

**BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION,
LUCKNOW**

Quorum

ShriDesh Deepak Verma, Chairman
Smt. Meenakshi Singh, Member
Shri I. B. Pandey, Member

In the matter of:

Sub:Petition No. 780 of 2012 “Nonpayment of interest on security by UPPCL, DVVNL, MVVNL, PVVNL, PuVVNL, KESCO and NPCL.”

1. Shri Rama Shankar Awasthi, 301 – Surabhi Deluxe Apartment, 6/7 Dali Bagh, Lucknow.
2. ShriMahendraSwaroop, President, Cold Storage Association U. P., at Swaroop Cold Storage, Aishbagh, Lucknow.
3. Shri Ganesh Tiwari, President, U. P. Chamber of Steel Industries Association at 122/235, Plot No. 17, Fazalganj, Kanpur.
4. Shri Shiv ShankerAwasthi, President, Amausi Industrial Association, at B – 13 / 1 Industrial Area Nadarganj, Lucknow.
5. ShriSatishGoel, President, Association of Steel Rolling Mill and Furnaces, at A – 10, Industrial Estate, Meerut Road, Muzaffarnagar.
6. ShriShashiBhusan Mishra, Secretary, UpbhoktaSanrakshanEvamKalyanSamiti, SitaramNidhi, Raja Niwas, Vrindawan, U.P.

-----Petitioners

Versus

1. Secretary, State of Uttar Pradesh, Department of Energy, Lucknow.
2. Chairman, U. P. Power Corporation Ltd. Shakti Bhawan, 14 Ashok Marg, Lucknow.
3. Managing Director, PaschimanchalVidyutVitran Nigam Ltd., Victoria Park, Meerut.
4. Managing Director, PurvanchalVidyutVitran Nigam Ltd., PurvanchalVidyutBhawan, Vidyut Nagar, DLW, Varanasi.
5. Managing Director, DakshinanchalVidyutVitran Nigam Ltd, UrjaBhawan, 220 KV Sub – station, Agra – Mathura Bye Pass Road, Agra.
6. Managing Director, MadhyanchalVidyutVitran Nigam Ltd., 4 – A, GokhleMarg, Lucknow.
7. Managing Director, Kanpur Electricity Supply Company Ltd.
8. Chief Executive Officer, Noida Power Company Ltd., Commercial Complex, H Block, Sector Alfa – II, Greater NOIDA.

-----Respondents

Present in the Hearing:

1. ShriKamlesh Chandra, Executive Engineer, UPPCL.
2. Shri Rama Shankar Awasthi. Petitioner
3. ShriBashisth Muni Mishra, Advocate, behalf of ShriAmarjeet Singh Rakhra, Advocate, Counsel for UPPCL.
4. Shri A. K. Arora, Resident Manager, NPCL.

ORDER

(Hearing on 23.09.2014)

1. Shri Rama Shankar Awasthi filed petition No. 780/2012 on 5.1.2012, submitting that they have filed the petition to constitute an 'Investigating Authority' to investigate **noncompliance of Section 47 (4) of Electricity Act, 2003 and Clause 2.40 of Electricity Supply Code, 2005 regarding nonpayment of interest on security**. The petitioner has submitted that it is necessary to constitute an Investigating Authority because most of the distribution licensees are not paying interest on security to the consumers. He has further submitted that it is the statutory duty of the Discoms to pay the interest on security and not the obligation of the Discoms towards the consumers, as they have not paid the interest to all the consumers, so Investigating Authority should be constituted to investigate the matter as to investigate why the Discoms have failed to fulfill their statutory duty. In support of his contention, the petitioner has relied upon the information collected from various licensees under the RTI Act, 2005.
2. On the hearing held on 10.4.2012, Shri A.S. Rakhra, Advocate, appearing on behalf of the respondents requested two months' time to file objections to the aforesaid petition. The Commission vide order dated 18.12.2012 allowed 8 weeks' time to the respondents to make their submissions with a copy to the same to the petitioner. On 15.10.2013 when the matter was next heard, Shri A.S. Rakhra, Advocate representing the respondents submitted that huge data has to

be collected and therefore he requested further two months' time to file replies. The Commission granted one months' time vide its order dt. 17.10.2013. The next date was fixed for hearing on 13.11.2013. On 13.11.2013, Shri A.S. Rakhra, Advocate again sought more time to file replies. Shri Rama Shankar Awasthi objected to the same submitting that more than a year had passed and the Discoms are unable to file replies. Shri A.K. Arora appearing on behalf of NPCL submitted that the NPCL had paid interest on security for the financial year 2012-13 to all the consumers. The Commission directed the respondent Distribution Companies to publish an advertisement in the newspapers calling upon the consumers, who have not received interest on security, to formally write to the Distribution licensees for payment of interest on security. Further the petitioner was directed to submit list of consumers (100 or more) who have not received the interest on security.

