

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
AT NEW DELHI  
(APPELLATE JURISDICTION)**

**APPEAL NO.                      OF 2016**

**IN THE MATTER OF:**

Federation of Industries Associations, Silvassa  
Office No. 8, Danudyog Shopping Center,  
Opposite Hirvavan Garden,  
Piparia, Silvassa,  
Dadra and Nagar Haveli 396230

**...APPELLANT**

**AND**

1. Joint Electricity Regulatory Commission for the State of  
Goa and Union Territories,  
Udyog Vihar, Phase V,  
Sector 19, Gurugram, Haryana
2. M/s Dadra & Nagar Haveli Power Distribution Company  
Ltd.  
Vidyut Bhavan, Near Secretariat, Amli, Silvassa, Dadra and  
Nagar Haveli 396230

**...RESPONDENTS**

**THE APPELLANT ABOVE-NAMED MOST RESPECTFULLY  
SUBMIT AS UNDER:**

**1.     DETAILS OF APPEAL**

The present appeal is being filed under sub-section 1 and 2 of  
Section 111 of the Electricity Act, 2003, against the order dated  
15.09.2016 passed by the Joint Electricity Regulatory  
Commission(1st Respondent herein) disposing of the Petition No.  
205/2016 partially allowing it.

**2.     THE DATE ON WHICH THE ORDER APPEALED AGAINST  
IS COMMUNICATED AND PROOF THEREOF, IF ANY.**

The copy of the impugned order dated 15.09.2016 was uploaded on the website of Joint Electricity Regulatory Commission on 21.09.2016. The appellant downloaded the same on 20.09.2016 when it came to know that the order has been uploaded in the website. Because of certain constraints, the appellant was unable to obtain a certified copy of the said order. However, the order copy obtained from the website of Joint Electricity Regulatory Commission is annexed herein. The impugned order in Petition No 205/2016 is annexed herewith and marked as **Annexure A.**

**3. THE ADDRESS OF THE APPELLANT FOR SERVICE IS SET OUT HERE UNDER:**

**Name and Address of the Counsel**

Mr. Rohit Rao. N,  
Advocate,  
Veritas Legis,  
Advocates & Consultants,  
Suit No.10, Ground Floor,  
Hans Bhawan, #1 Bahadur Shah  
Zafar Marg, (I.T.O.),  
New Delhi -110002

**4. THE ADDRESS OF THE RESPONDENTS FOR SERVICE OF ALL NOTICES IN THE APPEAL ARE SET OUT HEREUNDER:**

1. Joint Electricity Regulatory Commission for the State of Goa and Union Territories,  
Udyog Vihar, Phase V,  
Sector 19, Gurugram, Haryana
2. Dadra & Nagar Haveli Power Distribution Company Ltd.  
Vidyut Bhavan, Near Secretariat, Amli, Silvassa, Dadra and Nagar Haveli 396230

**5. JURISDICTION OF THE APPELLATE TRIBUNAL**

The appellants declare that the subject matter of the appeal is within the jurisdiction of this Hon'ble Tribunal.

## **6. LIMITATION**

The appellant declares that there is a delay of 81 days in filing the appeal.

## **7. FACTS OF THE CASE**

The facts of the case are given below:

1. The appellant is a society registered under the Societies Registration Act. The society is a conglomeration of all the industries associations of Silvassa, DNH and is established to give a common voice to the interests and concerns of the industries operating in DNH. They are consumers of the Respondent No.2.
2. The 1<sup>st</sup> Respondent, Joint Electricity Regulatory Commission, is the Appropriate Electricity Regulatory Commission under the Electricity Act, 2003. The 2<sup>nd</sup> Respondent is Government Company incorporated under the Companies Act, 1956 and is also a Distribution Licensee under Section 14 of the Electricity Act 2003, responsible for both purchase of power, distribution and retail supply of electricity to its consumers in its area of supply.
3. It is to be note that under the Open Access regime introduced by the Joint Electricity Regulatory Commission, many EHT consumers, shifted from non-

