**BEFORE THE JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION**

**REVIEW PETITION NO. OF 2019**

**IN THE MATTER OF:**

Petition under section 94 of the Electricity Act 2003 and Regulation 41 (1) (2) & (3) of Jharkhand State Electricity Regulatory Commission (Conduct of Business) Regulations, 2017 for review of Jharkhand State Electricity Regulatory Commission Tariff Order for ***True-Up for FY 2016-17 and FY 2017-18, Annual Performance Review for FY 2018-19, Aggregate Revenue Requirement and Tariff for FY 2019-20 for JBVNL***

**AND**

**IN THE MATTER OF:**

JHARKHAND BIJLI VITRAN NIGAM LIMITED (JBVNL) - Petitioners

**MOST RESPECTFULLY SHOWETH:**

## 1. BACKGROUND

The Jharkhand State Electricity Regulatory Commission (JSERC) or the Hon'ble Commission, in exercise of its powers vested under the Electricity Act, 2003 (EA 2003 or Electricity Act) passed Impugned tariff order for for***True-Up for FY 2016-17 and FY 2017-18, Annual Performance Review for FY 2018-19, Aggregate Revenue Requirement and Tariff for FY 2019-20 for JBVNL, Dated, 28th February, 2019.***

***1.1*** The Hon'ble Commission has stated to have undertaken the following in the Impugned tariff order.

(a) *Truing up exercise for FY 2016-17 and FY 2017-18;*

(b) *Annual (mid-year) Performance Review for the FY 2018-19; and*

(c) *Determination of Aggregate Revenue Requirement and Tariff for JBVNL, under MYT Regulations, notified by Hon'ble Commission vide dated 10th November, 2015.*

***1.2*** The petitioners requests the Hon'ble Commission to revisit over certain aspects of the Impugned tariff order, dated 28th February, 2019 and would request the Hon'ble Commission to review and consider the same. The issues, which the petitioner would like to take up in this petition, are detailed in the following sections.

## 2. ISSUES FOR REVIEW

### *2.1 <u>Disallowance of Delayed Payment Surcharge of Rs 352.85 Cr of DVC in the Power Purchase Cost of FY 2017-18.</u>*

The Hon'ble Commission in its impugned Tariff Order dated 28th February 2019 has trued up the Power Purchase cost of FY 2017-18 wherein, the Hon'ble Commission has only disallowed the Delayed Payment Surcharge (DPS) of Rs. 352.85 Crore to DVC. The relevant extract of the impugned Tariff Order has been reproduced below for the ready reference"

> *5.11 The Commission has analysed the submission made by the Petitioner in its Power Purchase Cost. With regard to FY 2016-17, the Commission observes that the power purchase cost claimed is the same as approved by the Commission in its Order dated April 27, 2018 and is also reflected in the books of accounts. The Commission has therefore approved the same. The Commission with regards to power purchase cost claimed for FY 2017-18 observes that an amount of Rs. 352.85 Crore has been claimed towards DPS for DVC which is ~ 6% of the overall Power Purchase Cost.*
>
> *5.12 The Commission asked the Petitioner to provide justification for the DPS paid to DVC of Rs. 352.85 Crore as a part of ARR for FY 2017-18 vide Discrepancy Note dated December 19, 2018. The Petitioner replied that due to disallowance of actual Power Purchase Cost and inadequate tariff hike, it was not able to pay its power purchase liabilities, thus resulting into levying of delayed payment surcharge (DPS) of Rs. 352.85 over payment done to DVC during FY 2017-18. The Commission is of the view that it has been allowing the Petitioner all legitimate cost in the ARR and therefore consequences of non-payment of bills leading to delayed payment surcharge is not justified and therefore the same cannot be passed on to the consumers and hence the DPS amount has been disallowed."*

