The Secretary
Telangana State Electricity Regulatory Commission
11-4-660, 5th floor
Singareni Bhavan, Red Hills
Hyderabad - 500 004 **December 6, 2023**

Respected Sir,

Sub : Submissions on draft TSERC (Multi-year tariff) Regulation, 2023

With reference to the public notice dated 26.11.2023, inviting comments/suggestions/objections on the subject issue, am submitting the following points for the consideration of the Hon'ble Commission:

1. **Explaining its initiative for the key changes proposed in the subject regulation, the Hon'ble Commission has maintained that it has endeavoured to balance the interest of consumers, generating companies, transmission licensees, distribution licensees and SLDC. The Hon'ble Commission has pointed out that "**the Regulation No. 1 of 2019 is effective upto 31.03.2024. With the objective of consolidating all the Tariff Regulations governing the determination of tariff along with suitably amending the provisions of the current Regulations based on the experiences in implementation of MYT Regulations in the previous periods, the Commission has framed the Draft Multi Year Tariff Regulation for the period commencing from 01.04.2024 onwards covering the Generation Business (Conventional), Transmission Business, Distribution Wheeling Business, Retail Supply Business, and SLDC for the period commencing from 01.04.2024 onwards.The Regulation No. 1 of 2019 is effective upto 31.03.2024. With the objective of consolidating all the Tariff Regulations governing the determination of tariff along with suitably amending the provisions of the current Regulations based on the experiences in implementation of MYT Regulations in the previous periods, the Commission has framed the Draft Multi Year Tariff Regulation for the period commencing from 01.04.2024 onwards covering the Generation Business (Conventional), Transmission Business, Distribution Wheeling Business, Retail Supply Business, and SLDC for the period commencing from 01.04.2024 onwards." **Based on the experience so far, the Hon'ble Commission should have explained the rationale for bringing about** "the key changes" **in the subject regulation, pointing out what went wrong and how the proposed changes would rectify the same. We have been making several suggestions over the years in our written submissions and during public hearings on various issues on the need for bringing about amendments to the regulations of the Hon'ble Commission to protect larger consumer interest. In the name of reforms, an endless process of initiatives and changes has been taking place in the power sector in the country and the undivided Andhra Pradesh and after its bifurcation in the state of Telangana. The regulatory process of ERCs has been governed and continues to be governed by the applicable laws, policies and directions of the government of India, with a number of pronounced dichotomies. As such, the regulatory process of the ERCs has its constraints and limitations, especially when there has been a hiatus between the pronounced objectives of the reforms and policies, directions, regulations and actual**

practice, and when the broader approach of the GoI tends to be pro-corporate, anti-state and anti-consumer, as has been confirmed by experience during the last three decades from the early 1990s when the neo-liberal reforms were introduced and continued in the power sector and other sectors in the country. That hike in power tariffs, shortage for power or availability of unwarranted surplus power, legalised black marketing through power exchanges, imposition of obligations to purchase renewable energy, unrelated to requirement and prudent balance between demand curve and power mix to the extent practicable, burgeoning burdens of true-up, policies of increasing tax burdens by the governments at the centre and in the state, failures of commission and omission of the GoI in allocating and ensuring timely supply of adequate quantum of fuels required by various generating stations and making adequate arrangements for transportation of fuels, on the one hand, and allowing coal companies to conduct e-auctioning of coal, on the other, forcing thermal power stations to import very high-cost coal, manipulation in terms and conditions and processes of tenders, and in PPAs, etc., continue to be unabated, despite substantial growth in the power sector. All these are interlinked with the policies of the GoI and state governments, with increasing tendency of pampering crony capitalism by the rulers. As such, one need not entertain the illusion that ERCs have the required authority to rectify the reform-related ills afflicting the power sector and ensure protection of larger consumer interest. Even when ERCs are headed by public spirited people, the impact of regulatory process is marginal, in terms of protecting larger consumer interest. Of late, the moves of the GoI are going in the direction of making ERCs instrumentalities for pushing ahead its pro-corporate, anti-state and anti-consumer reforms in a very crude and perverse manner, taking undue advantage of power being in the concurrent list of the Constitution and imposing its diktats on the states and ERCs, without taking any responsibility for the adverse consequences that have been arising as a result of implementing the same. As such, the level of efficiency of ERCs has to be judged on the basis of their performance to protect larger consumer interest, within limitations of their powers, to the extent possible. The objectives of, and clauses in, the subject regulation also have to be seen with this perspective.

2. **TSTRANSCO and TSDISCOMs are licensees of the Commission. The terms and conditions of the transmission and distribution licensees are different. Though interlinked for the purpose of generation, transmission and distribution of power, the nature and processes of generation, transmission and distribution are different. Generating companies, including TSGENCO, are not licensees of the Commission. With TSDISCOMs seeking and the successive Commissions giving consent for filing their ARR and tariff proposals annually, instead of control period-wise, for very valid reasons over the years in Andhra Pradesh, Telangana and other states, applicability of MYT system for retail supply business has been confirmed to be unwarranted and impracticable. While consents to PPAs between the DISCOMs and the generating companies are being given by the Commissions for the period of the PPAs, transmission, distribution and SLDC charges are being determined for a control period of five years, while retail supply tariffs for the DISCOMs are being determined annually. Many twists and turns have taken place in methodologies and periods**

adopted for filing claims for true-up/true-down for retail supply business of the DISCOMs, they continue to be control period-wise for transmission an distribution businesses and SLDC. As per terms and conditions in the PPAs to which the Commission gives consents, variations in fixed and variable costs for generation of power by different kinds of power plants, using different technologies and fuels and generation processes, are being factored and allowed. Different regulations with different parameters are being determined, issued and adopted by the ERCs for determining tariffs for generation, transmission, distribution and retail supply of power and SLDC. SERCs also are adopting regulations of CERC wherever they consider are required. Moreover, obligations under RPPO are being imposed on the DISCOMs. The Commission has not explained what has been wrong with its practices all these years relating to such divergent considerations and factors and how the proposed "consolidating all the Tariff Regulations" would correct deficiencies, improprieties and imbalances in the processes of policy-making, decision-making and regulatory process, and facilitate fulfilment of the objective stated by the Commission - **"**The Electricity Regulatory Commissions, being the custodian of the statute, have been bestowed with the responsibility to facilitate and promote competition, efficiency and economy in activities of the electricity industry." **By the way in which the Government of India has been indulging in a ever-changing and never-ceasing process of "reforms" in the power sector, often with mutually contradictory stances and dichotomies in its policies, notifications, directions, guidelines, etc., with scant respect to the requirements and opportunities to the states and their rights and powers to take their decisions to suit their specific requirements in the sector, it is evident that the ERCs also are being transformed into instrumentalities to push through its pro-corporate, anti-state and anti-consumer agenda ruthlessly. In such a situation, claims or expectations that the ERCs would be able to ensure the above-stated responsibilities would verge on credulity. It is like an impossible task of bringing about rationalization within the framework of irrationality. The explanatory note and the clauses in the subject regulation read broadly like paraphrasing of the contents in the policies, notifications, directions and guidelines of the GoI, without analysing their pros and cons, and elements of balance and imbalance. "Being the custodian of the statue," the Commission cannot be expected to delve deep into the real implications of the continuing initiatives of the GoI, except taking them for granted and following the same. The subject regulation also is in that direction, notwithstanding the fact that there are clauses and sub-clauses in the subject regulation which are balanced, protecting interests of consumers of power at large to some extent.**

3. **Several proposals in the subject regulation make it clear that the Hon'ble Commission should have sought/should seek views of the GoTS, TSTRANSCO and the DISCOMs on the subject regulation and make them public and hold public hearings on the subject issue. They relate to the interest of the state and its rights and powers, GoTS, the DISCOMs and TSTRANSCO as well, besides larger consumer interest. I request the Hon'ble Commission to consider the same and take appropriate decisions. Several clauses in the subject regulations have serious and far reaching complications and implications for the state, its power utilities and consumers at large. Pro-corporate**

proclivity is strikingly apparent in several clauses of the subject regulation, notwithstanding the claim of the Hon'ble Commission that it has endeavoured to balance the interests of different stakeholders. Involvement of pro-corporate private consultants in drafting the subject regulation is discernible, as was the case with Regulation 1 of 2019. The subject regulation needs to be studied in-depth and analysed, to make meaningful, reasoned and purposeful submissions in larger public interest. It takes considerable time. Hence, there is no need or urgency to push through the regulation in a hurry. We request the Hon'ble Commission to extend time by at least fifteen days for filing further submissions on the subject issue.