open access to open access consumption. In order to meet power requirement of U.T of DNH, PPAs have been tied up NSPCL-100 MW and EMCO-200 MW. As per the Long Term/Medium Term PPAs signed with the aforesaid generating companies, the Respondent No.2 is obligated to pay Fixed Charges irrespective of energy scheduled and as per terms and conditions of tariff. However, the variable charges are paid on the basis of actual energy scheduled. The fixed charges paid by Respondent No.2 are not fully recovered from various consumers under Fixed Charge category. Some portion of the Fixed Charge is converted into Energy Charge and recovered from the consumers. However, the Open Access consumers procure energy from other sources and thus refrain from payment of energy charges. This results into under recovery of Fixed Charge which was converted into Energy Charge. It is also to be noted that, this under recovery is ultimately passed on to the loyal consumers of Respondent No.2. In a way, non-open access consumers are indirectly cross subsidizing the open access consumers.

4. The under recovery of fixed charges, as per the detailed calculations filed by the Respondent No.2 before the Joint Electricity Regulatory Commission, was Rs.1.41/- per unit. This amount was recoverable from the open access consumers and not from the non-open access

consumers. The Non-open access consumers were already burdened with additional energy charges on account of the open access consumers, as mentioned in the preceding paragraph.

5. The Respondent No.2 filed a Petition bearing number 205/2016 in the Joint Electricity Regulatory Commission seeking for approval to recover the under recovered fixed cost of Rs.1.41/- per unit, as additional surcharge from the open access consumers. The Respondent No.2 also submitted computation based on actual data of FY 2015-16. True copy of the Petition No. 205/2016 filed by the Respondent No.2 before the Joint Electricity Regulatory Commission is annexed herewith and marked as **Annexure B**.
6. The Appellant herein filed an application seeking to implead itself before the Joint Electricity Regulatory Commission in Petition No.205/2016. The Appellant also made submission before the Joint Electricity Regulatory Commission in said Petition. After hearing all the stakeholders involved, the Joint Electricity Regulatory Commission passed an order dated 15.09.2016. The Commission had found merit in the application of the Respondent No.2 and decided that the additional surcharge for Open Access for the FY 2016-17 to be recovered from the Open Access consumers at Rs. 0.47 per kWh only and not Rs. 1.41/- per kWh/unit as

sought by the Respondent No.2. It further held that the said additional surcharge of Rs.0.47 per unit shall be levied only from 1<sup>st</sup> of October, 2016.

7. Aggrieved by that portion of the order of Joint Electricity Regulatory Commission 15.09.2016, which pertains to the lower payable by the open access consumers and only from 1<sup>st</sup> October 2016, the Appellant is filing the instant Appeal.

**8. (a) FACTS IN ISSUE:**

1. It is the humble submission of the appellant that the Hon'ble Joint Electricity Regulatory Commission has erred in the calculation for arriving at the additional surcharge of Rs. 0.47 per unit and not Rs.1.41/- per unit as correctly sought by the Respondent No.2.
2. It is the humbly submitted that the Respondent No.2 has wrongly passed on the additional burden imposed on them with respect to the non-payment of fixed cost by the open access consumers to the non-open access consumers. It is humbly submitted that the members of the appellant are burdened with amounts that are admittedly payable by the Open Access consumers, which amounts to around Re.1 per unit.
3. It is humbly submitted that there is a difference of around a rupee per unit between the additional surcharge sought by Respondent No.2 and the additional surcharge approved

by Joint Electricity Regulatory Commission. The Joint Electricity Regulatory Commission has, in the impugned order given no reason or justification as to how open access consumers are liable to pay only Rs.0.48/- per unit as additional surcharge and not Rs.1.41/- per unit that was sought by the Respondent No.2

