

**BEFORE THE MAHARASHTRA ELECTRICITY REGULATORY COMMISSION,
MUMBAI**

CASE NO. : 182 OF 2014

IN THE MATTER OF:

Petition for submission of Revised Network Rollout Plan in compliance to the direction of the Hon'ble Commission in Case No. 90 of 2014 and the direction of the Hon'ble ATE in Appeal Nos. 229 and 246 of 2012

AND IN THE MATTER OF:

Tata Power Company Limited,

Bombay House, 24, Homi Mody Street,

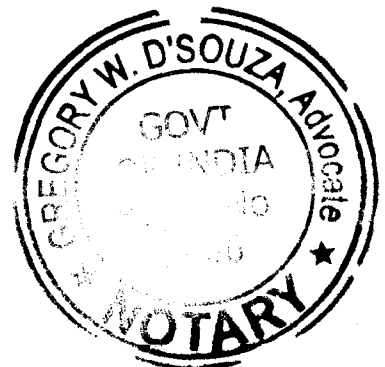
Mumbai – 400 001

--- Petitioner

**AFFIDAVIT VERIFYING BEST'S REPLY TO TPC'S SUBMISSIONS ON
OBSERVATIONS, FINDINGS AND DIRECTIONS OF HON'BLE APTEL'S
JUDGMENT DATED 28.11.2014**

I, Rajendra Dadaram Patsute, son of Dadaram Patsute, aged 48 years, having my office at BEST Bhavan, BEST Marg, Colaba, Mumbai – 400 001 do solemnly affirm and state as follows:

1. I am Chief Engineer (Regulatory) of the Brihanmumbai Electric Supply and Transport Undertaking of Municipal Corporation of Greater Mumbai (i.e. BEST). I am duly authorized and competent to make this Affidavit.




2. The statements made in the Reply, are based on information and / or record maintained by BEST in its usual course of business, which I believe to be true.

3. I say that there are proceedings pending before (i) Hon'ble APTEL under the Appeal No. 243 of 2014, and (ii) Hon'ble Supreme Court of India under the Civil Appeal No. 4074 of 2015 and the Civil Appeal (Diary) No. 11771 of 2015, wherein inter alia TPC and BEST are parties and wherein issues arising and / or relief sought are relevant to the issues arising in the present matter pending before the Hon'ble Commission.

07 SEP 2015

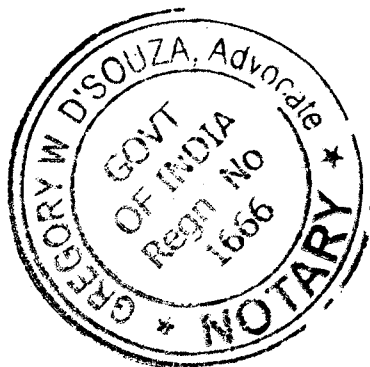
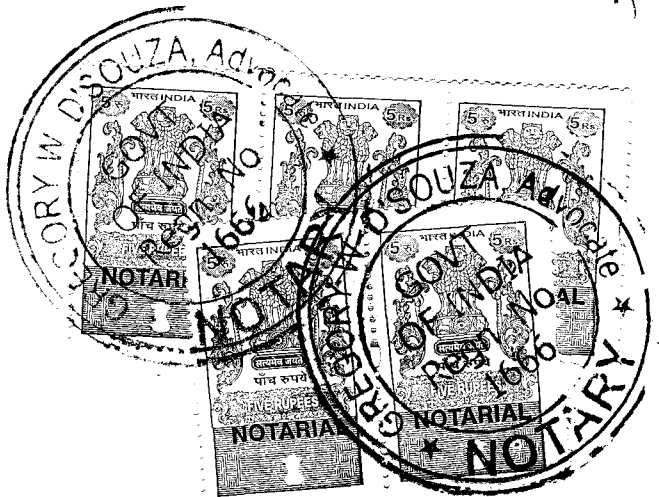
Solemnly affirmed at Mumbai on this _____ day of _____, 2015 that the contents of this affidavit are true to my knowledge, no part of it is false and nothing material has been concealed therefrom.