4. **It seems that, since the Hon'ble Commission wants to issue the subject regulation to come into force from the 1st April, 2024, the subject draft regulation is drafted and issued, inviting submissions from interested public belatedly. Since long-term load forecast, investment and business plans, procurement plans, etc., of the TSTRANSCO and TSDISCOMs are already reserved for orders of the Hon'ble Commission, multi-year tariffs for transmission and distribution businesses of the licensees may have to be issued based on such plans approved by the Commission. Similarly, ARR and tariff proposals of the DISCOMs for the year 2024-25 can be submitted based on the existing regulations only and the Hon'ble Commission also may have to issue RSTO accordingly. With change of government in the state in the post-poll scenario, the DISCOMs may be constrained to delay submission of ARR and tariff proposals. In any case, the Hon'ble Commission always retains power to i) issue practice directions, ii) power to amend regulations iii) power to remove difficulties and iv) power to deviate from the regulations for reasons to be recorded in writing, as has been the standard practice. In the subject draft, the first three provisions are included. We request the Hon'ble Commission to include the fourth provision also in the regulation.**

5. **Generators of power are not licensees of the Hon'ble Commission. If only the licensee DISCOMs enter into a power purchase agreement (PPA) with any generator of power, the question of the generating entity submitting capital investment plan and the Commission considering it does arise. Therefore, it should be made obligatory on the part of the DISCOMs concerned to submit the PPA for the consideration of the Hon'ble Commission, making the generating entity as a respondent. Then only the question of submission of capital investment plan by the generating entity linked to detailed project report and its considering by the Commission would arise. PPA and capital investment plan form the basis for determining tariff for power. The irresponsible approach of the DISCOMs maintaining stoic silence, without making their submissions, justifying the PPA/s they enter into, and their responses to proposals of the generating entities and submissions of objectors, during public hearings should not be allowed. In other words, for all new generating projects from whom the DISCOMs propose to procure power, PPA, capital investment plan, with a detailed project report, and determination of tariff should be taken up simultaneously by the Hon'ble Commission for its consideration by holding public hearings and issuing its orders. The subject regulation is not confined to on-going projects alone.**

6. **Selection of private generating entity for procurement of power by the DISCOMs shall be done through a real and transparent competitive bidding, ensuring level-playing field to bidders, leaving no scope for manipulations in terms and conditions of bidding, to ensure benefit of a wider participation of bidders and competition to the consumers of power. Procurement of power on long-term and medium-term basis should be from generating entities only. The DISCOMs should not be permitted to procure power from other entities acting as middlemen, even if they are trading entities of the public sector utilities and of a government, as the DISCOMs will have no involvement in selecting generating entities by such companies acting as middlemen or traders. There are several instances of manipulations in bidding processes and selecting generating entities by such middlemen organisations and legal litigations also are taking place. The TSDISCOMs themselves have been facing legal litigations on procurement of power from the Chattisgarh State Power Distribution Company Limited DISCOM which is acting as a middleman for supplying power, and tariff determined by Chattisgarh SERC and are facing the predicament of stoppage of supply of power under the PPA. All our submissions on the undesirability of entering into PPA with Chattisgarh DISCOM and the way it was selected through the MoU route with active involvement of the then Chief Minister and the kind of problems that would arise fell on the deaf ears of the GoTS, the DISCOMs and the then Hon'ble Commission. The DISCOMs are competent enough to invite bids and select generating entities for procurement of power through real competitive biddings, besides GoTS permitting TSGENCO to take up required power projects on priority basis by providing required support to it and taking effective steps for timely completion of projects with prudent costs.**

7. **It should be made obligatory on the part of the DISCOMs to enter into a PPA with a generating entity, after selecting it through real competitive bidding, before execution of project or its unit starts, and submit the same, along with capital investment plan and tariff proposals to the Hon'ble Commission for its consideration. Apart from requirement of power by the DISCOMs, reasonableness of capital cost of the project and tariff needs to be considered by the Hon'ble Commission simultaneously to take a holistic view, if it is not simply ratifying tariff based on tariff-based competitive bidding . It is all the more imperative in order to ensure timely completion of the project, imposing penalties for delay in execution of the project. If execution of a project is delayed, the DISCOMs may have to purchase power in the market at higher prices during the period of delay and incur avoidable additional expenditure which will be imposed on consumers under true-up or impose power cuts. Disallowance of additional capital cost, including interest during construction, does not compensate the DISCOMs. Similarly, failure of the generating entity to supply power at threshold level of PLF also should be penalised. Payment of fixed charges proportionate to scheduling of power at a lesser PLF also does not compensate the DISCOMs for purchasing power in the market due to failure of the generating entity. Here, too, a reasonable penalty should be imposed on the generating entity to compensate the DISCOMs. Just as the DISCOMs are obligated to pay fixed charges for power backed down as a result of their non-requirement, the generating entities also should pay reasonable penalty to the DISCOMs for their failure to generate and supply power at**

the threshold level of PLF when the DISCOMs require it. It is wrong to argue that imposing such a penalty on generators would be tantamount to penalising them doubly, because for lesser generation and supply of power they are not being paid fixed charges. If generators fail to generate and supply power fully or partly, they are not entitled to get fixed charges from the DISCOMs, because it is their failure. Non-payment of fixed charges for power which is not generated and supplied by the generators does not compensate the DISCOMs for purchasing power in the market at higher tariffs, thereby incurring avoidable additional costs and burdens solely on account of the failure of the generators concerned.

8. **In the subject draft, the Hon'ble Commission has proposed that "**notwithstanding anything contained in these Regulations, the Commission shall have the authority, either suo motu or on a Petition filed by the generating entity or licensee or SLDC, to determine its Tariff and Charges, including terms and conditions thereof." **Without the consent of the Hon'ble Commission to the PPAs concerned or its permission, the DISCOMs are not expected to purchase power from any generating entity or trader. If the licensee DISCOM or the generating entity with whom the former enters into a PPA does not come before the Hon'ble Commission with appropriate petitions, what is the basis, as well as need, for the Commission to determine tariff and charges, including terms and conditions thereof, suo motu? On what basis "the Commission shall have the authority" to do so? How such a questionable provision is incorporated in the subject draft is incomprehensible. Such an approach implies that the Commission cannot direct the licensees to comply with the subject regulation and come before it with a required petition in time for its consideration. Moreover, how can the Hon'ble Commission fulfil regulatory requirements for holding a public hearing, without receiving petitions, along with all the required information, from the licensee DISCOMs or the generating entity concerned? This clause needs to be deleted. This questionable approach is contrary to another clause (10.1 (a) and (b)) which says: "**The Commission shall, within one hundred and twenty (120) days from admission of the Petition, and after considering all suggestions and objections received from the public," issue a tariff order or reject the petition." **That the Hon'ble Commission failed to take up suo motu, despite having such authority, when the TSDISCOMs failed to submit their petitions for ARR and tariff proposals for certain years in the past, and issue retail supply tariff orders for the financial years concerned is a fact on record. The Hon'ble Commission also failed to make it clear that, if the DISCOMs do not submit their petitions for ARR and tariff proposals in time, or fail to submit the same at all, and continue to supply power as per tariffs determined by the Commission for earlier financial year, they would not be allowed to make claims under true-up for the financial year concerned to recover their revenue gap. Rather, the Commission allowed the DISCOMs to supply power as per tariffs of the earlier RSTO with retrospective effect for the FY concerned for which no petitions for ARR and tariff revision were filed by the DISCOMs and even allowed them to make true-up claims to recover revenue gap for that FY. For failure of the DISCOMs to submit their ARR and tariff proposals in time, imposing penalties for the period delayed is not enough.**

9. **While emphasizing that all future procurement of power shall be undertaken only through tariff based competitive bidding in accordance with guidelines notified by GoI, the Hon'ble Commission has proposed that, "**if the Licensee proposes to procure the power by a process other than that specified by the Competitive Bidding Guidelines, it shall, in its filing with the Commission, seek the consent of the Commission and demonstrate to the Commission's satisfaction that the proposed procurement is the preferred least cost option, with reference to the economic, technical, system and environmental aspects of commercially viable alternatives, including arrangements for reducing the level of demand. The Licensee shall describe the procurement procedure, proposed to be adopted, including the steps to be taken to ensure that the purchase is made on the best possible terms." **It is a highly questionable and unwarranted proposal. Even considering the various factors mentioned in the proposed clause, they can be included in terms and conditions of competitive bidding. Without competitive bidding, decisions taken based on such factors in highly generalised terms tend to be subjective to do undue favours to generators of the choice of the decision makers. All these factors are generalised and relative and any decision should be based on comparisons. Comparisons must be made between similar sources available and that must be based on competitive biddings only. Therefore, this clause should be deleted from the subject regulation.**