4. It is humbly submitted that the Respondent No.2, after admitting in its application/petition before the Joint Electricity Regulatory Commission that the additional surcharge of Rs.1.41/- is payable by the open access consumers, has now, sought to levy a portion of the said additional surcharge from the non-open access consumers, because of the impugned order passed by the Joint Electricity Regulatory Commission. It is the respectful submission of the appellant that the extra amount of around Re. 1/- per unit is not payable by the appellant and such the action of the Respondent No.2 in passing on the burden, is against its own contentions and completely unfair and illegal. True copy of the bills raised by the Respondent No.2 on the members of the Appellant as well as the calculation, levying Re.1/- per unit that was not allowed to be recovered from the open access consumers, are annexed herewith and marked as **Annexure-C and D** respectively.
5. It is humbly submitted that the Joint Electricity Regulatory Commission has further erred in directing that the

additional surcharge would be levied only from 1<sup>st</sup> of October 2016, whereas the additional surcharge was payable, as per actuals, from April 2015. The Joint Electricity Regulatory Commission has given no reasons as to why the additional surcharge shall not be payable from April 2015. It is to be noted that the additional surcharge levied upon the open access consumers is only towards recovery of fixed charges that had to be paid by Respondent No.2 to the power generators in respect of power procured only for open access consumers. As such, the recovery has to be allowed from the date it fell due. The Joint Electricity Regulatory Commission has thus erred in law as well as facts while allowing additional surcharge with effect from October 2016.

6. It is humbly submitted that the manner of the recovery of the said Re.1 per unit from the non-open access consumers by the Respondent No.2 is also without any legal basis. The Respondent No.2 has, incorrectly, used the FPPCCA formula for passing on the amount disallowed by the Joint Electricity Regulatory Commission, on to the non-open access consumers. It is submitted that such a practice is violative of the FPPCA formula framed up by the Hon'ble Commission. It is submitted that the FPPCA formula is applied only upon the event of a spike or dip in the fuel and power cost and as such cannot be used and applied for levying an amount that primarily arose because of the non-



utilization of power and non-payment of fixed cost by the open access consumers.

**8. (b) QUESTIONS OF LAW:**

1. Whether the Commission has not erred in concluding that the additional surcharge to be levied from the open access consumers shall be at the rate of Rs. 0.47/- per unit?
2. Whether the Commission has erred in holding that the additional surcharge to be levied from the open access consumers shall be with effect from 1<sup>st</sup> October 2016 and not from April 2015?
3. Whether the disallowed/un-recovered fixed cost which are supposed to be recovered as energy charges from the open access consumers can be passed on to the non-open access consumers?
4. Whether the disallowed/un-recovered fixed cost which are supposed to be recovered as energy charges from the open access consumers can be passed on to the non-open access consumers by way of increase in FPPCA charges?

**9. GROUNDS WITH LEGAL PROVISIONS:**

1. It is humbly submitted that the Respondent Commission has erred in calculating the additional surcharge to be levied from the open access consumers to be just Re.0.47/- per unit. The Hon'ble Commission has not mentioned or detailed as to how the calculation submitted by Respondent No.2, fixing the additional surcharge at Re.1.41/-, is wrong.

It is apposite to note that the impugned order does not discuss in detail or give explanation with that regard.

2. It is humbly submitted that the Respondent No.2 has grossly erred in passing on the burden, arising on account of difference in the additional surcharge sought for by the appellant and the approved additional surcharge of the Joint Electricity Regulatory Commission, to the members of the appellant.
3. It is submitted that the non-open consumers should not be burdened with the additional surcharge liability. Open access and non-open access consumers are two distinct categories and interests of both should be balanced so that advantage of one should not become disadvantage of another. In non-open access categories, consumers are mainly MSME industrial units who are backbone of Indian economy and provide huge contributions in the form of tax to the exchequer. All advantages/benefits and conditions, which they are enjoying today will be reversed and as such the burden will have a huge impact in the financials of the industries which employ thousands of workers.
4. It is respectfully submitted that the levy of under recovered fixed charges which are supposed to be recovered through energy charges from the open access consumers are now passed on to the non-open access consumers by the Respondent No.2 by way of increase in FPPCA. As such, the levy of such charges by way of FPPCA is clearly and

blatantly in violation of the FPPCA Formula and the conditions contained therein, as specified by the Joint Electricity Regulatory Commission.