Deponent

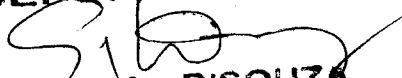
Identified before me

Place: Mumbai

Date: 07 SEP 2015



BEFORE ME


GREGORY W. D'SOUZA
ADVOCATE & NOTARY
Kalpak Estate Bldg. No. B-11
Shop No. 40, Antop Hill
MUMBAI-400 037

07 SEP 2015

**BEFORE THE MAHARASHTRA ELECTRICITY REGULATORY COMMISSION,
MUMBAI**

CASE NO. : 182 OF 2014

IN THE MATTER OF:

Petition for submission of Revised Network Rollout Plan in compliance to the direction of the Hon'ble Commission in Case No. 90 of 2014 and the direction of the Hon'ble ATE in Appeal Nos. 229 and 246 of 2012

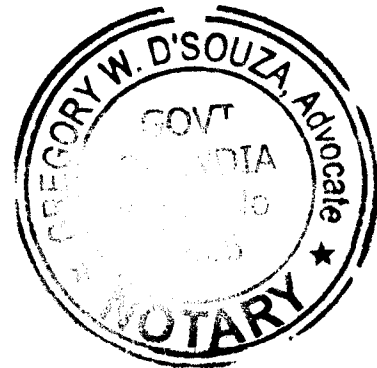
AND IN THE MATTER OF:

Tata Power Company Limited,
Bombay House, 24, Homi Mody Street,
Mumbai – 400 001

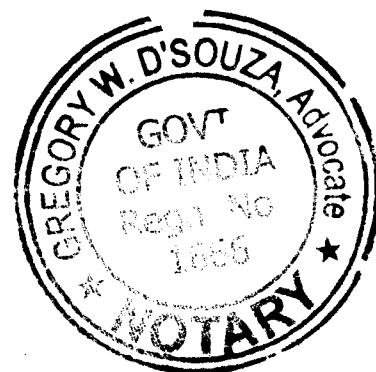
--- Petitioner

**BEST'S REPLY TO TPC'S SUBMISSIONS ON OBSERVATIONS, FINDINGS AND
DIRECTIONS OF HON'BLE APTEL'S JUDGMENT DATED 28.11.2014**

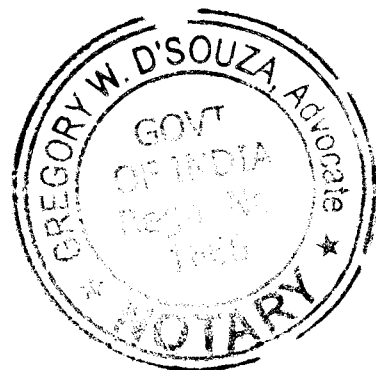
1. At the outset, BEST denies each and every averment made in the Submissions of Tata Power Co. Ltd. (i.e. TPC) on observations, findings and directions of Hon'ble APTEL's Judgment dated 28.11.2014, which is contrary to or inconsistent with that which is stated herein, and humbly submits that nothing in the said Submissions of TPC be deemed to be admitted by or on behalf of BEST, for want of specific traverse. BEST clarifies that the averments and submissions made herein are in alternative and without prejudice to one another. BEST also craves leave to file an Additional Affidavit, if necessary.



2. At the further outset, it is clarified that BEST has filed its Reply, Additional Reply and Further Reply in the Case No. 182 of 2014. BEST reiterates that the contents of the said Reply, Additional Reply and Further Reply, and submits that the same be deemed to be and are part of this Reply. In that regard, BEST craves leave to refer to and rely upon the said Reply, Additional Reply and Further Reply, if necessary.
3. It is pertinent that TPC under its Submissions has estimated the network rollout required (i) in the island city of Mumbai on the basis of the Order dated 14.08.2014 made by MERC in Case No. 90 of 2014, and (ii) in the Mumbai suburbs on the basis of the Judgment dated 28.11.2014 passed by Hon'ble APTEL in the Appeal Nos. 246 and 229 of 2012, pursuant to the Daily Order dated 12.08.2015 made by MERC in this Case No. 182 of 2014 requiring different treatment by TPC of the area common with BEST vis-à-vis the area common with RInfra. However, at the same time, TPC under its Submissions has illegally and malafide relied upon the Judgment dated 28.11.2014 passed by Hon'ble APTEL in the Appeal Nos. 246 and 229 of 2012, in proposing the network rollout by TPC in the island city of Mumbai. In this regard, BEST submits that TPC cannot arbitrarily substitute the requirements of the Order dated 14.08.2014 made by MERC in Case No. 90 of 2014 and the Distribution License No. 1 of 2014 granted on 14.08.2014 by MERC to TPC, with the requirements of the Judgment dated 28.11.2014 passed by Hon'ble APTEL in the Appeal Nos. 246 and 229 of 2012, to sub-serve the ulterior motives of TPC.



