



## ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

(Regulatory Commission for the States of Andhra Pradesh and Telangana)

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From  
Commission Secretary,  
APERC, 4<sup>th</sup> & 5<sup>th</sup> Floors,  
# 11-4-660, Singareni Bhavan,  
Red Hills, Lakdi-ka-pul,  
Hyderabad 500 004.

To  
The Secretary (Power),  
Ministry of Power,  
Shram Shakti Bhawan, Rafi Marg,  
New Delhi 110 001.  
Fax No. (011)23717519.

Lr. No.APERC/Secy/F:State Reorganization/2014-5 Dated 21.08.2014

Sir,

Sub: APERC – AP Reorganisation Act, 2014 – Status of APERC – Reg.

Ref: 1. The Andhra Pradesh Reorganisation Act, 2014 [No.6 of 2014]  
2. G.O.Ms.No.3, Energy (Budget) Department, Dt.26.07.2014 of  
Government of Telangana  
3. G.O.Ms.No.35, Energy (Power.III) Department, Dt.01.08.2014  
of Government of Andhra Pradesh

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In Schedule Twelfth, Section (C) item 3 of the Andhra Pradesh Reorganisation Act, 2014 it is stated that the existing Andhra Pradesh Electricity Regulatory Commission (APERC) shall function as a joint regulatory body for a period not exceeding six months within which time separate SERCs will be formed in the successor States. This Section does not provide clarity on what will be the status of existing APERC after formation of separate SERCs in the successor States. In our Advisory#1, dated 15.04.2014 (copy enclosed), the Commission had advised the then existing Government of Andhra Pradesh a way forward. However, this could not be implemented.

In the G.O. 2<sup>nd</sup> cited, Government of Telangana have issued a notification constituting Telangana State Electricity Regulatory Commission (TSERC). Vide G.O. 3<sup>rd</sup> cited, Government of Andhra Pradesh have issued orders for constitution of Andhra Pradesh State Electricity Regulatory Commission [APERC]. None of these G.Os. speak about the status and future of the existing APERC.

In this connection, following issues relating to the existing APERC need to be fully addressed to ensure a smooth transition to the new regulatory regime.

- (i) There are several batches of Civil Appeals pending before the Hon'ble Supreme Court of India, where APERC is an appellant. The amount at stake in respect of these appeals is about Rs.500 crore. In addition, there are a number of individual cases relating to challenge to Regulations, Orders, Directions, etc., notified/issued by the Commission and disputes arising

P.T.O.

between licensees and generators, where APERC is the appellant. Though the downside financial impact of such cases is difficult to assess, it is imperative to defend these cases.

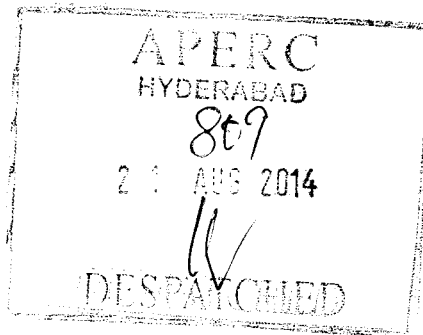
It is, therefore, essential that an ordered restructuring of the present APERC takes place consequent to the Andhra Pradesh Reorganisation Act, 2014 to ensure that the above cases do not abate & public interest is not jeopardized.

- (ii) The present APERC has 41 (forty one) full time regular employees at various levels. Their salary expenditure is Rs.48.86 lakh per month.
- (iii) The APERC has a pension liability on account of its former employees to the tune of Rs.1.30 lakh per month.
- (iv) The Chairman and Members were appointed for a period of 5 years. As per proviso under subsection 2 of Section 89 of the Electricity Act, 2003, the terms and conditions of service of the Chairman and Members shall not be varied to their disadvantage after appointment.
- (v) The APERC has certain existing assets and liabilities.