5. It is respectfully submitted the FPPCA formula can only be applied if there is a spike in the power purchase charges due an increase in the fuel prices. It is very clear from the facts of the case that the Respondent has not faced any additional burden towards purchase of power for the previous period. The only lawful course of action available to the Respondent for imposing any charges under FPPCA under the scheme of the Electricity Act as well as the Tariff Regulations, 2009, is to approach the Hon'ble Commission in an appropriate Tariff Petition, which has not been done in the present case.

**10. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT.**

The appellants declare that they have not filed any writ petition or suit regarding the matter in respect of which this appeal is preferred before any court or any other authority nor any such writ petition or suit is pending before any of them.

**11. SPECIFY BELOW EXPLAINING THE GROUNDS FOR SUCH RELIEF (S) AND THE LEGAL PROVISIONS, IF ANY, RELIED UPON.**

The grounds and legal provisions have been set out in paragraph 9.

**12. DETAILS OF INTERIM APPLICATION, IF ANY, PREFERRED ALONG WITH APPEAL.**

The appellant is filing an application for interim stay of the operation of the impugned order dated 15.09.2016 passed by the 1<sup>st</sup> Respondent Commission till the disposal of the appeal. The appellants crave leave to refer to the contents of the said interim application.

The appellant is filing an application seeking condonation of delay.

**13. DETAILS OF APPEAL/S, IF ANY PREFERRED BEFORE THIS APPELLATE TRIBUNAL AGAINST THE SAME IMPUGNED ORDER/DIRECTION, BY RESPONDENTS WITH NUMBERS, DATES... AND INTERIM ORDER, IF ANY PASSED IN THAT APPEAL (IF KNOWN).**

The Appeal No. 288/2016 has been filed by Association of Polyester Continuous Polymerization Industries of DNH.

**14. DETAILS OF INDEX.**

An index containing the details of the documents in chronological order relied upon is enclosed.

**15. PARTICULARS OF FEE PAYABLE AND DETAILS OF BANK DRAFT IN FAVOUR OF PAY AND ACCOUNTS OFFICER, MINISTRY OF POWER, NEW DELHI, IN RESPECT OF THE FEE FOR APPEAL.**

Name of the Bank: Vijaya Bank, Mayur Vihar Phase I Branch,  
Delhi, payable at New Delhi

D.D. No.242901 for Rs.1,05,325/- dated 03.12.2016.

**16. LIST OF ENCLOSURES:**

A detailed index including the annexures has been filed along with the Appeal.

**17. WHETHER THE ORDER APPEALED AS COMMUNICATED IN ORIGINAL IS FILED? IF NOT, EXPLAIN THE REASON FOR NOT FILING THE SAME.**

No. The certified copy of the impugned order could not be obtained by the appellant since the appellant was constrained to file this appeal only on the wake of the invoices issued by the Respondent No.2 passing on the burden of the additional surcharge on open access consumers on to the appellants.

**18. WHETHER THE APPELLANT/S IS READY TO FILE WRITTEN SUBMISSIONS/ARGUMENTS BEFORE THE FIRST HEARING AFTER SERVING THE COPY OF THE SAME ON RESPONDENTS.**

YES

**19. WHETHER THE COPY OF MEMORANDUM OF APPEAL WITH ALL ENCLOSURES HAS BEEN FORWARDED TO ALL RESPONDENTS AND ALL INTERESTED PARTIES, IF SO,**

**ENCLOSE POSTAL RECEIPT/COURIER RECEIPT IN  
ADDITION TO PAYMENT OF PRESCRIBED PROCESS FEE.**

NO

**20. ANY OTHER RELEVANT OR MATERIAL PARTICULARS  
/DETAILS WHICH THE APPELLANT(S) DEEMS NECESSARY  
TO SET OUT:**

The Appellant craves leave of the Tribunal to refer and rely upon such other relevant or material particulars/ details which deem necessary and proper at the time of hearing of the present Appeal.

