoms the distribution losses are bound to reduce.

In view of aforesaid it is prayed to the Hon'ble Commission that Distribution Losses may be reduced by 5% atleast as against the reduction target at 3.5% and Distribution Losses be fixed at 14.50% for FY 2016-17.

B. CAPITAL INVESTMENT PLAN

Capital Investment Plan submitted by PVVNL (*refer Pg. 105 of ARR Petition)* is not in consonance with Regulation 4.5 of Tariff Regulation and is required to be rejected *in toto*. Further, the Capital sought to be invested by PVVNL may be allowed only after thorough verification of investment already purportedly been made by PVVNL in the past. The investments were being made to favour certain people at the cost of the consumers by procuring low quality product at inflated price. Further, officials of PVVNL have indulged into mal-practice of paying for products which were not supplied by the seller. Also, without there being **Gross Fixed Asset Register** being maintained by PVVNL and other Discoms, no prudent planning can be done to invest capital to improve infrastructure of Distribution Licensees. *Therefore, cost of Rs. 2431.31 Cr., being sought by PVVNL toward capital investment during 2016-17, ought to be rejected.*

C. FIXED ASSET REGISTER, GROSS FIXED ASSET AND DEPRECIATION

It is submitted that in absence of Fixed Asset Register, the Gross Fixed Asset of the Utility be considered as Zero. It is submitted despite numerous direction of this Hon'ble Commission the Utilities have till date not created Fixed Asset Register. It is submitted that main reason behind non-creation or maintenance of Fixed Asset Register is siphoning off the money by officials of Discoms in the name of capital investment. It is submitted that Discoms have inflated GFA whereas in actual they do not have corresponding assets. Discoms are adding the burden on the consumers every year by paying huge sums in the name of capital investment which in reality is being paid to few favoured class of people. *In absence of Fixed Asset Register, the Gross Fixed Asset of the Utility be considered as Zero and no depreciation, much less Rs. 768.95 Cr., as sought by the Utility should be disallowed.*

D. FINANCE CHARGES

PVVNL has sought Rs. 14.28 Cr. (*refer Pg. 111)* towards Finance charges without giving any details of the same. Therefore, on the very face of it the same are liable to be rejected.

E. BAD AND DOUBTFUL DEBT

Bad and Doubtful Debt can only be allowed if the same has been identified and written off by the Discom. No bad and doubtful debt can be allowed in ARR for the ensuing year. Therefore, bad and doubtful debt of Rs. 37.31 Cr. (*refer Pg. 114)* sought by PVVNL is ought to be rejected.

F. RETURN ON EQUITY AND TARIFF FOR LMV-10 CONSUMERS

It is submitted that PVVNL has sought 50% discount on the tariff of departmental employees, pensioners etc. instead of Return on Equity (*refer Pg.*

115). It is submitted that if PVVNL prefers to supply electricity to its employees at discounted rates than passing of the benefit to its consumers, it is prayed by the objectioners that such an act of the Discoms should be not be allowed since it would mean burdening the consumer by depriving the benefit of the 'Return on equity'.

Further, the Objectioners request this Hon'ble Commission to calculate Return on Equity as per the Regulations. The total cost of discount given to the employees should not be more than Return on Equity to be provided as per Tariff Regulations.

5.7 OBJECTIONS TO TRUE UP OF FY 2013-14

A. Power Purchase Expense

As has been reported in various newspaper reports, UP Discoms have been procuring expensive power from the market despite the fact that power at cheaper price is available. Therefore, Commission may allow power purchase expense at the power purchase cost per unit approved in Tariff Order i.e. Rs. 3.92 per Unit as against Rs. 4.16 per Unit claimed by PVVNL (*refer Pg. 16 of ARR Petition).* It is prayed before this Hon'ble Commission to conduct a prudence check into rates at which power has been procured by Discoms vis-à-vis price at which power is available in the market and also initiate appropriate proceedings against the Discoms and concerned officers who have been procuring expensive power at cost of consumers. Copy of Newspaper Article of Times of India, Lucknow Edition dated 14th April, 2016 is filed herewith and marked as **EXHIBIT-3.**

