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Ref.No.PEG/2015/02

13th January 2015

To,
The Secretary
Tamil Nadu Electricity Regulatory Commission
No 19A, Rukmini Lakshmi-pathy Salai, Egmore,
Chennai - 600 008.

Subject: Prayas comments and submissions regarding:

- 1) Procedural issues with tariff determination process for 2014-15
- 2) Substantial Issues with respect to Order No.9 of 2014 and grave lapses highlighted by dissent order for the same matter.
- 3) Tariff determination process for 2015-16 and final true up for FY11 to FY15.

Ref: Order No 9 of 2014, Public Notice dated 23rd September 2014

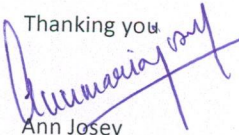
Dear Sir,

This letter is respect to the matters mentioned above. As highlighted in our previous two submissions¹ to the commission during the tariff determination process for 2014-15, transparency, availability of crucial information and informed public participation are essential for a meaningful tariff determination process. However, as highlighted by other consumers in the public hearings and Thiru. S. Nagalsamy, Member (I) of the Commission in his dissent order, none of the above was ensured in a meaningful manner.

Given TANGEDCO's critical financial position, the risk of such serious lapses in the current tariff determination process, being repeated, could prove to be fatal for Tamil Nadu's power sector. This is more so as the actual extent of the accumulated losses and the costs accruing to consumers cannot be established without a final true-up process (based on annual audited accounts), which has not been completed for FY2010-11 to FY2014-15.

Considering the need for immediate action by the commission, the enclosed submission has suggestions for the tariff process for 2015-16 and for the true-up for the past five years. We request the commission to take our submission on record and will be glad to clarify any particular issue or assist in any manner as the commission may so desire in this regard. We would also request the commission to allow us to make additional submissions if any, in this regard.

Thanking you


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Enclosed: Submission regarding tariff determination process for 2014-15 and suggestions for tariff determination process for 2015-16 (Enclosure 1)

¹ Letter with reference number PEG/2014/107, dated 8th October 2014 and letter with reference number PEG/2014/114, dated 22nd October 2014.

Regarding tariff determination process for 2014-15 and suggestions for tariff determination process for 2015-16

TANGEDCO's precarious financial position and lapses in ensuring quality power supply equitably are matters which deeply affect the electricity consumers and economic activity within the state. In such a time of crisis, it is vital to ensure a transparent, participatory process as per the letter and spirit of the Electricity Act 2003. As consumers have to bear all the prudent expenses, they have a right to informed participation in the determination of necessary expenses incurred.

TNERC has recently issued a tariff order for the year 2014-15 along with the provisional true up for 2011-12 and 2012-13 and Annual Performance Review for 2013-14. Along with the order, TNERC member Thiru S. Nagalsamy also issued a dissenting order highlighting grievous procedural lapses and substantial issues with the tariff determination process undertaken to arrive at this order.

In this context, we would like to highlight certain consequential procedural issues with the tariff determination process and performance review conducted for the Order No.9 of 2014 issued by TNERC, while offering possible suggestions for the way forward.

I. TNERC's wilful neglect of serious non-compliance

- 1. TNERC chose not to exercise its powers to obtain information from TANGEDCO:** The commission is empowered by various provisions in the Electricity Act (Section 62 (2), Section 142, Section 146) and its Tariff Regulations¹ to obtain information for tariff determination from the utility. However no action was taken by TNERC even when petitions for ARR and tariff determination for 2014-15 were not filed despite TNERC regulations stating clearly that *'The Distribution / Transmission licensee shall file the Aggregate Revenue Requirement (ARR) on or before 30th November of each year in the format prescribed, containing the details of the expected aggregate revenue that the licensee is permitted to recover at the prevailing tariff and the estimated expenditure.'* **[Regulation 5 (1)]**. In such a situation, where information on TANGEDCO's operations and finances is crucial for the commission's analysis and where there is clear contravention on the provisions of the Electricity Act, commissions regulations, TNERC could have invoked its powers under Section 142 of the Electricity Act. According to this section, the Commission can invoke a penalty for failure of compliance and invoke an additional daily penalty for continuing non-compliance to the Act, commission's regulations and directives. From the dissent order by the Commission member it is clear that the matter was discussed by the Commission and decided that in the interest of an expedient order, action under section 142 was not sought to avail important and necessary information. Evidence for this is also provided in Annexure 1 of the dissent order.
- 2. No action taken by Commission to ensure presence of TANGEDCO at public hearings:** In spite of the suo-motu tariff determination process being initiated to decide the revenue requirement for the cash-strapped Distribution Company, no representative from TANGEDCO made submissions on behalf of the company at the public hearings. The commission could have exercised its powers under Section 94 (a) of the Electricity Act in order to summon or enforce the attendance of TANGEDCO during the public hearings.