10. **The Hon'ble Commission has proposed that** "the power procurement plan already filed by the distribution licensee for the Control Period commencing from 01.04.2024, as on date of notification of this Regulation shall be deemed to have been filed under this Regulation." **The Commission has already held public hearings on power procurement plan, etc., for the 5th and 6th control periods. Those plans were prepared and filed as per the regulations of the Commission in force and submissions were made by interested stakeholders based on those regulations. Having completed the process of public hearing and reserved them for orders of the Commission, those plans should not be deemed to have been filed under the subject regulation. Therefore, we request the Hon'ble Commission to first issue its orders on procurement plan, long-term load forecast, etc. of the licensee DISCOMs and state electricity plan and investment plan filed by TSTRANSCO for the 5th and 6th control periods and then consider the subject regulation.**

11. **The Hon'ble Commission has proposed that "**prior approval of the Commission shall not be required for purchase of power from Renewable Energy sources at the generic/preferential tariff determined by the Commission for meeting its Renewable Power Purchase Obligation (RPPO)." **Such a whimsical proposal does not correspond to the claim of the Commission that it has endeavoured to balance the interest of consumers, generating companies, transmission licensees, distribution licensees and SLDC. It goes against competitive bidding. Moreover, generic/preferential tariff for renewable power has become redundant, with technological changes taking place and tariffs coming down substantially through competitive biddings over the years. The same applies to RPPO also. Even after a long period of about three decades when determination of generic/preferential tariffs for NCE/RE and RPPO were introduced and continued with the claimed view of encouraging generation and consumption of**

NCE/RE, their continuation is retrograde. Certainly, it is not based on merits, but on the diktats being issued by the GoI. We request the Hon'ble Commission to consider the following points made based on the experience so far and arguments and counter arguments on the issues, among others, and delete the above-quoted provision facilitating purchase of RE based on generic/preferential tariffs in the subject regulation:

a) **The purpose, as well as the process, for determining generic tariffs for different kinds of non-conventional energy, introduced as a part and parcel of reforms in the power sector in the past with a view to encouraging generation and consumption of NCE/RE, is outdated and its continuation unwarranted, in view of the fact that the process of competitive bidding is being adopted in the country, especially for purchasing solar and wind power. Earlier, when the tariffs for different kinds of NCE/RE used to be very high, in order to encourage NCE/RE, generic tariffs were being determined by Electricity Regulatory Commissions, based on various parameters, enabling the Discoms to enter into long-term power purchase agreements with units of NCE/RE. Also, the Commissions have been determining the minimum percentage of NCE/RE the Discoms should purchase out of their total sales of power under Renewable Power Purchase Obligation (RPPO) orders being issued by them periodically. The generic tariffs determined by the ERCs continue to be higher compared to the tariffs being discovered through competitive biddings in the country.**

b) **In the initial years of encouraging non-conventional energy, the Government of India, as a part and parcel of its reform process and policy approaches, determined uniform tariffs for different kinds of NCE/RE in the mid 1990s. A uniform tariff of Rs.2.25 per kwh with an annual escalation of 5% with 1994-95 as base year was introduced by the GoI for all kinds of NCE/RE. Subsequently, its policy approaches underwent many changes. Even the latest guidelines of GoI, providing for the Discoms purchasing power from wind power projects with installed capacities of less than 25 MW through feed in tariff to be determined by the concerned SERCs are guidelines only and not mandatory. Even after the experience for a long period of more than two and a decades in encouraging NCE/RE, continuance of generic tariffs has no basis for justification.**

c) **Whatever be the basis for various parameters and operating norms for determination of generic tariffs for NCE/RE, their relevance and justification cannot hold good, in view of ever changing market trends. Generic tariffs determined by ERCs for NCE/RE for a specific period have been losing their relevance and justification in view of the fact that fast-changing market conditions, with adoption of latest technologies available and improvements in efficiency of generating units, and the kind of tariffs being quoted in competitive biddings floated by the power utilities of the GoI and State Governments showing tremendous downtrend.**

d) **In view of the fact that GoI has been fixing and revising ambitious targets for adding of NCE/RE capacities in the country, and adoption of competitive bidding process, determination of generic tariffs for NCE/RE and allowing the Discoms to enter into**

long-term PPAs for purchasing the same based on such generic tariffs is an exercise with mutually contradictory approaches. In view of the minimum percentage of NCE/RE to be purchased by the Discoms as per RPPO orders being issued by the ERCs periodically and higher targets of NCE/RE capacities to be set up in the country, the approach of ERCs determining generic tariffs and the Discoms entering into PPAs to purchase power at such tariffs is counter-productive and negates the spirit of competitive bidding.

e) **Determination of generic tariffs for NCE/RE units, including wind and solar power projects, and the Discoms entering into PPAs based on such tariffs involve elements of discrimination. Those generators of NCE/RE power projects who can manage the powers-that-be to force the Discoms to enter into long-term PPAs with them based on generic tariffs would succeed and those who cannot manage the powers-that-be accordingly fall on the way side. In other words, such an approach provides an unhealthy opportunity to the powers-that-be to show undue favouritism to their chosen developers and ignore others in directing the Discoms to enter into, or not to enter into, PPAs with them, and it gives scope for serving vested interests.**

f) **Uniform generic tariffs cut at the roots of level-playing field in the sense that different generators of same kind of NCE/RE, for example, wind power projects, may adopt divergent technologies, with substantial differences in capital cost, efficiency in generation, etc. Such divergence naturally provides for divergence in costs of generation. It is not confined merely, for example, in the case of wind power units, to difference in wind velocity from area to area. Wind power units set up in the same area, with different technologies, may achieve different percentages of capacity utilisation factor, even when wind velocity for all of them is the same. In such cases, uniform generic tariff provides advantage to some and disadvantage to some other generators of wind power projects.**

g) **Competitive bidding, if transparent and without manipulations in terms and conditions, would ensure competitive tariffs and benefits to the end-users of NCE/RE, whereas generic tariffs won't ensure the same. Encouraging NCE/RE power units with smaller installed capacities, with generic tariffs to be determined by the ERCs and adopted by the Discoms for purchasing the same on long-term basis, should not be at the cost of consumers of power at large. If the GoI is really interested to provide some cushion to NCE/RE power plants with relatively smaller installed capacities to enable them to compete with plants with relatively larger installed capacities in the competitive biddings, it is open to it to provide required subsidies, etc., to smaller projects.**

h) **Simply because some private companies have set up or are setting up NCE/RE power projects in a particular State, it does not provide any right to them to demand the Discoms of that State to purchase the power generated by them. Conversely, there is no obligation on the Discoms to purchase the same, irrespective of their requirement for power and tariff being economical. Barring the obligations of the Discoms under RPPO order issued by the ERC concerned to purchase the minimum percentage of**

NCE determined therein, the Commissions cannot, and should not, force them to purchase power from NCE/RE units, including wind power projects, at generic tariffs determined by it.

i) The view that a feed in tariff that reflects the prevailing market price is necessary for the State to facilitate investment made already to be honoured and that the ERC concerned has to exercise its powers under Electricity Act, 2003, for that purpose raises several questions. First, the Commission's powers are confined to regulating power purchases by the Discoms, when the latter approach it for consents to PPAs intended for such purchases. Even then, the Commission has to examine three crucial aspects: 1. Whether such power is required by the Discoms for meeting demand. 2. Whether other options are available to the Discoms to purchase power from other sources at competitive tariffs, i.e., tariffs lower than the ones they proposed to purchase. 3. Whether real and transparent competitive bidding is followed by the Discoms to ensure that the benefits of reasonable and competitive tariffs accrue to their consumers. On its own, the Commission need not take cognisance of investments being made by private developers of power projects, including wind power projects, unless and until the Discoms propose to purchase power from those projects and seek its consent for the same. In other words, there is no obligation on the part of any State Government, its Discoms and the ERC to "honour" investments made or being made by private developers of power projects, ipso facto. Simply because private developers are investing for setting up wind power projects, the Discoms cannot, and should not, be compelled to "honour" such investments.

j) When AP Discoms filed a petition before APERC to curtail the control period for purchasing power from wind power units under generic tariffs up to 31.3.2017 and allow them to go in for competitive bidding, in the light of two orders issued suo motu by the Commission determining generic tariffs for wind power for subsequent periods at levels much higher than the ones being discovered through competitive bidding, APERC, after holding public hearing on the same, issued its order dated 13.7.2018 in O.P.No.5 of 2017 in which it held that the two orders issued by it suo motu determining generic tariffs shall be deemed to have ceased to be in force with effect from 1.4.2017. It further held that "the petitioners are at liberty to procure power through a transparent process of bidding in accordance with the guidelines for tariff based competitive bidding process for procurement of power from grid connected wind power projects formulated and issued by the Ministry of Power, Government of India, dated 08-12-2017 under Section 63 of the Electricity Act, 2003."

k) In the above-mentioned order, APERC held, inter alia, that "even if PPAs were entered into by the DISCOMs with the wind (power) generators they are not enforceable under law unless they are specifically approved by the Commission u/s 86(1) (b). As seen from the ARR approvals for FY 2017-18 & 2018-19 submitted by the DISCOMs, the State achieved surplus power generation, met and even exceeded the RPPO obligation and unless and until there is need to purchase power, the Commission is not obliged to approve the Power Purchase Agreements" (para 8.22).