B. Repair & Maintenance Expenses

PVVNL has considered R&M expenses Rs. 207.52 cr. as against Rs. 168.77 cr. as approved in the Tariff Order (*refer Pg. 19 of ARR Petition*). R&M being controllable factor, inefficiency of PVVNL should not be passed on to the consumers. On perusal of the **EXHIBIT-2** purchase of faulty transformers and other equipments for the transmission is also one of the major reason for the higher than expected R&M Expenses. The Hon'ble commission should therefore, considere the R&M expenses for FY 2013-14 as Rs. 168.77 Cr., as considered in the Tariff Order.

It is prayed to the Hon'ble Commission to conduct a prudence check into the quality of the equipment procured by Discoms vis-à-vis price at which they are available in the market and also initiate appropriate proceedings against the Discoms and concerned officers who have been procuring defective/sub-standard power equipments at cost of consumers

C. Purported Investment of Rs. 1203.54 Cr. should be disallowed

Investments of Rs. 1203.54 Cr. should purportedly made by PVVL during FY 2013-14 should be disallowed since UP Discoms have been procuring goods/machineries including transformers from the companies which were blacklisted. Without prejudice to the same, it is submitted that the Discoms have been falsely capitalizing the machinery without actual purchase of the same. Therefore, it is prayed before this Hon'ble Commission to allow capitalization of the goods/machinery only after verifying the existence, price (which should conform to market price) and after quality check of the goods/machinery.

D. DEPRECIATION

PVVNL is not entitled for any depreciation in absence of Fixed Asset Register.

E. PRIOR PERIOD EXPENSE

PVVNL are wrongfully claiming Rs. 159.60 Cr. towards prior period expense (*refer Pg. 25 of ARR Petition*). It is submitted that prior period expense ought to be disallowed as PVVNL has not given any details of the same (year and purpose for which these expenses were incurred). This Hon'ble Commission had disallowed prior period expense for FY 2000-01 to 2007-08 by Order dated 21.05.2013 which was upheld by Hon'ble Appellate Tribunal for Electricity vide judgment dated 23.11.2015 passed in Appeal No. 128 of 2014. The relevant portion of the judgment is extracted herein-below:-

> *"After citing rival contention on issue No. (b), we directly proceed to consider this issue on merits. According to the appellants there is no absence of clarity on each item booked under prior period expenses with respect to FYs to which they pertain. As stated above, the learned State Commission has disallowed the prior period expenses to the tune of Rs. 852.33 Cr., observing that there was absence of classification of such items booked under prior period expenses with respect to FYs to which they pertained. The record further depicts that the learned State Commission through letter dated 20.12.2012 raised the queries regarding appellants' claim of prior period expenses. The appellants/DISCOMs, without giving correct reply to the above query of the State Commission simply stated that year-wise classification could not be given as there was neither any statutory requirements to year-wise classify prior period expenses nor the Accounting Standard 5 (Revised) required any such classification. Thus the appellants failed to reply to the exact query made by the State Commission to the aforesaid letter and skipping true reply said that the year-wise classification could not be given as there was no statutory requirement nor Accounting Standard requiring such year-wise classification of prior period expenses. Thus the appellants instead of replying to the queries correctly and properly tried to take some excuse and ultimately failed to properly respond to the query of the State Commission. The learned State Commission while passing the Impugned Order has disallowed the prior period expenses on the legal and correct ground that year-wise break up of prior period expenses was not given by the appellants.* ***It is true that prior period expenses claimed by the appellants were duly audited expenses allowed in the statutory audit of the appellants but the word "audited" only means that the expenditure has been vouched for and the State Commission is further required to consider or check whether such expenses have been prudently incurred on whether the consumer has received any benefit from such expenditure. We are of the opinion, that in these circumstances and in the absence of non-furnishing of the details sought by the Commission, the State Commission has rightly disallowed the prior period expenses. After all the State Commission is required to use prudent check whether the expenses have been properly incurred or whether the licensee or the consumer has actually received any benefit from such expenditure. It is clear from the facts and other material on record that in the absence of the details to be provided by the appellants herein, the State Commission could not have conducted the prudence check of such items. The law as settled by this Appellate Tribunal on this point is that the State Commission is not bound by the audited accounts***