¹ Regulation 6(1), Regulation 6 (3) and Regulation 5 (1)

3. **No action taken when TANGEDCO did not submit replies to objections or suggestions received by the public:** When the question of TANGEDCO being present at the hearings was raised at the Chennai public hearing, the commission assured the public that TANGEDCO will furnish detailed replies to queries instead. However, there has been no response from TANGEDCO to many of the queries posed by the consumers during the tariff determination process especially regarding availability of information. According to TNERC Tariff Regulations, 2005, *'The applicant shall furnish reply to the objection / suggestion if any received from the public direct to the objector with a copy to the Commission.'* [**Regulation 6 (3)**]. Therefore the inaction of TANGEDCO in this matter is in direct contravention with TNERC regulations. Yet, no action was taken by TNERC to enforce its regulations as per powers vested in it by the Electricity Act².
4. **ARR filings for 2015-16 not submitted by the distribution company:** According to TNERC tariff regulation 5, TANGEDCO should have filed the ARR for 2015-16 by 30th November 2014 whether or not they file an application for tariff determination. According to the dissenting order of Thiru. S. Nagalsamy, the petition for the year 2015-16 had not been filed and no action was taken by the commission to ensure filing. Given the experience in the recent tariff determination process for Order No. 9 of 2014, it is expected that there will be lack of submission of crucial information from the utility for the coming year. Much like the previous year, no action has been taken by the Commission till date, to ensure submission of crucial information by TANGEDCO for this process.

II. Critical issues regarding 2014-15 tariff process

1. **Commission's assumptions, analysis and crucial data not presented to the public to ensure informed participation:** An important consequence of the non-receipt of information from the distribution company is that there was not much information provided to the public. Moreover, in the absence of crucial evidence, the commission seems to have made certain assumptions while deliberating matters such as power procurement, interest payments, sales growth, impact of open access, wind generation, wind banking and backing down etc. These assumptions impact decisions which have significant cost implications and were not available to the public to consider. According to Member (I) of TNERC, Thiru S. Nagalsamy, *'.. the Commission has not got all the details but only monthly / quarterly returns such as some generation returns, power purchase statements, sales returns, etc.'* The member also states in his dissenting order that the tariff determination is based on *'assumed data'* and the determined tariff is *'purely arbitrary'*. Till the 24th of October, consumers could only rely on a 28 page summary of the suo-motu tariff proposal for information to participate in the process. Moreover, information was not made available as per the prescribed ARR formats. Some of these crucial information gaps have been highlighted in Prayas Energy Group's submission to the Commission dated 8th October 2014.
2. **Public Hearings not held in larger cities as per usual practice:** TNERC was among the few commissions which had the good practice of holding public hearings in major regions within the state to encourage public participation. However, for this crucial tariff determination process, the number of cities for tariff hearings were reduce from 4 to 3 .Moreover, the hearings were held in the cities of Tirunelveli and Erode which are smaller and have less aggrieved consumers than the cities of Coimbatore, Trichy and Madurai, where hearings are usually held. Due to this

² Section 142, Section 146

change, no hearings were held in Central Tamil Nadu. It should also be noted that this change was undertaken without consultation and without any reasons being provided to the public for such a change.

3. **Issues with True-up and performance review:** TNERC has conducted the final true-up for TANGEDCO for just 1 year, namely 2010-11 using 5 months of data from audited accounts. In the present tariff order, *provisional* true-ups have been conducted for 2011-12, 2012-13 and the Annual Performance Review for 2013-14 was also completed. It must be noted that a provisional true-up for 2011-12 was also conducted in T.P 1 of 2013 and that by now audited accounts for the years 2010-11, 2011-12, 2012-13 and 2013-14 should be available with TANGEDCO. True-ups are important because it acts as an assessment of the past performance of the utility and also determines prudent expenses incurred, which can be borne by the consumers. Without post-facto evaluation, the actual extent of costs incurred and consequently the loss levels cannot be adequately assessed. Therefore there is no final estimate based on true-ups on the extent of the revenue gaps, accumulated losses and the magnitude of the regulatory asset approved by the commission in T.P 1 of 2013. Given the precarious financial position of the distribution company, the state government's initiative to provide financial support and the need for tariff revision in the face of rising expenses, TNERC should have expeditiously conducted *final* true-ups for the years of 2010-11, 2011-12, 2012-13 and 2013-14 in this tariff process.