4. In the circumstances, BEST submits that the said Judgement dated 28.11.2014 is neither applicable nor relatable to BEST or its area of supply. Hence, the reference to or reliance upon the said Judgment dated 28.11.2014 by TPC in proposing its network rollout in the island city of Mumbai, is clearly malafide and misconceived.
5. Also, alternatively and without prejudice, BEST submits that the said Judgment dated 28.11.2014 of Hon'ble APTEL required TPC to create or rollout a distribution network in parallel to an already existing distribution network, only if such creation or rollout of distribution network in parallel by TPC would improve the reliability of supply of electricity and benefit the consumers of electricity. Furthermore, the said Judgment dated 28.11.2014 of Hon'ble APTEL requiring TPC to extend supply to new consumers who seek connection from TPC, would be applicable and relevant only to a consumer in or about whose premises there does not exist / subsist any distribution network whatsoever. Therefore, TPC cannot extend supply to consumers in or about whose premises there already exists and subsists a reliable distribution network.
6. Alternatively and without prejudice, BEST states that a bare perusal of the Judgment dated 28.11.2014 passed by Hon'ble APTEL in the Appeal Nos. 246 and 229 of 2012 (and in particular Paras 58 to 61 and 80 thereof), clearly makes the following requirements of the Rollout Network Plan of TPC :-



- (i) the Rollout Network Plan of TPC should disclose whether there are practical or physical constraints in rollout of distribution network,
- (ii) in case of such practical or physical constraints, the Rollout Network Plan of TPC should disclose the geographical areas where there are such practical or physical constraints in rollout of distribution network,
- (iii) the Rollout Network Plan of TPC should disclose whether there is already a subsisting distribution network of a pre-existing distribution licensee,
- (iv) in case of such subsisting distribution network, the rollout plan of TPC should disclose and demonstrate that the creation or rollout of a distribution network in parallel by TPC is necessary to improve the reliability of supply of electricity and benefit the consumers of electricity,
- (v) the Rollout Network Plan of TPC should disclose whether there are any premises of new consumers, in or about which there is not any distribution network,
- (vi) in case of such premises of the consumers, the Rollout Network Plan of TPC should disclose the backbone distribution network and last mile connectivity from such backbone distribution network, for extension of supply of electricity to the premises of such new consumers,
- (vii) the Rollout Network Plan of TPC should not selectively create or rollout the distribution network of TPC.

However, the Revised Network Rollout Plan submitted by TPC does not at all state, much less specify :-

- (a) the subsisting distribution network of a pre-existing distribution licensee,

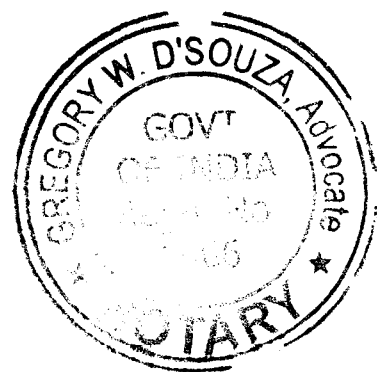


- (b) as to how the subsisting distribution network of a pre-existing distribution licensee is not reliable,
- (c) as to how the creation or rollout of distribution network in parallel by TPC would improve the reliability of supply of electricity and benefit the consumers of electricity,
- (d) any premises of new consumers, in or about which there is not any distribution network,
- (e) as to the backbone distribution network and last mile connectivity from such backbone distribution network, for extension of supply of electricity to the premises of such new consumers,
- (f) as to how the creation or rollout of distribution network of TPC is to provide equal access to all categories of consumers of electricity, and in particular to low end consumers having consumption between 0-300 units.

8. It is pertinent that the Revised Network Rollout Plan submitted by TPC under the present Case No. 182 of 2014 is ex facie :-

- (i) not providing for an adequate or timely rollout of distribution network.

The said Network Rollout Plan merely provides for creation and rollout of an independent distribution network in a phased manner over a period of 7 years (i.e. FY 2014-15 to FY 2020-21). It is significant that such phased development of distribution network is contrary to and in violation of the Electricity Act, 2003, and the Rules and Regulations made thereunder, and in particular of the indispensable requirement of the Universal Service Obligation. It is also significant that such phased development of distribution



network is only likely to result in selective development of distribution network for “cherry picking” of lucrative consumers of electricity.