***of the licensee because the State Commission being the regulator is required to apply prudence check to such expenses or expenditure to see whether such expenses or expenditure were really required to be made for the benefit of the consumers**. On our careful scrutiny we do not find any illegality or perversity in the Impugned Order passed by the State Commission on this issue No. (b). Consequently, this issue is also decided against the appellants."*

Copy of order dated 23.11.2015 passed by Hon'ble Appellate Tribunal for Electricity in Appeal No. 128 of 2014 in filed herewith and marked as **EXHIBIT-4**.

F. BAD AND DOUBTFUL DEBT

PVVNL has wrongfully included Rs. 54.64 Cr. towards Bad & Doubtful Debt which is contrary to Regulation 4.4 of Tariff Regulations, 2006 since PVVNL has neither identified nor written off the same.

"4.4 Bad and Doubtful Debts:
Bad and Doubtful Debts shall be allowed as a legitimate business expense with the ceiling limit of 2% of the revenue receivables provided the distribution licensee actually identifies and writes off bad debts as per the transparent policy approved by the Commission. In case there is any recovery of bad debts already written off, the recovered bad debt will be treated as other income."

In support of the aforesaid submissions, the Objectioners relies upon True Up Order dated 21.05.2013 passed by this Hon'ble Commission for FY 2000-01 to 2007-08. The relevant portion of the Order is extracted herein-below:-

"2.18.6 The Commission has noted the suggestions of the NPCL. In spite of repeated directions by the Commission, the Petitioner has failed to formulate a clear policy and procedure for identifying and writing off receivables. Any provisioning towards bad and doubtful debts needs to be backed up with processes to identify consumers who are not paying up and then making adequate attempts to collect from such consumers. In the absence of proper policy in place for identifying and writing off receivables, the Commission has disallowed the claims towards provision for bad and doubtful debts."

It is pertinent to note that PVVNL had filed an Appeal against Order dated 21.05.2013, however, PVVNL did not challenge the said finding.

G. CARRYING COST

It is submitted that carrying cost, if any, should not be allowed on account of True Up of ARR for FY 2013-14 PVVNL grossly failed in filing True Up Petition in time. It is submitted that consumers should not be burdened due to inefficiency and negligence on part of PVVNL. It is submitted that audited accounts of a company, for FY 2013-14, should have been finalized by September, 2014. However, PVVNL chose to file True Up Petition for FY 2013-14 after a delay of more than two years. Therefore, carrying cost, if any, on the actual expense incurred by PVVNL for FY 2013-14 should not be passed on to the consumer.

It is submitted that in aforesaid facts and circumstances, the projected ARR of PVVNL is way below estimated revenue from at existing Tariff (Rs. 15,303/-). (*refer Pg. 117).* Therefore, the Tariff should be decreased accordingly.

Respectfully submitted;

FILED BY

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Place : NEW DELHI
Dated : 19.05.2016

AFFIDAVIT

I, Anil Bhardwaj, aged about ____ years S/O Shri ____________________, Secretary, Federation of Indian Micro and Small and Medium Enterprises (FISME), B-4/ 161, Safdarjung Enclave, New Delhi-110029 do solemnly affirm and say on oath as follows:

1. That I am the secretary of the applicant/objectioner Society (FISME) in the above matter and am duly authorised to make this affidavit on behalf of the Society i.e. FISME.

2. That the statements made by me in the application/objections are true to my personal knowledge and belief.

DEPONENT
(Anil Bhardwaj)

VERIFICATION

I, the above deponent, do hereby verify that the contents of para 1 and 2 of this affidavit are true to my personal knowledge. No part of it is false. So help me God.

New Delhi **DEPONENT**
Dated: 19th May 2016 (Anil Bhardwaj)

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