3. On the next hearing held on 3.2.2014, Shri A.S. Rakhra, Advocate appearing on behalf of the respondents submitted that all five State owned Distribution Companies have published the advertisement in the newspapers. The petitioner also submitted a list of 196 consumers who have not received the interest on security. The respondents again sought two months' to file reply, which was granted by the Commission. The next hearing was held on 28.07.2014. The Commission observed in its order dt. 21.08.2014 that no reply has been received from DakshinanchalVidyutVitran Nigam Ltd. and PaschimanchalVidyutVitran Nigam Ltd. and therefore why it should not be presumed that no interest on security has been paid to the consumers in the jurisdiction of these two Discoms and why competent proceedings be not initiated against the erring Discoms i.e. DakshinanchalVidyutVitran Nigam Ltd. and PaschimanchalVidyutVitran Nigam Ltd. The Commission further observed that the reply submitted by PoorvanchalVidyutVitran Nigam Ltd. and MadhyanchalVidyutVitran Nigam Ltd. are not notarized. The notarized reply should be filed within two weeks of issue of this order along with the submission of KESCo.
4. The next hearing was held on 23.09.2014 with direction for personal appearance of the MDs of DakshinanchalVidyutVitran Nigam Ltd. and

PaschimanchalVidyutVitran Nigam Ltd. In the hearing both the MDs were not present, whereupon the Commission was informed that the MD of DVVNL could attend the hearing as there was some public unrest / agitation against the licensee and as such his presence at Agra was necessary. It was also informed that the MD, DVVNL was also presently having the charge of the MD of PVVNL.

5. However the summary / status of the replies filed by the respondent Distribution Companies is as follows:

a. PVVNL:

PVVNL has filed its affidavit in the Commission on 21st Aug, 2014. It states as follows: Out of the list of 196 consumers filed by the petitioner, 18 consumers fall in its jurisdiction and all of them have been paid interest on security deposit. Also no consumer has approached the licensee in response the newspaper publication inviting the consumers in the matter of non-payment of interest on security deposit.

They have not filed any affidavit giving the undertaking that interest on security deposit has been paid to all its consumers.

b. PuVVNL:

PuVVNL has filed its affidavit in the Commission on 28th July, 2014. It states as follows: Out of the list of 196 consumers filed by the petitioner, 15 consumers fall in its jurisdiction and all of them have been paid interest on security deposit.

The licensee has not given any information on the no. of consumers who have approached the licensee in response the newspaper publication inviting the consumers in the matter of non-payment of interest on security deposit.

Further as a matter of extreme caution, the Director (Commercial), PVVNL has directed all Chief Engineers of all Zones to comply with the provisions / regulations pertaining to the payment of interest on security vide a letter dt. 19th July, 2014.

They have not filed any affidavit giving the undertaking that interest on security deposit has been paid to all its consumers.

c. MVVNL:

MVVNL has filed an affidavit dt. 28th July, 2014. It states as follows: Out of the list of 196 consumers filed by the petitioner, 29 consumers fall in its jurisdiction and all except 2 of them have been paid interest on security deposit.

The licensee has not given any information on the no. of consumers who have approached the licensee in response the newspaper publication inviting the consumers in the matter of non-payment of interest on security deposit.

They have not filed any affidavit giving the undertaking that interest on security deposit has been paid to all its consumers.

d. KESCo:

KESCo has filed its affidavit in the Commission on 6th February, 2014. It states as follows: That they have issued publication in various newspapers, inviting consumers in the matter of non-payment of interest on security deposit.

The licensee has not given any information on the no. of consumers who have approached the licensee in response the newspaper publication inviting the consumers in the matter of non-payment of interest on security deposit.

They have not filed any affidavit giving the undertaking that interest on security deposit has been paid to all its consumers.

e. DVVNL:

DVVNL has filed its affidavit in the Commission on 6th February, 2014. It states as follows: That they have issued publication in various newspapers, inviting consumers in the matter of non-payment of interest on security deposit.

The licensee has not given any information on the no. of consumers who have approached the licensee in response the newspaper publication inviting the consumers in the matter of non-payment of interest on security deposit.

They have not filed any affidavit giving the undertaking that interest on security deposit has been paid to all its consumers.

An email was received on 23rd Sept, 2014 which provides some information in regard to 23 consumers vide a covering letter (the hard copy has also been received later) and is not in the form of an affidavit.

f. NPCL:

NPCL has filed its affidavit in the Commission on 13th November, 2013. It states as follows: That they have been paying interest on security deposit of the consumers.

6. The Commission is not satisfied with the submissions made by the State owned respondent distribution licensees. They have failed to disclose the total amount

of security lying with them and the amount of interest to be payable to the electricity consumers.