To ensure a smooth and coordinated transition to the new regulatory regime it is necessary that all these issues are holistically addressed in a manner consistent with the Electricity Act, 2003 keeping in view the public interest as well as the interest of consumers.

In this regard, I am directed to request that the Government of India may consider giving suitable directions u/s 92 & 108 of the Andhra Pradesh Reorganisation Act, 2014, to address all the above issues.

Encl.: As above



Yours faithfully,

  
21/8/14  
Commission Secretary

o/c  
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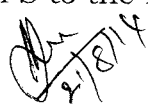
The Principal Secretary to Govt., Energy Department, Government of Andhra Pradesh, Andhra Pradesh Secretariat, Hyderabad 500 004.

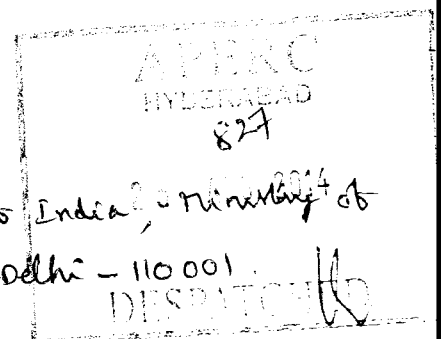
The Principal Secretary to Govt., Energy Department, Government of Telangana, Telangana Secretariat, Hyderabad 500 004.

PS to the Chairman/APERC

PS to the Member (A)/APERC

PS to the Member (R)/APERC

  
21/8/14  
The Director (O) & Member Secretary, Government of India, Ministry of Power, Shram Shakti Bhawan, Rabi Marg, New Delhi - 110 001.



# Andhra Pradesh Electricity Regulatory Commission

## Advisory 1 of 2014

### Introduction

1. Under Section 86(2) of the Electricity Act 2003, the State Commission shall advise the State Government on all or any of the following matters namely
  - i. promotion of competition, efficiency and economy in activities of the electricity industry;
  - ii. promotion of investment in electricity industry;
  - iii. reorganization and restructuring of electricity industry in the State;
  - iv. matters concerning generation, transmission, distribution and trading of electricity or any other matter referred to the State Commission by that Government.
2. The Andhra Pradesh Re-organization Act 2014 (hereinafter Act) mandates the creation of the two states of Andhra Pradesh and Telengana on 2nd June 2014. The existing electricity industry in the state now needs to be reorganized and restructured to cater to the requirements of the two states. While the Act does contain provisions relating to such restructuring and reorganization, these provisions appear diffuse and inadequate.
3. This Commission was not consulted by the Government when the bill was in the draft stage. Accordingly, and in compliance with its obligation under Section 86(2) (iii) of the Electricity Act, this Commission issues this advisory to the Government of Andhra Pradesh in the matter of reorganization and restructuring of the electricity industry in the State.
4. This advisory is primarily concerned with analyzing the impact of Sections 53, 68, 69, 71, 81, 82, 85 and 92 of the Act, as well as the Ninth and Twelfth Schedules to the Act. It points to some of the problems in the present schema of the Act and highlights the need for suitable clarifications/ amendments in the Act if the power sector is to be seamlessly partitioned between the two states of Andhra Pradesh and Telengana on 2nd June 2014. In the first instance, this Commission has identified six issues which may arise in the forthcoming reorganization of the power sector in Andhra Pradesh and suggests ways to move forward in each case.