When such is the case, the question of "honouring" investments made by private developers for setting up NCE/RE power units does not arise.

l) **Since the ERCs are not regulating sale of power by generators and the tariffs pertaining thereto, but regulating power purchase by the licensee Discoms, the petitions filed before them specifically praying for determination of generic tariff for NCE/RE power projects being set up by private companies are not a valid ground for the ERCs for determining generic tariffs. Unless and until the Discoms enter into PPAs with such developers and come before the ERC concerned seeking its consent to the same, the question of entertaining prayers for determination of tariff does not arise. In other words, the proposals and prayers of the Discoms, not of private developers, should weigh with the ERCs in considering such matters, subject to the three crucial aspects mentioned above, in order to protect larger consumer interest. When Telangana State ERC held a public hearing for determining generic tariff for wind power projects, based on a petition filed before it by a private company in pursuance of a judgement given by the High Court of Hyderabad, the TS Discoms submitted to the Commission that they would like to adopt the process of competitive bidding for purchase of NCE/RE and requested it to give a direction accordingly. The then Hon'ble Chairman of TSERC, Sri Ismail Ali Khan garu, asked the Discoms to file a petition accordingly.**

m) **It is high time the ERCs gave up the redundant and unwarranted practice of determining generic tariffs for NCE/RE, and allowing the Discoms to enter into PPAs with NCE/RE units for purchasing power based on such generic tariffs even for meeting their obligations under RPPO and directed them to go in for real and transparent competitive bidding, depending upon requirement of power to ensure ideal power mix to be in tune with changing demand curve to the extent possible technically.**

12. **For purchase of additional power, the Hon'ble Commission has proposed that the distribution licensee may undertake additional power procurement during the year, over and above the power procurement plan for the control period approved by the Commission,** when the sourcing of power from existing tied-up sources becomes costlier than other available alternative sources. **It has further proposed that** the distribution licensee can procure power from a new short-term source identified by it at a tariff that reduces its approved total power procurement cost, without the prior approval of the Commission. **However, the basis for deciding how cost of power from existing tied-up sources is costlier than that from alternative sources is left unexplained. Similarly, how to decide whether cost of procurement of power from a new short-term source reduces its approved total power procurement cost also is left unexplained. Under financial principles, the Hon'ble Commission has stipulated that the financial prudence with respect to revenue expenditure shall be assessed in terms of "**optimum purchase of power considering factors such as requirement of power, Merit Order Despatch, potential for earning additional net revenue based on the differential between the rate for purchase of power from different sources and the market rate for sale of surplus

power, if any." **The following points, among others, for prudence check need to be considered:**

a) **Even if power is available at relatively cheaper price from alternative sources compared to the tariff to be paid for power to be procured from tied-up sources under PPAs in force, purchasing power from such alternative sources would lead to backing down of capacity of the tied-up sources under PPAs in force, even under the principle of merit order dispatch. In such an eventuality, fixed charges to be paid for backing down capacity of the power plants of the tied-up sources should be taken into account for determining which power is cheaper. Backing down capacity of the plant with highest variable cost as per merit order dispatch principle comes into play when surplus power is available to the DISCOMs under PPAs in force. Such a backing down cannot prevent imposition of fixed charges on the DISCOMs, which, in turn, means on their consumers. The Hon'ble Commission is expected to examine whether the principle of merit order dispatch permits backing down of capacities of power plants under PPAs in force in order to purchase power from alternative sources on cost considerations. Fixed charges for backing down and price to be paid for power procured from alternative sources need to be taken into account to consider which power is cheaper. In other words, if fixed charges for backing down plus price to be paid for power procured from alternative sources is cheaper than the total tariff, i.e., variable and fixed charges to be paid to the plant whose capacity is backed down, then it will be beneficial to the consumers. Conversely, if total tariff to be paid to the plant backed down is cheaper than the price to be paid to alternative source for procuring power plus fixed charges to be paid to tied-up source under PPA in force for backing down its capacity, then procuring power from alternative source imposes additional burden on the consumers and as such, such purchase should not be permitted.**

b) **When power from alternative source is purchased, backing down capacity of a plant under PPA in force, apart from payment of fixed charges for the capacity backed down, other factors, with technical and financial implications for the DISCOMs and the thermal power plant/s backed down and grid integration would arise. The technical committee appointed by the Central Electricity Authority on study of optimal location of various types of balancing energy sources/energy storage devices to facilitate grid integration of renewable energy sources and associated, in its report submitted in December, 2017, explained in detail the problems associated with integration of renewable energy with the grid and backing down of thermal power in order to purchase RE. The report explained the problems and additional costs associated with adequacy cost, balancing cost and grid integration cost. In a nutshell, the adequacy cost is computed as a differential cost between weighted average RE tariff and the weighted average thermal variable cost. The balancing cost is due to increase in specific coal consumption and increased oil consumption while operating in ramped down condition; and reduced coal plant life, etc., due to frequent ramp up/ramp down or start/stop operations. The grid integration cost is due to the wasted evacuation and network infrastructure created for the < 25% PLF VRE plants. 75% of evacuation infrastructure remains underutilized and the fixed cost is pid unnecessarily by TRANSCO and to PGCIL by way of PoC charges. The TRNSCO**

charges are not included in the network expenditure. The APDISCOMS, in their counter dated 19.9.2023 in OP No.1-16 of 2019 and OP No.22-26 of 2019, have shown a tentative estimate of grid integration cost of absorbing VRE generation as Rs.2.30 per unit. If such purchases are made from outside the state, there will be additional costs for inter-state transmission charges and transmission losses. Apart from fixed charges for backing down, such additional costs and technical aspects also need to be taken into account when power is permitted to be procured from alternative sources, especially from RE units. Otherwise, it will turn out to be a superficial comparison, concealing the real impact of costs for purchasing power from alternative sources. Therefore, all relevant factors like the ones explained above need to be incorporated in the subject regulation for the purpose of determining which power is cheaper through realistic and holistic comparison.

c) "Potential for earning additional net revenue based on the differential between the rate for purchase of power from different sources and the market rate for sale of surplus power, if any," **cannot be considered as a parameter, because it is purely hypothetical. Such hypothetical parameters cannot foresee opportunities for, and ensure sale of, surplus power gainfully in the speculative market with any degree of certainty. Sale of surplus power depends on market conditions, i.e., availability of power and demand for it. Distribution licensees enter into PPAs to purchase power for meeting demand of their consumers, not to create and sell surplus power. If surplus power cannot be sold in the market profitably, or at least, with no profit no loss, the avoidable burden of fixed charges for backing down will be imposed on the consumers in the form of true-up claims and other costs linked with grid integration, etc., as explained above, on the DISCOMs and power plants whose capacities are backed down. One can understand availability of surplus power to the extent unavoidable due to the inherent technical constraints in the power system. But, decisions and orders allowing purchase of power from different sources under PPAs should not lead to availability of abnormal quantum of surplus power. The Commission has rightly said that "the long-term/medium-term procurement plan shall be a last cost plan based on available information regarding costs of various sources of supply." At the same time, due diligence is required in preparation and consideration of such a plan realistically to ensure an ideal power mix from different sources to be in consonance with fluctuating demand, especially peak demand, to the extent technically feasible and practicable so as to see that it does not lead to availability of unwarranted and avoidable surplus power. But, experience confirms that practice is contrary to this requirement, with a number of examples on record and the situation of availability of abnormal quantum of surplus power, on the one hand, and need for purchasing substantial additional power in the market at higher prices, on the other.**

13. **The Hon'ble Commission has proposed that** "where the Commission has reasonable grounds to believe that the agreement or arrangement entered into by the Distribution Licensee does not meet the criteria specified in clause 19.2 to clause 19.5, it may disallow any increase in the total cost of power procurement over the approved level arising therefrom or any loss incurred by the distribution licensee as a result, from being passed through to consumers" (clause 19.6). **That the way in which true-up claims for**

abnormal sums, which are several times higher than the impact of annual tariff hikes, have been made by the DISCOMs and allowed by the Commission over the years confirms that much needs to be done to improve efficiency and prudence in terms of a whole gamut of issues connected with the entire reform proces. When some of the grounds contained in the above-mentioned sub clauses are vague and questionable, leaving scope for divergent interpretations, as explained under point No.10 above, how does the Commission "believe" that there are "reasonable grounds" to disallow any increase in the total cost of power procurement over the approved level is a big question mark. It is simply "believe", not determine. The reasonable grounds must be specific and measurable. Moreover, it (such a disallowance) is simply "may," and it is a big may. "Shall" should be substituted for "may." Allowing the DISCOMs to purchase additional power, in some cases even without prior permission of the Commission, or giving them scope to create "reasonable grounds" to "believe" that their actions led to impermissible increase in the total cost of power procurement over the approved level and incurring of loss, and then disallowing such increase in cost or loss incurred from being passed through to consumers will put the DISCOMs in financial doldrums. Prevention is better than cure. Therefore, prevention should come into play effectively with due diligence when long-term procurement plans are prepared and approved, by stipulating and implementing stringent conditions effectively, with equally effective and timely prudence check in giving or rejecting consents to proposals for procurement of power and PPAs. Experience so far gives several examples as to how it should or should not be done, with an honest and objective assessment. The Hon'ble Commission may consider five percent reserve margin or spinning reserve.