In this regard, it is submitted that State government of Jharkhand in the FY 2017-18 has provided a subsidy support of Rs 3,000 Cr i.e. Grant of Rs 500 Cr for payment to DVC in addition to regulatory disallowance support (RGF) of Rs 2500 Cr. Therefore, the amount of Rs 500 Cr has been paid to DVC through the Subsidy support provided specifically by the State Government of Jharkhand for payment of Power purchase dues to DVC. The Letter received from Dept. of Energy, Jharkhand regarding the Grant of Rs 500 Cr for payment of DVC Dues is annexed as Annexure

It is also pertinent to mention that as per Tariff Regulation, the Delayed Payment Surcharge gets accumulated and any payments made by the

Petitioner are first adjusted towards Delayed Payment Surcharge accumulated, if any. As such, the amount of Rs 500 Cr will get adjusted with the Delayed Payment Surcharge first and then the balance amount will be adjusted with the principal.

It is further reiterated that curtailing the Power Purchase Cost and other components of ARR to supress the electricity tariff creates a significant gap in cash flows leading to delay in payment of power purchase liabilities and accumulation of DPS, which becomes an uncontrollable factor.

It will be therefore principally incorrect to consider the total amount of Subsidy of Rs 500 Cr on the revenue side and to disallow the delayed payment surcharge from the power purchase cost of FY 2017-18. As such, if the amount of Rs 352.85 Cr has to be disallowed from the Power Purchase cost of JBVNL for the FY 2017-18, the subsidy received from the State Government of Jharkhand for the payment of DVC dues should also be first adjusted with the amount of DPS.

In view of the above, the Grant considered in the FY 2017-18 should be revised and to the extent that the DPS payment should be first adjusted with the Grant of Rs 500 Cr provided for payment to DVC. The Balance Grant along with the RGF support adjusted for Higher T&D losses should be considered for calculating the revenue Gap for the FY 2017-18.

As such, the Hon'ble Commission is requested to pass a suitable order revising the revenue gap of FY 2017-18, and pass on the same in FY 2019-20 in overall revenue gap of FY 2019-20 of the Discom along with the respective holding cost.

### 2.2 ***Calculation of Depreciation for the FY 2016-17, FY 2017-18, FY 2018-19 and FY 2019-20.***

It is submitted that since the segregation of the depreciation pertaining to GFA created out of grant and consumer contribution is not provided in the accounts of JBVNL, the Petitioner has followed the similar approach in its Tariff petition as adopted by the Commission in its Tariff Orders dated April 27, 2018 and June 21, 2017. However, the Hon'ble Commission in its impugned Tariff Order dated 28$^{th}$ February, 2019 has revised the methodology for calculation of Depreciation for FY 2016-17, FY 2017-18, FY 2018-19 and FY 2019-20.

In the revised methodology, the Hon'ble Commission while Truing Up the depreciation for the FY 2016-17 and FY 2017-18 and determining the same for the FY 2018-19 and FY 2019-20 has considered the average GFA of the financial year instead of the closing GFA considered by petitioner for calculation of Depreciation for a given financial year. Further, JSERC

(Terms and Conditions for Determination of Distribution Tariff) Regulations, 2015, also provides for calculation of depreciation where, GFA created out of grant and consumer contribution is not to be considered for calculation of depreciation of a year. As such, in order to prevent the depreciation of Assets funded through grant and consumer contribution to be passed on to consumers, the GFA created out of the Consumer Grant and contribution shall be reduced from the Average GFA amount.

The Hon'ble Commission in its impugned Tariff Order dated 28.02.2019 has calculated the GFA created out of loan and equity by reducing the closing balance of GFA created out of Grant and Consumer Contribution from the Average GFA. Principally, it would be incorrect to consider Average GFA and Closing balance of Grants and Consumer Contribution and the Hon'ble Commission ought to have considered only the Average balance of Grants and Consumer Contribution. It is further submitted that the approach adopted by the Hon'ble Commission appears to be arithmetically and principally incorrect and must be revisited.