### Issue # 1. Allocation of Power generated to the Four DISCOMs

#### The Issue

As per Article 2 of the Section C of the Twelfth Schedule to the Act, "existing power purchase agreements (PPAs) with the respective DISCOMS shall continue for both the



ongoing projects and the projects under construction". This implies that electricity available will be shared between the DISCOMS will be as per the provisions of the PPA. However, none of the PPA's signed by generators with DISCOMS allocate power to individual DISCOMS. The PPAs have been signed between GENCO and all the DISCOMS collectively. The power allocated to each DISCOM is nowhere mentioned in the respective PPA. The PPA only mentions the total power to be delivered by GENCO to all the DISCOMS collectively. For eg in the PPA for the KTPS project signed on 22-12-2009 between GENCO and the four Discoms collectively, this aggregate figure is mentioned as 100% of the available power. In the PPA for the Priyadarsini Jurala Project signed on 22-12-2009 between GENCO and the four DISCOMS collectively this aggregate figure is mentioned as 50%. The share of power to flow to DISCOMS individually has not mentioned anywhere in the PPA. The allocation of power between DISCOMS has been formalized only in the Third Transfer Scheme issued in GoMs 53 of Energy (Power III) Dept dated 28-04. 2008. Neither the substance nor the intent of this important Government Order has been mentioned anywhere in the Act.

#### Suggested way forward

Article 2 of Section C as it stands now is imprecise and cannot attain the objective it seeks to achieve. It needs to be amplified. If it is so desired, then the sharing provisions mentioned in GoMS 53 could be incorporated in either the Act or the Twelfth Schedule or both, after amending the inter se allocations to reflect the transfer of the two districts of Anantpur and Kurnool from CPDCL to SPDCL.

#### Issue # 2. Status of APERC

##### The Issue

Under Article 3 of Section C of the Twelfth Schedule, "*the existing Andhra Pradesh Electricity Regulatory Commission (APERC) shall function as a joint regulatory body for a period not exceeding six months within which time separate SERCs will be formed in the successor States.*" The implication is that the existing APERC will be dissolved and two new SERCs will be formed.

This proposal militates against three separate provisions of the EA Act. First, as per Section 82(2) of the EA, the State Commission shall be "*a body corporate with perpetual succession*" and thus it cannot be dissolved. Second, as per Section 89(2) of the EA, "*the terms and conditions of service of the members shall not be varied to their disadvantage after appointment.*" Third, under Section 90, no member shall be removed from office except on specified grounds, none of which are applicable to this case. Thus the law requires that both the APERC or its successor continue in perpetuity and its members continue till the expiry of their respective terms.

Designating a successor in interest to APERC is extremely important in view of the pending litigation in the Supreme Court where APERC has filed appeals against lower court orders. Such appeals may abate if the successor to APERC is not specifically identified in the Act, causing unintended and significant losses to stakeholders.

The three members in the existing APERC have been duly appointed under Section 82 of the Electricity Act 2003 (EA) for a term of five years. Their term lasts till 2017/ 2018 and their terms cannot be varied to their disadvantage.



### Suggested way forward

Article 3 of Section C of the Twelfth Schedule to the Act as it is framed now is nebulous and susceptible to litigation.

Section 83 (1) of the Act mandates that the Public Service Commission for the existing State of Andhra Pradesh shall on and from the appointed day, be the Public Service Commission for the State of Andhra Pradesh and a fresh Public Service Commission be constituted for the State of Telangana. A similar approach can be adopted for the Andhra Pradesh Electricity Regulatory Commission.

The following provision could be substituted for Article 3 of Section C of the Twelfth Schedule. *"The Electricity Regulatory Commission for the existing state of Andhra Pradesh shall on the appointed day, be the Electricity Regulatory Commission for the residuary State of Andhra Pradesh and a new Electricity Regulatory Commission shall be created for the State of Telangana. Till the Telangana Electricity Regulatory Commission is formed, the Electricity Regulatory Commission for the residuary State of Andhra Pradesh shall function as a joint Regulatory Commission for both the States."*

### Issue # 3. Sharing of Power generated by Central Generating Stations

#### The Issue

Article 6 of Part C of the Twelfth Schedule states that *"the power of the Central Generating Stations will be allotted in such ratio to the State of Telangana and the State of Andhra Pradesh based on the actual energy consumption of the last 5 years of the relevant DISCOMS in the respective successor states."*

Presently, there are three modes by which power generated by Central Generating Stations are allocated to all states including Andhra Pradesh. First, power generated by dedicated stations like NTPC Simhadri Stage 1 where 100% of the power is allocated to the State. Second, general stations where the share of AP is determined by a formulaic approach depending on state specific parameters. Third unallocated share of relevant CGS stations which remains at the disposal of the Government of India for allocation to the needy States.