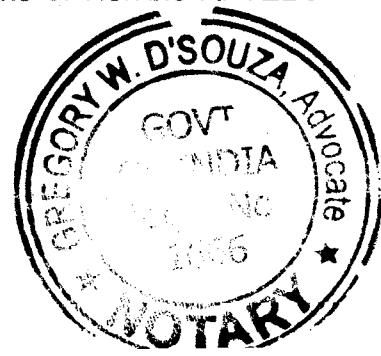
(ii) not conducive to level playing field and genuine competition.

The said Network Rollout Plan does not provide equal access to all categories of consumers of electricity, and in particular, for low end residential consumers having consumption between 0-300 units of electricity. The said Network Rollout Plan does not make any specific provision about a creation or rollout by TPC of a distribution network in slum areas and/or low end consumers of electricity.

(iii) not addressing / complying the directions issued and observations made under (a) the Order dated 14.08.2014 made in Case No. 90 of 2014 by MERC, and / or (b) the Judgement dated 28.11.2014 passed in Appeal Nos. 246 and 229 of 2012 by Hon'ble APTEL.

The said Order dated 14.08.2014 of MERC required TPC to submit a Revised Network Rollout Plan, which was cost effective, which provided equal access to all categories of consumers, which created a level playing field and which was optimal for the purpose of meeting the Universal Service Obligation in a time bound manner.

9. BEST submits that TPC in its submissions is malafide arrogating to itself the right to selectively develop network for supplying electricity to any type of new consumers, as well as the right to lay out duplicate network for supplying electricity to consumers of a pre-existing distribution licensee (under the guise of interpreting the observations, findings and directions of Hon'ble APTEL's



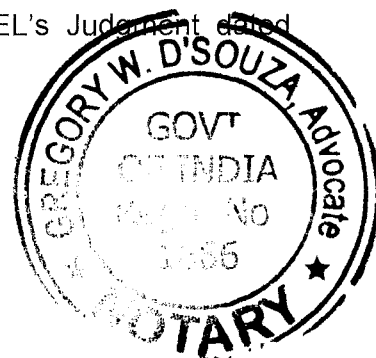
Judgment dated 28.11.2014), by misinterpretation of aforesaid Judgment dated 28.11.2014 of Hon'ble APTEL and / or provisions of the Electricity Act, 2003. BEST submits that such misinterpretation by TPC has been misused in the submissions of TPC to allege that new as well as existing consumers of Rlnfra and BEST are free to opt for or switchover to TPC. BEST submits that TPC has misinterpreted the provisions of the Electricity Act, 2003 in its submissions, to malafide enable selective development of distribution network by TPC for supplying electricity to any type of existing or new consumer. BEST reiterates that the said Judgment dated 28.11.2014 is ex facie relatable and / or specific only to the area of supply common to Rlnfra and TPC (i.e. suburban Mumbai and Mira-Bhayander). BEST reiterates that the said Judgment dated 28.11.2014 is neither applicable nor relatable to BEST or its area of supply.

10. With reference to Para 1 of TPC's submissions on interpreting the observations, findings and directions of Hon'ble APTEL's Judgment dated 28.11.2014, BEST craves leave to refer to and rely upon the Order dated 14.08.2014 made by MERC in Case No. 90 of 2014, as well as the Distribution License No. 1 of 2014 granted by MERC to TPC, to elicit the correct effect and interpretation thereof.
11. With reference to Para 2 of TPC's submissions on interpreting the observations, findings and directions of Hon'ble APTEL's Judgment dated 28.11.2014, BEST craves leave to refer to and rely upon the Revised Network



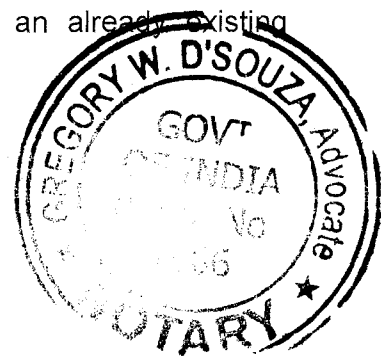
Rollout Plan submitted on 09.10.2014 by TPC under the Case No. 90 of 2014, to elicit the correct effect and interpretation thereof.