**21. RELIEFS SOUGHT**

In view of the facts mentioned in para 7 above, points in dispute and questions of law set out in para 8, the appellant prays for the following relief(s):

- a) Allow the instant appeal setting aside the impugned order dated 15.09.2016 passed by the Hon'ble Commission in Petition No.205/2016 to extent mentioned in the appeal;
- b) Grant cost of this appeal; and
- c) To grant such other and further reliefs as this Hon'ble Tribunal deems fit to pass under the facts and circumstances of the case, in the interest of justice.

Dated at this day of

**Counsel for Appellant**

**Appellant**

**DECLARATION BY APPELLANT**

The appellant(s) above named hereby solemnly declare(s) that nothing material has been concealed or suppressed and further declare(s) that the enclosures and typed set of material papers relied upon and filed herewith are true copies of the original(s)/fair reproduction of the originals/ true translation thereof.

Verified at            on this            day of            , 2016

**Counsel for Appellants**

**Appellant**

**VERIFICATION**

I, R. B Shelke, S/o Bhaskar Rao Shelke, aged 56 years, working as Hon. Secretary of Federation of Industries Associations, Silvassa, Occupation: Business, do hereby verify that the contents of the paras \_\_\_\_ to \_\_\_\_ are true to my knowledge and derived from the official record and paras \_\_\_\_ to \_\_\_\_ are believed to be true on legal advice and that I have not suppressed any material facts

Date:

Place New Delhi

Signature of the Appellant/Hon. Secretary

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT  
NEW DELHI

(APPELLATE JURISDICTION)

APPEAL NO:                      OF 2016

IN THE MATTER OF:

Federation of Industries Associations, Silvassa    ....**APPELLANT**  
VERSUS

Joint Electricity Regulatory Commission & Anr **RESPONDENT**

**AFFIDAVIT**

I, R. B Shelke, S/oBhaskar Rao Shelke, aged 56 years, working as Hon. Secretary of Federation of Industries Associations, Silvassa, Occupation:Business, do hereby solemnly affirm and declare as under:

1. I say that I am the Hon. Secretary of the Appellant, Federation of Industries Associations, Silvassa and am conversant with the facts of the present case.
2. I say that I have read the contents of the above appeal filed by the Appellant against the impugned order dated 15.09.2016 passed by the Joint Electricity Regulatory Commission and I have understood the contents of the same. I say that the facts contained in the appeal are based on the true records maintained by the appellant in its ordinary course of business and believed by me to be true. The submissions made are on the basis of advice received and believed by me to be true.
3. I say that the Annexures filed with the memorandum of appeal are true and correct copies of their originals.

DEPONENT

VERIFICATION

I, the deponent above named, do hereby verify that the contents of the above affidavit to be true to the best of my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi, on this the \_\_\_\_<sup>h</sup>, day of December, 2016

DEPONENT



**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
AT NEW DELHI  
(APPELLATE JURISDICTION)**

**APPEAL NO.                      OF 2016**

**IN THE MATTER OF:**

Federation of Industries Associations, Silvassa  
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**...RESPONDENTS**

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2.	<b>ANNEXURE A</b> The true copy of the impugned order in Petition No 205/2016 passed by the Joint Electricity Regulatory Commission dated 15.09.2016.	
3.	<b>ANNEXURE B</b> True copy of the Petition No. 205/2016 filed by the Respondent No.2 before the Joint Electricity Regulatory Commission	

4.	<b>ANNEXURE C Colly</b> True copy of the bills raised by the Respondent No.2 on the members of the Appellant.	
5.	<b>ANNEXURE D</b> True copy of the calculation, levying Re.1/- per unit that was not allowed to be recovered from the open access consumers.	

VERITAS LEGIS  
Advocates & Consultants  
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Suit No.10, G.F. Hans Bhawan,  
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