While the power generated by dedicated stations can be shared as indicated in Article 6, it is debatable whether this approach can be used for general stations where the Ministry of Power uses a formula for determining the eligibility of each state and which may be difficult to override. The formulaic approach may have to continue for the two new states. The unallocated power of all the CG Stations is presently being used at the discretion of Government of India. Whatever portion of it was earmarked previously for Andhra Pradesh will now have to be earmarked to the two new states in the manner prescribed for allocation of such power.

### Suggested way forward

Article 6 of Part C as it stands is imprecise. It must be redrafted to clearly specify the sharing arrangements for each category of power generated by the central Generating



Generating Stations as per the sharing intention. For example the Article could say as under. Generation of dedicated stations will be allocated between the two states as per the third transfer scheme/ as per actual consumption over the past five years. Generation of other stations will be allocated by Ministry of Power as per their existing formula. Unallocated power will be distributed between the two states by the Ministry of Power as per its existing norms.

#### Issue # 4. Purchase of excess power

##### The Issue

Article 7 of Part C of the Twelfth Schedule states that *“For a period of ten years, the successor State that has a deficit of electricity shall have the first right of refusal for the purchase of power from the other successor State.”* This clause seeks to protect the interest of the deficit state facing a power shortage. However, this objective cannot be effectively achieved since the price at which this has to be offered has not been mentioned here. Thus it is possible for a surplus state to debilitate this right by making an offer to the deficit state at an unreasonable price.

##### Suggested way forward

Clause 7 does not provide the comfort it seeks to provide. It should be revised to incorporate the maximum price at which this power must be offered by the selling surplus state to the purchasing deficit state. This price could either be the cost of supply or the price at a designated power exchange for the relevant time block or the relevant price of the generating source being tapped in the merit order rating of the exporting surplus state for the relevant time block.

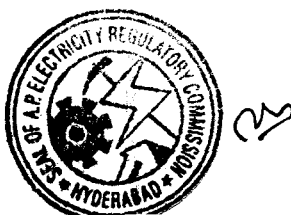
#### Issue No 5. Ownership of Hydro power Projects

As per Article 1 of Section C of the Twelfth Schedule, the units of APGENCO shall be divided based on geographical location of power plants. This implies that the State where the plant is located will be the complete owner of the plant. This is also mandated in Section 48(1) of the Act. Thus the state which owns the assets will also be entitled to the disposition of its assets including the disposition of the power generated by the plants located therein.

However, as per Article 85, hydro projects presently managed by APGENCO will be managed by the respective River Management Boards who will as per clause 8(b) be responsible for *“the regulation of supply of power generated to the authority in charge of distribution of power.”* Thus the effective ownership of hydro projects will not be as dictated by Section 48(1) and Article 1.

##### Suggested way forward

The provisions of Section 48(1), 85, and Articles 1 and 2 of Section C of the Twelfth Schedule should be redrafted using non obstante clauses depending upon the intention.



## Issue No 6. Treatment of Hydro power Projects

### The Issue

As per Article 85, river based projects will be managed by two River Management Boards to be set up. These river based projects will include multipurpose projects. Thus hydel power projects being presently managed by APGENCO will come under the management of the River Management Boards

As per sub clause 8(b) of this article, such River Management Boards are responsible for “*the regulation of supply of power generated to the authority in charge of distribution of power....*”

Such authority has not been defined in the Act

### Suggested way forward

The authority mentioned in Sub Clause 8(b) of Section 85 needs to be defined and the percentage share of the power generated allocated to the two states or four DISCOMs needs to be specified.

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