14. **In connection with petition for true-up, the Hon'ble Commission has proposed that "**in case its payment obligations to other entities are not regularly met, the generating entity or licensee shall provide justification for such shortfall with reference to its cash flow statement:" **It baffles elementary commonsense as to what connection is there between claims for true-up and the licensees or generating entity failing in their payment obligations to other entities, and providing justification for the same. There is absolutely no justification for inclusion and consideration of such factors under true-up claims. If a generating entity or licensee fails to meet its payment obligations to other entities, consumers of power of the DISCOMs have absolutely nothing to do with such a failure. The same applies to the proposal of the Commission that "**the generating entity or licensee shall submit the Cost Audit Report along with the true-up Petition to justify the revenue expenses incurred as well as inventory management policies." **As the Commission is fully aware, that revenue expenses cannot be considered for true-up has been the standard regulatory practice of the Commission. Therefore, these two sub-clauses under 20.4(d) should be deleted from the subject regulation. Under clause 20.5(e), the Hon'ble Commission has proposed that "i**n case any scheme has not been commenced during the year despite the Commission's approval, detailed justification shall be submitted along with the Petition for True-up." **It should be true-down, instead of true-up, as the question of truing up non-expenditure relating to non-commencing of an approved scheme does not arise.**

15. **The regulation is silent about subsidy to be provided as agreed by the state government, while confining to obligations of generating company or licensee to make payments. In other words, recovery of dues to the licensees does not figure in the proposals of the Commission. Based on written commitment given by GoTS, in response to its communication, the Hon'ble Commission is finalising tariffs to various categories of consumers after factoring subsidy the government agrees to provide to consumers of its choice and issuing RSTO. If the government does not provide the subsidy it committed to, the Commission is directing the DISCOMs to collect tariffs as per cost of service or full cost tariffs to recover the component of subsidy from the subsidised consumers concerned. When a client, including a government, gives a commitment to a court of law, it s binding on it. When the government gives a commitment on providing subsidy to categories of consumers of its choice either directly or through the DISCOMs to the Commission, it shall be binding on the government to provide the same in time. Directing the DISCOMs to collect the subsidy component also from the subsidised consumers concerned, in case the government does not provide the subsidy it committed to would be tantamount to allowing the government to blatantly dishonour its commitment given to a quasi judicial body like the Hon'ble Commission. Over the years, we have been submitting to the successive ERCs to seek commitment of the state government on providing subsidy to categories of consumers of its choice in a legally and irrevocably binding manner, with reasonable interest for the period delayed, but to no avail. We once again request the Hon'ble Commission to seek and get commitment of the state government to provide subsidy to categories of consumers of its choice in a legally binding manner, with reasonable interest for the period delayed. We also request the Hon'ble Commission to make it clear to the DISCOMs that, if they cannot get the subsidy amount the state government agrees to provide to consumers of its choice in the form of a written commitment given to the Commission directly, or through the DISCOMs, the DISCOMs shall not collect the subsidy component as a part of tariffs from the consumers concerned and that they should pursue with the government to get dues of subsidy from it.**

16. **Under capital cost, the Hon'ble Commission has proposed that capital cost for a capital investment project shall include, inter alia, "i**nterest during construction and financing charges, on the loans (i) being limited to 75% of the funds deployed, in the event of actual loan in excess of 75% of the funds deployed, by treating the excess loan amount as equity, or (ii) being equal to the actual amount of loan in the event of the actual loan less than 75% of the funds deployed." **Treating a part of loan as equity would lead to undue benefit to the generating entity or licensee at the cost of consumers of power, if rate of RoE or RoCE is made applicable for such a component of loan. Generally, rate of RoE or RoCE being decided by the ERCs tends to be higher than the rate of interest on loans, as experience confirms. Therefore, if a part of loan is treated as equity, it should be stipulated that, for that part of loan only rate of interest shall be applicable, instead of rate of RoE or RoCE.**

17. **The Commission has further stipulated that capital cost also shall include "**any gain or loss on account of foreign exchange rate variation pertaining to the loan amount availed

during the construction period." **If a part of capital cost of a project or scheme contains foreign exchange in the form of loan or equity, the risks or benefits of variations in rates of foreign exchange vis a vis Indian Rupee should be borne or reaped, as the case may be, by the generating entity or licensee. Going by the trend of exchange rate variation between the US $ and Indian Rupee, it has been and continues to be one of weakening of the Rupee only. Therefore, the question of gain on account of foreign exchange rate variation does not arise. The proposal is manipulatory in nature to impose such additional burdens on consumers of power and ensure undue benefit to generating entity or licensee. What kind of monetary burden it would impose on consumers of power can be understood from the example of the Tuglaquian approach of the GoI in determining the price of natural gas produced and sold in the country in the US $. While the price in $ terms remained the same over the years, in Rupee terms it increased abnormally for natural gas with passing of time due to weakening of the Indian Rupee vis a vis the US $. In other words, such an arrangement facilitates imposition of burdens of risks on consumers and reaping of undue benefits by the generating company or licensee. If capital investment is made in foreign exchange for a business or project or scheme in India, risks or benefits of variations in foreign exchange rate are being accruing to the concerned entities and their consumers have nothing to do with it. This manipulatory sub-clause should be modified, making it clear that the impact of variations in foreign exchange rate shall be borne by the generating entity or licensee and that such impact shall not be included in capital cost. If a generating entity or licensee draws foreign exchange periodically during construction period, the capital cost in Indian Rupees vis a vis foreign exchange as incorporated in the detailed project report and approved by the Commission should be the basis for determining fixed charges and final. If variation in foreign exchange rate prevailing at the points of drawing loan or equity component approved to be invested in foreign exchange is taken into account to include in the capital cost during the period of construction, the overall capital cost and fixed charges determined based thereon would increase further, thereby imposing additional burdens on consumers during the period of PPA or useful lifespan of the entity, as the case may be. If investing a part of capital cost in foreign exchange as loan or equity, is risky for the generating companies or licensees, it is for them to face the risk or choose alternative avenues, without risks, for their capital investment. Imposing burdens of such risks on consumers of power would go against the spirit of competition, especially, when generating entities are selected through competitive biddings.**

18. **Relating to interest during construction (IDC) and incidental expenditure during construction (IEDC), the Hon'ble Commission has proposed that** "if the delay in achieving the COD is not attributable to the generating company or the transmission licensee, IDC and IEDC beyond SCOD may be allowed after prudence check and the liquidated damages, if any, recovered from the contractor or supplier or agency shall be adjusted in the capital cost of the generating station or the transmission system, as the case may be." **It should added that provided that such IDC and IEDC may be allowed after prudence check to the extent of the liquidated damages, if any, recovered from the contractor or supplier or agency, not in entirety. If the generating entity or licensee is supposed to be not responsible for delay in achieving the COD, the consumers are**

not at all responsible for such a delay. Therefore, the additional burdens that arise as a result of delay in achieving the COD shall not be allowed to be imposed on the consumers either directly or through the DISCOMs.