The revised calculation of depreciation after considering the average GFA arising out of grant and consumer contribution is given below.

| Particular | | FY 17 | FY 18 | FY 19 | FY 20 |
|---|---|---|---|---|---|
| Opening GFA | A | | 5,450.60 | 5,962.09 | 8,990.03 |
| Closing GFA | B | 5450.6 | 5,962.09 | 8,990.03 | 10,882.25 |
| Average GFA | C=(A+B)/2 | 5,450.60 | 5,706.35 | 7,476.06 | 9,936.14 |
| | | | | | |
| Opening: CCG toward GFA | D | | 2,157.64 | 2,846.94 | 4,771.63 |
| Closing: CCG toward GFA | E | 2,157.64 | 2,846.94 | 4,771.63 | 5,657.97 |
| GFA excl. GFA out of Grant and CC (approved) | F=C-E | 3,292.96 | 2,859.41 | 2,704.43 | 4,278.17 |
| Depreciation Approved By Commission | F*5.94% | 195.60 | 169.85 | 160.64 | 254.12 |
| ***Revised Calculation using commission approved Values*** | | | | | |
| Average CCG Towards GFA | G=(D+E)/2 | 2,157.64 | 2,502.29 | 3,809.29 | 5,214.80 |
| GFA excl. GFA out of Grant and CC (Revised) | H=C-G | 3,292.96 | 3,204.06 | 3,666.78 | 4,721.34 |
| Revised Depreciation | H*5.94% | 195.60 | 190.32 | 217.81 | 280.45 |
| | | | | | |
| ***Impact*** | | ***-*** | ***20.47*** | ***57.16*** | ***26.32*** |

In view of the above, the Hon'ble Commission is requested to pass a suitable order, revise the depreciation for FY 2016-17, FY 2017-18, FY 2018-19 and FY 2019-20 and pass on the same in overall revenue gap of FY 2019-20 of the Discom along with the respective holding cost.

### 2.3 ***Revenue Gap for the FY 2016-17 and FY 2017-18.***

It is submitted that the Hon'ble Commission in its impugned Tariff Order has trued up the Annual Revenue Requirement of the FY 2016-17 and FY 2017-18 wherein the Hon'ble Commission has approved a Revenue Gap of Rs 2,165.98 for FY 2016-17 and Rs 92.43 Cr for FY 2017-18. The Table

141 of the impugned Tariff order showing the Revenue Gap for the FY 2016-17 and FY 2017-18 has been reproduced below:

| Particulars | FY 2016-17 | FY 2017-18 | FY 2018-19 |
|---|---|---|---|
| Opening Revenue Gap | 2,349.20 | -1,320.49 | -1,388.62 |
| **Revenue Gap / (Surplus) created during the Year** | **2,165.98** | **92.43** | **1,299.20** |
| UDAY Grants | 6,136.37 | - | - |
| Resultant Gap/Surplus during the Year | -3,970.39 | 92.43 | 1,299.20 |
| Closing Gap at end of the Year | -1,621.19 | -1,228.06 | -89.42 |
| Rate of Interest | 12.80% | 12.60% | 12.20% |
| Carrying Cost on Opening Balance | 300.7 | -166.38 | -169.41 |
| Carrying cost on Additional Gap Created during the Year | | 5.82 | 79.25 |
| Total Gap including carrying cost | -1,320.49 | -1,388.62 | -179.58 |

It is pertinent to mention that the Hon'ble Commission has not provided any details of calculation of the aforementioned revenue gap for FY 16-17 to FY 18-19. Moreover, even if the approved figures of Net Annual Revenue Requirement, disallowance due to excess distribution loss and Revenue as per the audited accounts for FY 2016-17 and FY 2017-18 are considered, the estimated Revenue Gap for the FY 2016-17 and FY 2017-18 shall be different than the approved. The calculation of the revenue gap approved and calculated based on the approved value of the Hon'ble Commission is Tabulated Below:

| Particulars | | FY 2016-17 | FY 2017-18 |
|---|---|---|---|
| Net Annual Revenue Requirement (As approved) | *A* | *6,081.72* | *6,252.66* |
| Resource Gap Funding | *B* | *1,200.00* | *3,000.00* |
| *Less: Approved Disallowances on account of increased T&D loss* (as approved) | *C* | *278.61* | *205.28* |
| Resource Gap Funding (Adjusted, as approved) | D=B-C | 921.39 | 2,794.72 |
| Revenue from Inter State Sale of Energy (As per Annual Accounts) | E | 2,730.63 | 3,174.53 |
| **Revised Revenue Gap based on approved figures** | **F=A-D-E** | **2,429.69** | **283.40** |
| **Gap Admitted by the Hon'ble Commission** | **G** | **2,165.98** | **92.43** |
| ***Difference*** | ***H=F-G*** | ***263.71*** | ***190.97*** |

It is evident from above table that the approved figures of the Net ARR, adjusted RGF and the Revenue as per the audited accounts doesn't add up to the approved Revenue Gap for FY 2016-17 and FY 2017-18. The revenue gap based on the approved figures of net ARR, adjusted RGF and Revenue as per annual accounts should be Rs 2,429.69 Cr for FY 2016-17 and Rs 283.40 Cr for FY 2017-18.

In view of the above, the Hon'ble Commission is requested to pass a suitable order, revise the revenue gap for FY 2016-17 and FY 2017-18 and pass on the same in FY 2019-20 in overall revenue gap of FY 2019-20 of the Discom along with the respective holding cost.

### 2.4 ***Adjustment of Outstanding Gap with the Grant under UDAY.***

It is submitted that the UDAY MoU was signed between JBVNL, MoP and State Govt. on 5th Jan 2016, which provides as below:

- The State Govt. shall take over the outstanding dues of CPSUs to the tune of Rs. 5,553.4 Cr. (i.e Rs. 783.4 Cr. towards CCL on behalf of PTPS and Rs. 4,770 Cr. towards DVC) – it is pertinent to mention that these dues have been accumulating since the erstwhile JSEB period
- The State Govt. shall take over the 50% of total outstanding debt of Rs. 1,166 Cr. as on 30th Sep'15 immediately. i.e. Rs. 583 Cr. were to be taken over (This Rs.583 Cr. pertained to banks)
- The State Govt. shall take over 25% of total outstanding debt of Rs. 1,166 Cr. as on 30th Sep'15 by end of FY 15-16, i.e. Rs.292 Cr. by 31st March'16 (Since the utility had some State Govt. borrowings, this part of Rs.292 Cr. pertained to State Govt. only)

Accordingly, the State Govt. issued the bonds of Rs.6,136 Cr. (Rs.5,553 Cr. + Rs.583 Cr.) and amount was passed on to JBVNL to repay the liabilities of CCL (Rs. 783.4 Cr.), DVC (Rs. 4,770 Cr.) and Banks (Rs. 583 Cr.). The amount was received by JBVNL and payments were made in FY 15-16 itself by 31st March 2016.

The amount so received from the Govt. was included in the liability side of JBVNL's balance sheet and the outstanding liabilities of the matching amount were cleared. Thus, the amount was received in form of loan or grant or equity is out of question here as it would have impacted only the liability side of the Balance Sheet of JBVNL for FY 15-16 and would not have led to accumulation of cash surplus with JBVNL.

As a matter of fact the amount was transferred by State Govt. as loan, but such loan has not been serviced by the Petitioner and the petitioner is not seeking the loan servicing to be passed on into ARR. The petitioner has raised the issue with State Govt. to convert the loan into grant/ equity which is in the process and shall be converted in due course of time. However, conversion of such loan into grant/equity doesn't mean that petitioner shall receive Rs.6,136 Cr. again, which can be utilized to meet the revenue gap.