III. Need for Immediate Action

The tariff determination process for Order O.P 9 of 2014 and the dissent order by the commission member have brought to light grave issues at the process level as well as with respect to substantial decisions taken in the tariff order. The non-compliance by the regulated utility, inaction on the part of the commission to ensure compliance, irregularities in the commission process and decision making which are against the letter and spirit of the Act, should not go unchecked as it might be repeated in future tariff processes. Such a precedent will erode the credibility of the exercise and may prove detrimental to consumer welfare.

There is a need for immediate action given the fact that the ARR filings for 2015-16 which were supposed to be submitted by the 30th of November 2014, have not been submitted as yet. The commission should exercise its powers vested by the Electricity Act to ensure accountability and proper regulatory scrutiny of TANGEDCO. As ARR filings for 2015-16 have not yet been submitted and final annual true-ups have not been completed since 2011, *the commission can use its powers under Section 128 of the Electricity Act to undertake an investigation of the affairs of TANGEDCO*. This investigation can form the basis for a suo-moto tariff determination process for 2015-16 and final true ups for the past 5 years.

IV. Suggestions and Way Forward

1. **TNERC must undertake an investigation of the affairs of TANGEDCO:** Using the powers under Section 128 of the Electricity Act, TNERC must -
 - a. Appoint an independent Investigating Authority (say, CAG) to inspect the books of account, registers and other documents in the custody of TANGEDCO, examine on oath officers of TANGEDCO in order to enable a performance review for the past 5 years and ARR determination for 2015-16 of the utility.

- b. The investigating authority should look into issues of considerable importance for which data is not current available to facilitate informed decision making. Information such as those given below can be sought by the investigating authority.
 - i. Consumer category wise, slab-wise break up of number of consumers, sales, revenue and connected load for the years 2011-12, 2012-13, 2013-14 and projections for 2014-15. This should also have category wise break up of metered and unmetered sales.
 - ii. Source/station wise contracted and actual MUs and MW, fixed cost, variable cost, for the years 2011-12, 2012-13 and 2013-14 including market, IPP and bilateral purchases.
 - iii. Station wise information of PLF, SHR and Auxiliary consumption for all TANGEDCO power plants for the years 2011-12, 2012-13 and 2013-14.
 - iv. Station wise capacity in the pipeline, delays in commissioning and IDC accruing to capacity commissioned by TANGEDCO.
 - v. Station wise contracted capacity in the pipeline, delays in commissioning for sources other than State Generation.
 - vi. Cash flow of utility and extent of working capital
 - vii. Projections of open access sales and wind banking and estimation of impact on TANGEDCO's sales and expenditure.
 - viii. Scheme/DPR wise information of capital expenditure, sources of funds, and capitalisation for the distribution business and the generation business
 - ix. Information of short term liabilities, rate of interest, lender and term of loans incurred by the generation and distribution business.
 - x. Extent of disbursements under FRP and consequent reduction in accumulated losses.
 - xi. Annual extent of disbursement by the State Government to amortise regulatory asset.
 - xii. Circle wise AT&C losses over the past five years
 - xiii. Category-wise slab wise number of consumers who have been subject to average billing, zero billing or have faulty meters.
- c. TNERC must solicit public comments and suggestions to finalise terms of reference for the investigating authority.
- d. Based on the findings, the investigating authority should submit a report to the Commission.
- e. The report must be available in Tamil and English on the commission's website.

2. TNERC must initiate tariff determination and final true-up process based on investigation findings: Based on the report submitted by the investigating authority, TNERC to initiate a suo-motu final true up process for 2014-15 and a tariff determination process for 2015-16. TNERC can also conduct a final annual true-up process for the years 2010-11, 2011-12, 2012-13 and 2013-14. This will also help finalise the extent of losses and the magnitude of the regulatory asset.

3. TNERC must ensure a meaningful consultative and participatory process for tariff determination: As mentioned earlier, any process should encourage informed participation and be consultative. To ensure this-

- a. The investigation report and the commission's analysis, assumptions and estimations based on the report should be available on the website of the commission.
- b. Any correspondence with the utility in this matter should also be made available in the public domain.
- c. Consumer representatives should be present at a technical validation session along with the Commission and the utility to identify data gaps and ask for submission of relevant data from TANGEDCO.
- d. Data sought under the technical validation session should be available on the commission's website

- e. In accordance with the past practice, public Hearings for the process should be held in atleast 4 major centres ,covering all the regions of the state
- f. TANGEDCO to be present at all tariff hearings and present its submission
- g. TANGEDCO should reply to all objections/submissions of consumers during the tariff process
- h. The consequent TNERC order must address the concerns raised by consumers and provide adequate answers to them.

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