19. **The Hon'ble Commission has further proposed that,** "if the delay in achieving the COD is attributable either in entirety on in part to the generating company or the transmission licensee or its contractor or supplier or agency, in such cases, IDC and IEDC beyond SCOD may be disallowed after prudence check either in entirety or on pro-rata basis corresponding to the period of delay not condoned and the liquidated damages, if any, recovered from the contractor or supplier or agency shall be retained by the generating company or the transmission licensee, as the case may be.**" Here, "shall be" should be substituted for "may be." Moreover, in such cases, when liquidated damages, if any, recovered from the contractor or supplier or agency shall be retained by the generating company or the transmission licensee, as the case may be, they should be penalised appropriately to compensate the DISCOMs for the additional burdens the latter have to bear for purchasing power at higher prices in the open market or through exchanges during the period of delay in achieving the COD. Disallowance of IDC and IEDC during the period of delay in achieving COD does not compensate the DISCOMs for avoidable burdens in additional purchase of power at higher prices.**

20. **The Hon'ble Commission has proposed that,** "provided also that the loss to the generating company or licensee or SLDC on account of variations in capitalisation, in terms of variation in interest and finance Charges, Return on Equity, and Depreciation, shall be shared between the generating company or Licensee or SLDC and the respective Beneficiary or consumer in the manner stipulated by the Commission in its Order after prudence check." **Needless to say, for loss on account of the narrated factors, the respective beneficiaries or consumers are not responsible. Therefore, there is no justification in forcing the beneficiaries or consumers for sharing such a loss. As such, this sub clause should be deleted from the subject regulation.**

21. **Under additional capitalisation, the Hon'ble Commission has proposed that** "liabilities to meet award of arbitration or for compliance of directions or order of any statutory authority or order or decree of any court of law," inter alia, may be admitted as capital expenditure within the original scope of work. **The generating company or licensee is expected to execute the project or scheme, without violating law and applicable regulations, after getting all the required permissions, and strictly honour the agreements, if any, entered into. If that is the case, there would be no scope for liabilities to meet award of arbitration or for compliance of directions or order of any statutory authority or order or decree of ay court of law. Such liabilities arise, if only the generating company or licensee violates law, regulations and legally binding agreements. As such, for such liabilities, the failures of commission and omission of the generating company or licensee would be responsible squarely. Including such liabilities in the capital expenditure means imposing such burdens on the beneficiaries or consumers; it is against principles of natural justice and equity. Moreover, inclusion of such liabilities in capital cost would encourage the generating company**

or licensee to act in a way that leads to avoidable legal litigations and violations of legally binding requirements with impunity and impose consequential burdens on beneficiaries or consumers. Therefore, the sub clause, wherever it is incorporated in the subject regulation (clauses 22.1(iv), 22.2(i), 22.3(i)) should be deleted from the subject regulation, making it clear that such liabilities shall be borne by the generating company or licensee concerned. Sub clause 79.1(i), relating to distribution licensees, states that "all penalties and compensation payable by the Licensee to any party for failure to meet any Standards of Performance or for damages, as a consequence of the orders of the Commission, Courts, Consumer Grievance Redressal Forum, and Ombudsman, etc., shall not be allowed to be recovered through the Aggregate Revenue Requirement." **This balanced principle should be made applicable to generating companies also.**

22. **Under Renovation and Modernisation, the Hon'ble Commission has proposed that "w**here the generating entity or the transmission licensee, as the case may be, makes an application for approval of its proposal for renovation and modernisation (R&M), approval may be granted after due consideration of reasonableness of the proposed cost estimates, financing plan, schedule of completion, interest during construction, use of efficient technology, cost-benefit analysis, expected duration of life extension, consent of the beneficiaries or long term customers, if obtained, and such other factors as may be considered relevant by the Commission." **Here "consent of the beneficiaries or long term customers, if obtained," should be changed as "consent of the beneficiaries or long term customers that shall be obtained." Otherwise, such a stipulation would turn out to be a baloney, without any binding force. Moreover, as consumers at large will have to bear all such expenditures for R&M as a part of retail supply tariffs, the Hon'ble Commission should hold public hearings before issuing its orders on proposals of renovation and modernisation.**

23. **Regarding tax on return on equity, since the Hon'ble Commission has proposed substantial rate of return on equity, the generating company or licensee shall bear income tax pre-paid or post-paid or to be paid. Since RoE is being paid by the consumers as a part of retail supply tariffs, imposing the burden of income tax on RoE would be tantamount to penalising them for the amount they have already paid in the form of RoE. Moreover, rate of RoE has been and continues to be higher than the rate of interest. Income tax is to be paid by the entity or person who derives that taxable income, not by others. Therefore, we request the Hon'ble Commission to dispense with this obnoxious and iniquitous arrangement by incorporating a clause in the subject regulation that income tax on RoE and other taxable income of the generating entity or licensees shall be borne by it only and shall not be allowed as a pass through to be collected from consumers directly or indirectly.**

24. **Under clause 31.10, the Hon'ble Commission has stipulated that "**refinancing shall not be done if it results in net increase on interest." **To this it should be added – "including other costs associated with such refinancing."**

25. **Regarding foreign exchange rate variation, the Hon'ble Commission has proposed that "**32.2 The generating company or licensee shall be permitted to recover the cost of hedging of foreign exchange rate variation corresponding to the foreign debt, in the relevant year as expense, subject to prudence check by the Commission, and extra rupee liability corresponding to such variation shall not be allowed against the hedged foreign debt.

"32.3 To the extent that the foreign exchange exposure is not hedged, any extra rupee liability towards interest payment and loan repayment corresponding to the foreign currency loan in the relevant year shall be allowed subject to prudence check by the Commission, provided it is not attributable to such Generating Company or the Licensee or its suppliers or contractors."

These two sub clauses should be deleted from the subject regulation, for the reasons given under point No.14 above.

26. **Regarding carrying cost or holding cost, the Hon'ble Commission has proposed that** "the Commission shall allow Carrying Cost or Holding Cost, as the case may be, on the admissible amounts, with simple interest, at the weighted Draft TSERC (MYT) Regulation, 2023 Page 71 of 134 average Base Rate prevailing during the concerned Year, plus 150 basis points." **The Commission should stipulate specific binding time schedules for submission of true-up/true-down claims by the entities concerned and for disposing of the same by the Commission after holding public hearings. It would facilitate speedy disposal of such petitions which, in turn, would benefit the entities concerned to get what is due to them early, and the consumers in the form of avoiding carrying cost or holding cost for period of avoidable delay on claims to be permitted by the Commission. It should also be incorporated that the entities concerned shall pay true-down amounts permitted by the Commission to the consumers directly or through the DISCOMs with simple interest, at the weighted average base rate prevailing during the concerned year, plus 150 basis points.**

27. **Under petition for determination of generation tariff, the Hon'ble Commission has proposed, inter alia, that** "the generating entity shall file the Petition for determination of final Tariff for new Generating Station within six (6) months from the date of commercial operation of generating unit or stage or generating station as a whole, as the case may be, based on the audited capital expenditure and capitalisation as on the date of commercial operation:" **It should be made clear in the subject regulation that for power supplied for the period before determination of final tariff, the provisional tariff determined by the Commission and paid by the DISCOMs shall be final and that final tariff shall not be made applicable with retrospective effect. Obviously, provisional tariff depends on the investments made and works executed up to a particular point of time, whereas final tariff covers all the permissible expenditures.**

28. **In the subject regulation, the Hon'ble Commission has proposed that** incentive shall be payable at a flat rate of 50.0 paise/kWh for actual energy generation in excess of ex-bus energy corresponding to Normative Annual Plant Load Factor. **Incentive should not be as high as or nearer to the rate of RoE. For generation of power at threshold level of**

PLF, the generating entity gets full fixed charges. Generation of power exceeding the threshold level of PLF also is a part of the continuous process of generation and does not require additional efforts and expenditure for covering fixed charges. Even if it is presumed that generation exceeding threshold level of PLF would result in additional wear and tear of the plant, resulting in reduction of its useful life span, and requiring renovation and modernisation earlier than what it would have been if the plant had been run at threshold level of PLF only, the permissible capital cost of R&M would be recovered by collecting it in the form of fixed charges from the consumers only. Therefore, there is no justification in proposing an incentive of 50 paise per unit of energy generated and supplied exceeding the threshold level of PLF. It is fair and rational to fix incentive for such additional generation and supply of power as a percentage of the rate of RoE, say 10 to 15%, or 20-25 paise per unit, in addition to variable charge.