12. With reference to Para 3 of TPC's submissions on interpreting the observations, findings and directions of Hon'ble APTEL's Judgment dated 28.11.2014, BEST craves leave to refer to and rely upon the Judgment dated 28.11.2014 passed by Hon'ble APTEL, the Revised Network Rollout Plans submitted on 12.02.2015 and 06.08.2015 by TPC, to elicit the correct effect and interpretation thereof.
13. With reference to Para 4 of TPC's submissions on interpreting the observations, findings and directions of Hon'ble APTEL's Judgment dated 28.11.2014, BEST craves leave to refer to and rely upon the Daily Order dated 12.08.2015 made by MERC in this Case No. 182 of 2014, to elicit the correct effect and interpretation thereof.
14. With reference to Paras 5, 6, 7 and 8 of TPC's submissions on interpreting the observations, findings and directions of Hon'ble APTEL's Judgment dated 28.11.2014, BEST craves leave to refer to and rely upon case law on the *doctrine of precedent, doctrine of stare decisis, ratio decidendi and obiter dicta*, to elicit the correct effect and interpretation thereof.
15. With reference to Paras 9 to 21 of TPC's submissions on interpreting the observations, findings and directions of Hon'ble APTEL's Judgment dated



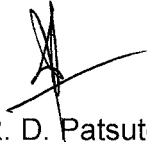
28.11.2014, BEST craves leave to refer to and rely upon the Order dated 22.08.2012 made by MERC in Case No. 151 of 2011 and the Judgement dated 28.11.2014 passed by Hon'ble APTEL in the Appeal Nos. 246 and 229 of 2012, to elicit the correct effect and interpretation thereof. BEST submits that TPC has misinterpreted and misapplied the said Judgment dated 28.11.2014 of Hon'ble APTEL and / or the Order dated 22.08.2012 made by MERC, to sub-serve TPC in cherry picking of consumers. In particular, BEST reiterates that the said Judgment dated 28.11.2014 is ex facie relatable and / or specific only to the area of supply common to Rlnfra and TPC (i.e. suburban Mumbai and Mira-Bhayander). BEST reiterates that the said Judgment dated 28.11.2014 is neither applicable nor relatable to BEST or its area of supply.

16. With reference to Paras 22, 23 and 24 of TPC's submissions on interpreting the observations, findings and directions of Hon'ble APTEL's Judgment dated 28.11.2014, BEST disputes the correctness of respective contents thereof. BEST disputes and denies the considered view of TPC that the Hon'ble APTEL has left the decision qua the development of the distribution network with multiple licensees in the licensed areas for the consideration of MERC while approving the Network Rollout Plan of TPC and / or further development / augmentation of Rlnfra's network. In particular, BEST disputes and denies the view of TPC that there is not any restriction under the said Judgment dated 28.11.2014 of Hon'ble APTEL in laying of parallel distribution network, if such network is laid down, (i) to supply to new consumer / connection, (ii) to cater to the demand made by an existing consumer or (iii) in consumer interest. BEST denies that TPC has duly or appropriately considered consumer interest in its Revised Network Rollout Plan. BEST reiterates that the said Judgment dated 28.11.2014 of Hon'ble APTEL required TPC to create or rollout a distribution network in parallel to an already existing



distribution network, only if such creation or rollout of distribution network in parallel by TPC would improve the reliability of supply of electricity and benefit the consumers of electricity. Furthermore, it is significant that the said Judgment dated 28.11.2014 of Hon'ble APTEL requiring TPC to extend supply to new consumers who seek connection from TPC, would be applicable and relevant only to a consumer in or about whose premises there does not exist / subsist any distribution network whatsoever. Therefore, TPC cannot extend supply to consumers in or about whose premises there already exists and subsists a reliable distribution network.

17. In the circumstances and for reasons aforesaid, BEST humbly submits and prays that the Revised Network Rollout Plan submitted by TPC deserves and should be discredited, and the TPC's Submissions on interpreting the observations, findings and directions of Hon'ble APTEL's Judgment dated 28.11.2014, ought to and should be discredited and dismissed by MERC with costs.


(R. D. Patsute)
Chief Engineer (Regulatory)
For Brihanmumbai Electric Supply
& Transport Undertaking

Place: Mumbai

Date: _____, 2015.

07 SEP 2015