7. The Electricity Act, 2003 provides for investigation and enforcement vide Section 128 and the same empowers the Commission to make investigation of certain matters where it is satisfied that the distribution licensee has failed to comply with any of the conditions of license or any of the provisions of the Act or rules or regulations made thereunder. Section 128 (6) of the Electricity Act, 2003 further empowers the Commission to take any action against the distribution licensee. Section 142 of the Electricity Act, 2003 provides for punishment for non-compliance with directions issued by the Commission. The Section 128 of the Electricity Act, 2013 is reproduced as below:

“Investigation of certain matters

128. (1) The Appropriate Commission may, on being satisfied that a licensee has failed to comply with any of the conditions of licence or a generating company or a licensee has failed to comply with any of the provisions of this Act or rules or regulations made thereunder, at any time, by order in writing, direct any person (hereafter in this section referred to as “Investigating Authority”) specified in the order to investigate the affairs of any generating company or licensee and to report to that Commission on any investigation made by such Investigating Authority:

Provided that the Investigating Authority may, wherever necessary, employ any auditor or any other person for the purpose of assisting him in any investigation under this section.

(2) Notwithstanding anything to the contrary contained in section 235 of the Companies Act, 1956, the Investigating Authority may, at any time, and shall, on being directed so to do by the Appropriate Commission, cause an inspection to be made, by one or more of his officers, of any licensee or generating company and his books of account; and the Investigating Authority shall supply to the licensee or generating company, as the case may be, a copy of his report on such inspection.

(3) It shall be the duty of every manager, managing director or other officer of the licensee or generating company, as the case may be, to produce before the Investigating Authority directed to make the investigation under subsection (1), or inspection under sub-section (2), all such books of account, registers and other documents in his custody or power and to furnish him with any statement and information relating to the affairs of the licensee or generating company, as the case may be, as the said Investigating Authority may require of him within such time as the said Investigating Authority may specify

(4) Any Investigating Authority, directed to make an investigation under subsection (1), or inspection under sub-section (2), may examine on oath any manager, managing director or other officer of the licensee or generating company, as the case may be, in relation to his business and may administer oaths accordingly.

(5) The Investigating Authority, shall, if it has been directed by the Appropriate Commission to cause an inspection to be made, and may, in any other case, report to the Appropriate Commission on any inspection made under this section.

(6) On receipt of any report under sub-section (1) or sub-section (5), the Appropriate Commission may, after giving such opportunity to the licensee or generating company, as the case may be, to make a representation in connection with the report as in the opinion of the Appropriate Commission, seems reasonable, by order in writing-

(a) require the licensee or the generating company to take such action in respect of any matter arising out of the report as the Appropriate Commission may think fit; or

(b) cancel the licence; or

(c) direct the generating company to cease to carry on the business of generation of electricity.

(7) The Appropriate Commission may, after giving reasonable notice to the licensee or the generating company, as the case may be, publish the report submitted by the Investigating Authority under sub-section (5) or such portion thereof as may appear to it to be necessary.

(8) The Appropriate Commission may specify the minimum information to be maintained by the licensee or the generating company in their books, the manner

in which such information shall be maintained, the checks and other verifications to be adopted by licensee or the generating company in that connection and all other matters incidental thereto as are, in its opinion, necessary to enable the Investigating Authority to discharge satisfactorily its functions under section.

Explanation. - For the purposes of this section, the expression "licensee or the generating company" shall include in the case of a licensee incorporated in India-

(a) all its subsidiaries formed for the purpose of carrying on the business of generation or transmission or distribution or trading of electricity exclusively outside India; and

(b) all its branches whether situated in India or outside India.

(9) All expenses of, and incidental to, any investigation made under this section shall be defrayed by the licensee or the generating company, as the case may be, and shall have priority over the debts due from the licensee or the generating company and shall be recoverable as an arrear of land revenue." (Emphasis Added)

8. Therefore the Commission is satisfied that there is a need to order an investigation into the above matter and hence directs an investigation by appointing an 'Investigating Authority' as per the provisions of Section 128 of the Electricity Act, 2003.
9. Hence, the Commission hereby appoints and directs Shri P.N. Pathak, Shri Arun Kumar Srivastava and Shri Vikas Chandra Agarwal to act as an 'Investigating Authority' to investigate the affairs of all five State owned Distribution Companies namely – MVVNL, PVVNL, PuVVNL, DVVNL & KESCo as per the provisions of Section 128 of EA, 2003. The 'Investigating Authority' shall be headed by Shri P. N. Pathak.
10. The 'Investigating Authority' shall endeavour to submit its Report to the Commission within 6 months from the date of its appointment hereunder.
11. The Commission hereby directs all five State owned Distribution Companies namely – MVVNL, PVVNL, PuVVNL, DVVNL & KESCo to cooperate with the 'Investigating Authority' in its investigation and make available all the required data as desired.

12. The 'Investigating Authority' shall act as per Section 128 of the EA, 2003, as directed by the Commission and authorised by the Commission to do so under this Section including whenever necessary employ any auditor or any other person for the purpose of assisting it in the investigation.
13. Further the Commission expresses its unhappiness over the casual approach of DVVNL & PVVNL and show causes MD of DVVNL (who also had the charge of PVVNL on the date of hearing) as to why not proceedings be initiated against him as per the Section 142 for repeated non-compliance of the directions of the Commission. Notice for the same may be issued to him separately.

(I. B. Pandey)
Member

(Meenakshi Singh)
Member

(Desh Deepak Verma)
Chairman

Dated: 28 .11.2014