29. **Under clause 46.5, the Hon'ble Commission has proposed that "**in case of part or full use of alternative source of fuel supply by coal based thermal generating stations other than as agreed by the Generating Company and beneficiary/ies in their power purchase agreement for supply of contracted power on account of shortage of fuel or optimization of economical operation through blending, the use of alternative source of fuel supply shall be permitted to generating station: Provided also that in such case, prior permission from beneficiaries shall not be a precondition, unless otherwise agreed specifically in the power purchase agreement: Provided also that the weighted average price of alternative source of fuel shall not exceed 30% of base price of of primary and secondary fuel approved by the Commission." **Such arbitrary provision for using alternative source of fuel by generating units would cause unjustifiable damage to consumer interest and impose avoidable burdens. Therefore, the Hon'ble Commission shall see to it that an appropriate clause prohibiting use of alternative fuel or in the case of thermal projects, blending of coal from other sources, which may include imported coal as well, is included in the PPAs. It should also be made clear in the PPAs that prior permission from beneficiaries shall be a precondition for blending coal from other sources and that it shall be subject to consent given by the Commission. Even if the weighted average price of alternative source of shall not exceed 30% of base price of primary and secondary fuel approved by the Commission, the additional burden in the form of variable charges on the consumers would be substantial. When relatively cheaper power from alternative sources is available, the DISCOMs can procure the same, without agreeing to the generating company under PPA in force to use coal from alternative source. That would be a prudent approach in larger consumer interest.**

30. **In the same clause the Hon'ble Commission has proposed that "**where the Energy Charge Rate based on weighted average price of fuel upon use of alternative source of fuel supply exceeds 20% of base Energy Charge Rate as approved by the Commission for that year, prior consultation with beneficiary/ies shall be made at least three days in advance:" **The condition that** prior consultation with beneficiary/ies shall be made at least three days in advance **turns out to be a hollow formality. Therefore, it should be changed into**

"with prior consent of beneficieary/ies" and prior approval of the Commission after holding public hearings.

31. **The Ministry of Power, GoI, has been directing the thermal power stations in the country to use certain percentage of imported coal periodically for optimizing generation to meet growing demand, with GoI failing to ensure supply of indigenous coal as per allocations made to thermal power plants and ensuring required transportation arrangements for the purpose. The MoP, GoI, is directing the central utilities like NTPC to import coal and supply to thermal power units, besides permitting import of coal by private entities. This is to facilitate sale of coal by crony Indian capitalists who had coal mines abroad. Serious allegations have been made on over-invoicing of coal imported by such private entities, especially the Adani group, as has been widely reported in the media. Here, competition vanishes into thin air, with manipulatory practices. Despite persistent demands for probing these fraudulent malpractices, which are imposing avoidable burdens running into thousands of crores of Rupees on the consumers of power by increasing variable costs for power abnormally and ensuring ill-gotten profits to the fraudsters, the GoI has been maintaining stoic silence contrary to the resounding cacophony of the loudmouths of the ruling dispensation in fulminating against opposition to its failures of commission and omission. We request the Hon'ble Commission to impose the above-suggested restrictions and prerequisites for using imported coal also, apart from coal from alternative sources, by thermal plants with whom the TSDISCOMs had PPAs in force.**

32. **In the subject regulation, the Hon'ble Commission has stipulated that "a**ll the new intra-State transmission systems costing above a Threshold Limit of Rs. 300 Crore shall be developed through Tariff Based Competitive Bidding in accordance with the guidelines issued by the Central Government under Section 63 of the Act." **In the explanatory note, the virtues of permitting private capital to set up intra-state transmission projects or schemes is eulogised at length. We request the Hon'ble Commission to consider the following points, among others:**

    a) **The erstwhile APERC of the undivided Andhra Pradesh State notified the Andhra Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Transmission of Electricity) Regulation, 2005 (Regulation 5 of 2005) under Sections 61, 62 and 63 of the Electricity Act, 2003, wherein it approved the Approach, Framework, Procedure, Filings and Principles for computation of Aggregate Revenue Requirement (ARR) and the determination of Transmission Tariff. This Regulation was published in the AP Extraordinary Gazette on 30.11.2005. Clause 21 of the said Regulation provides for the determination of tariff of intra-state transmission projects under the bidding process. The same have been adopted by TSERC. No such bidding process has been taken up all these years for intra-state transmission projects in the states of Andhra Pradesh and Telangana. In other words, despite the said provision, the successive Commissions continued to consider it not mandatory and necessary for almost 18 years in AP and for about ten years in Telangana.**

b) **As per Tariff Policy 2016, the tariff of all new generation and transmission projects of companies owned or controlled by the Central Government shall continue to be determined on the basis of competitive bidding in accordance with the Tariff Policy notified on 6th January 2006 unless otherwise specified by the Central Government on a case to case basis. Further, the Tariff Policy specifies that intrastate transmission projects shall be developed by the State Government through the competitive bidding process for projects costing above a threshold limit which shall be decided by the SERCs. The National Electricity Policy specifies that all efforts have to be made to bring the power industry under competition as early as possible in the overall interest of consumers. Experience has confirmed that the words "guided," "guidelines" and "shall be guided" are recommendatory in nature, not mandatory and binding. It has been the case with some other issues like elimination of cross subsidies and rightly so. In other words, it is left to the discretion of the SERCs.**

c) **The Hon'ble Commission has pointed out that** on March 15, 2021, the Ministry of Power issued a letter in which it recommended to the State Governments the adoption of Tariff Based Competitive Bidding (TBCB) for the development of intra-state Transmission Systems. Furthermore, on August 21, 2023, the Ministry of Power sent a letter requesting the SERCs to notify the threshold limit for awarding Transmission Projects through TBCB**. Here, too, "recommended**" **and "requesting" indicate that they are simply recommendatory, not mandatory, and it is left to the discretion of the SERCs and state governments, without any time schedules. It is also noteworthy that only some of the SERCs have brought about regulations like the subject one.**

d) **As the Hon'ble Commission is fully aware, TSGENCO, being a utility of the GoTS, has been allowed to take up power generating projects, without any competitive bidding, to meet requirement of power in the state through the TSDISCOMs. The successive Commissions have been determining and approving capital cost, power purchase agreements with TSDISCOMs and tariffs for power projects of TSGENCO. EA, 2003 and national electricity and tariff policies also indicate need for competitive biddings. Despite that, the method of determining generic tariffs for non-conventional energy projects and variable renewable energy projects by SERCs has been going on, and, in practice, it has become highly questionable. The kind of questionable pampering of VRE generators, mostly private generators and even open access generators, by the state governments under its policies being issued periodically, providing incentives, concessions and various facilities all at the cost of consumers of power has been going on unabated. The successive Commissions have been failing to make it clear that the burdens of all such incentives, concessions and facilities being extended to VRE generators should be borne by the state government concerned. As a result, all such burdens are being imposed on the consumers of power in a brazenly unjustified and partisan manner defying all canons of fair play and principles of natural justice. When AP TRANSCO and the DISCOMs filed petitions before APERC, seeking**

amendments to applicable regulations to withdraw all such concessions and incentives in tune with the latest VRE policies of the GoAP, the Commission did not amend its applicable regulations in tune with the new policies issued by GoAP in the year 2018. During the public hearing, the Commission asked the DISCOMs to file fresh petitions, despite the learned counsel for the DISCOMs making it clear that the petitions filed were for that purpose only. The DISCOMs, too, do not seem to have filed fresh applications. Our detailed submissions, justifying the amendments sought by the utilities of GoAP, did not find a place in the order issued by the Commission, leave aside the responses of the latter. That is how the successive Commissions have been exercising their discretion. In view of such questionable approaches, the talk of competition and minimizing tariffs lacks the kind of seriousness and sincerity of purpose they deserve. In this connection, we would like to remind the Hon'ble Commission that we have already made elaborate submissions in our submissions on ARR and tariff proposals of APDISCOMs for the year 2023-24 on how CERC has been maximizing inter-state transmission charges in a highly questionable manner and the same also are under legal litigation. When such is the case with a public sector utility like PGCIL's tariffs, what would be the tariffs for private transmission projects is anybody's guess. Under the TBCB, ERCs have to simply ratify the tariffs discovered through biddings, even if they are manipulated.

e) **Since MoP, GoI, recommended to the state governments to adopt tariff-based competitive bidding for development of intra-state transmission systems, it is not known whether any initiative has come from the GoTS or TSTRANSCO, requesting the Hon'ble Commission to issue regulations in accordance with the "letters" of the MoP, GoI. Whether letters of MoP, GoI, are binding on the state governments, their power utilities and SERCs is an issue that needs to be examined in terms of legal tenability or otherwise. In the case of FPPCA regulations, even while admitting that the directions or recommendations of the GoI are not binding on the ERCs in terms of tariff determination, APERC issued the said regulations, as if it were doing so suo motu. If no proposal has come from the GoTS or TSTRANSCO to the Hon'ble Commission to bring about the the proposal of TCBC and fixing of threshold level for the purpose, it implies that TSERC is acting suo motu or on the basis of the said letter and other guidelines and directions received from, or issued by, MoP, GoI. If any proposal has come from GoTS or TSTRANSCO to the Commission, requesting it to bring about the provision for TBCB for intra-state transmission projects in the subject regulation, it should be made public. Without involvement of GoTS and TSTRANSCO, bringing about the provisions like TBCB for ISTPs in the subject regulation would be tantamount to paving the way for imposing the diktats of the GoI on state government encroaching upon the rights of the latter. When GoI is exercising its authority for exempting intraregional transmission projects from TBCB and allocating them to be executed by private corporate houses of its choice, depriving the state governments of the authority to allow their respective TRANSCOs to take up intra-state transmission projects accordingly is arbitrary and partisan. If GoTS ignores the letter of MoP, GoI, on the subject issue for more than two and**

a half years, why should the Hon'ble Commission thrust the approach of the GoI on GoTS? It will give the impression as if TSERC is imposing that policy approach on GoTS, even though the latter does not prefer it. Has GoTS or TSTRANSCO expressed the view and conveyed to the Commission that TSTRANSCO cannot take up and implement intra-state transmission projects required, without TBCB? On what basis the Hon'ble Commission has come to the implied view that TSTRANSCO cannot and should not take up and implement intra-state transmission projects, without TBCB, while proposing the subject regulation? Therefore, we request the Hon'ble Commission first to seek the views of the GoTS and TSTRANSCO on the provision for TBCB for ISTPs, and response of the GoTS, if any, to the said letter of MoP, GoI, on the issue, make them public and allow interested public to make submissions/further submissions. It is all the more important in view of change of government that has taken place in the post-poll scenario in the state. We also request the Hon'ble Commission to make all the submissions on the subject issue received by it public by posting them in its web site and hold a public hearing.