Out of the amount of Rs. 4,770 Cr. paid to DVC, a total of Rs. 4,218 Cr. pertained to the erstwhile JSEB period and the complete outstanding paid to CCL of Rs. 783.4 Cr. was pertaining to erstwhile JSEB's thermal plant in Patratu (PTPS), i.e. a total of Rs. 5,001.4 Cr. pertained towards the erstwhile JSEB period and in addition to above amount of Rs. 5,001.4 Cr at the time of incorporation of JBVNL, the opening short term liabilities were to the tune of Rs 339 Cr thereby adding up to Rs 5,340 Cr. Hence, the total amount received by JBVNL for the period from 6th Jan'14 to 30th Sep'15 was only Rs. 796 Cr., including the following

Outstanding DVC dues created from 6th Jan'14 to 30th Sep'15 to the tune of Rs. 552 Cr. and;

Payment of Rs. 244 Cr. towards outstanding debt as on 30th Sep'19

In November 2017, the petitioner filed the True up petition for erstwhile JSEB for the period from FY11-12 to FY 13-14 (till 5th Jan 2014, date of unbundling) and the True up Petition for FY 13-14 (6th Jan'14 onwards) till FY 16-17 and APR for FY 17-18.

The State Commission while approving the true up for JBVNL from FY 13-14 (6th Jan'14 onwards) to FY 16-17 and APR for FY 17-18 estimated the revenue gap of Rs. 5,514 Cr., which is purely a revenue gap from 6th Jan'14 (FY 13-14) to FY 17-18 only. The revenue gap/ surplus of erstwhile JSEB has no bearing on this gap of Rs. 5,514 Cr. of JBVNL at all.

The petitioner is now aggrieved by the approach of State Commission that the revenue gap occurred during the JBVNL period of Rs. 5,514 Cr. has been adjusted against the Rs. 6,136 Cr. received under UDAY. Whereas, out of Rs.6,136 Cr. received, only Rs. 796 Cr. were received for the JBVNL period.

The accumulation of revenue gap has led to the fresh piling up of power purchase dues to various generators including DVC and NTPC, which is again in complete contravention to the envisaged objectives of UDAY scheme. Also, if the said revenue gap is provided to the petitioner, in form of tariff or amortized as Regulatory Asset, shall be instrumental in clearing the outstanding power purchase liabilities existing in the books of petitioner.

The petitioner has already filed an appeal before Hon'ble Aptel seeking the relief in the Impugned Tariff Order dated 27.04.2018. However, the petitioner prays before the the Hon'ble Commission to take into cognizance the facts produced before the Hon'ble Commission and not to adjust the entire amount of Rs 6,136 Cr received against the derived Gap of FY 2016-17.

In view of the above, the Hon'ble Commission is requested to pass a suitable order, revise the revenue gap for FY 2016-17, FY 2017-18 and FY 2018-19 and to pass on the same in overall revenue gap of FY 2019-20 of the Discom along with the respective holding cost.

## 3. Prayer

In view of the aforesaid mentioned facts, the petitioners most respectfully pray the Hon'ble Commission to:

(a) To rectify the treatment of DVC Delayed payment surcharge of Rs 352.85 Cr along with the other incidental components of Annual Revenue Requirement of FY 2017-18.

(b) To revise the depreciation allowed for the FY 2017-18, FY 2018-19 and FY 2019-20 along with the other incidental components of Annual Revenue Requirement.

(c) To consider the arguments made by the petitioner in section 2 of the review petition and to recalculate the approved revenue gap at the end of FY 2019-20.

(d) Review and modify the Tariff Order for True-Up for FY 2016-17 and FY 2017-18, Annual Performance Review for FY 2018-19, Aggregate Revenue Requirement and Tariff for FY 2019-20 for JBVNL, dated, 28th February, 2019 to the extent of the submissions made by the petitioner in the present review petition.

(e) To allow the petitioner make any additional/supplementary submission in addition to the review petition filed against the impugned order.

(f) Condone any inadvertent omissions/errors/shortcomings, permit the appellant (JBVNL) to add/change/modify/alter this filing and make further submissions as may be required at a future date.

(g) To condone any delay in filing the petition due to reasons unavoidable by the Discom.

(h) To pass necessary order.

BY THE APPLICANT THROUGH

Authorized Signatory

Jharkhand Bijli Vitran Nigam Limited (JBVNL)

Ranchi