f) TSTRANSCO is considered as one of the best transmission utilities in the country and has several awards to its credit for availability of transmission capacity above 99%, transmission losses at a low level with a decreasing trend and other parameters of performance over the years. Except the letter of MoP, GoI, there does not seem to be any need or urgency for bringing about the subject regulation. In the face of strong opposition and resistance from various quarters, political and others, especially from the engineers and workers in the power utilities of the governments in the country, to the moves of the Modi government at the centre to amend the EA, 2003, over several years, it could not push through its pro-corporate, anti-state and anti-people agenda. It has been adopting the tactics of issuing a spree of circulars, recommendations and directions to the state governments and ERCs to push through its said agenda, with willing state governments and ERCs falling in line. The proposed provision for TBCB for ISTPs also falls in this category.

33. In the explanatory note, the Hon'ble Commission has explained that,. "An Intra-State transmission licensee needs to carry out various works in order to maintain and augment transmission systems. As per recently commissioned and ongoing works being carried out by TSTRANSCO, the cost of schemes varies from minor works to major works such as power evacuation schemes. Further, the InSTS network such as number of EHV substation , lengths of the lines, voltage level , transformation capacity , required level of reliability etc drastically vary for each State. The Tariff Policy duly considering that there are various works, which are minor in nature and for which TBCB mode of development may not be feasible, has rightly included a Threshold Limit that needs to be specified by the SERC. However, Clause 5.3 of the Tariff Policy does not suggest the methodology or basis to be considered while specifying the Threshold Limit. This could be so to cater to the diversity among the States including the availability of network and the requirement of future network which would be very different for different states. Thus, it has put the onus of determination of this limit on the respective SERCs. The State Electricity Regulatory

Commissions of Maharashtra, Bihar, Rajasthan, Punjab, Haryana, Assam, Uttar Pradesh, Uttarakhand and Madhya Pradesh have specified this Threshold Limit however, no uniform methodology has been adopted in specifying the Threshold Limit by those Commissions. It is observed that the Standard Bidding Guidelines and the Standard Bidding Documents does not specify any Threshold Limit for Transmission Project to be considered under TBCB mode. The only reference to the capital expenditure is with regards to qualification criteria wherein in order to qualify, a Bidder must have executed projects amounting to a minimum of Rs. 500 Crore in the last five years and in order for a project to qualify to meet the above requirement, the minimum individual project experience should be Rs. 100 Crore. However, as the National Committee on Transmission has been constituted, the Committee based on the requirement and in association with CEA formulates and recommends to the Ministry of Power, Schemes to be either executed under TBCB mode or through Regulated Tariff Mechanism (RTM). The Committee does take care of the aspect that the project should not be too small as it will not attract competitive tariff thus, curtailing competition. Further, higher the cost of the project higher will be the saving in terms of reduction in tariff if the project gets implemented through TBCB. Therefore, taking a cue from the above and the actual investment approval data for various schemes executed and under execution, the Threshold Limit should not be too small as the same may not attract competition. Based on the actual investment approval data towards cost of projects and in order to encourage competition amongst various stakeholders, it is proposed that the Threshold Limit be kept as Rs. 300 Crore for new transmission projects to be developed through TBCB process.' **The following points, among others, need to be examined:**

a) **Whether the Hon'ble Commission is satisfied with the investment approvals it granted to TSTRANSCO, cost and time lines of the approved projects and their implementation by TSTRANSCO, the latter's performance in operating and maintaining the transmission system in the state as per applicable parameters. If not satisfied, the findings of the Commission in that regard have never been made public by successive Commissions. What are the findings, if any, of the the Hon'ble Commission in terms of the above-mentioned factors?**

b) **As far as the objectives of fostering competition and minimizing intra-state transmission tariffs, the Commission has not given any details of its considering the experiences elsewhere in the country to justify need and urgency for the subject regulation. Does the Commission consider that the experiences elsewhere in the country regarding following the tariff-based competitive bidding for intra-state transmission projects (and intra regional transmission projects) are more beneficial to the consumers than the experiences of transmission system being developed and maintained by TSTRANSCO over the decades, inheriting the same from the erstwhile APSEB originally and later from the APTRNSCO in the undivided Andhra Pradesh? Does the Commission consider that transmission projects developed and maintained by private entities selected through TBCB elsewhere in the country are in a way better than TSTRANSCO, with services being rendered by qualified and experienced engineers and workers, in terms of capital costs, implementation of transmission projects, standards of operation and maintenance and tariffs? Is everything hunky-**

dory with private inter-state transmission projects and inter regional transmission projects? The transmission utilities of the governments in the country have to follow the applicable guidelines and regulations issued by the CEA and ERCs concerned.

c) Experience in the state and elsewhere in the country shows that the standard guidelines being issued by the GoI can be manipulated to unduly favour crony capitalists of the choice of the powers-that-be. For example, the so-called judicial preview – a questionable arrangement made by GoAP bypassing the Hon'ble APERC – could not sanctify the bidding process adopted by A.P. Green Energy Corporation Ltd. which went through the same judicial preview process and floated tenders for 6400 MW of solar power. The Hon'ble High Court set aside that bidding process on the grounds of manipulating the bidding process raised by another private corporate house. On the direction of the GoAP, APGECL withdrew its appeal before the division bench of the High Court, may be, due to the apprehension that the appeal would be set aside. It shows how ineffective the so-called judicial preview is and how competitive biddings can be manipulated. Another example is the way in which SECI conducted competitive bidding under which Adani's company is selected for supply of solar power and it has led to legal litigation. The Hon'ble Commission has accorded permission to APDISCOMs to enter into agreements with SECI for procurement of 7000 MW of solar power of Adani's plants in Rajasthan in a questionable manner on which we have made elaborate submissions earlier. Permitting DISCOMs to procure power, if required, is one thing, and permitting them to procure power from a single source on such a large scale is quite another. One more example is that of purchase of pre-paid and other smart meters by APDISCOMs. As per the information furnished by AP DISCOMs in some other petitions, only three companies -1. Shirdi Sai Electricals, Ltd., YSR Kadapa district, 2 Genus Power Solutions Private Ltd., Noida, UP, and 3.Adani Transmission Ltd., Ahmedabad, Gujarat - participated in the bidding for supply of pre-paid and other smart meters. Only Shirdi Sai and Adani were qualified in the technical bid opened on 17.1.2023. In the price bid opened on 28.2.2023, Adani Transmission emerged L-1 bidder, quoting a contract value of Rs.1807.009 crore. After reverse bidding and after negotiations, the contract value was reduced further by L1. In other words, Shirdi Sai did not participate in reverse tendering and subsequent negotiations. No other company participated in the bidding, contrary to experiences elsewhere in the country. This also shows how bidding processes can be manipulated, without real and wider competition. Manipulated biddings cannot ensure real competition and minimizing of tariffs.

d) The experience in the state of Telangana provides its examples of manipulating the terms and conditions and processes of competitive biddings. For example, for purchasing 570 MW from Thermal Powertech Corporation of India Ltd. (O.P.No.01 of 2016) and order of the Commission dated 27.1.2016) how the process adopted for inviting and finalising tenders was manipulated in such a way that the selected company turned out to be the sole bidder and how an avoidable additional burden of Rs.2189.89 crore was imposed on the consumers during the period of PPA in the form of fixed charges by the TSDISCOMs and the then TSERC, without even holding a public hearing, gave consent to the same, is a glaring example. In my letter to TSERC

dated February 25, 2016, I gave a detailed analysis of the issue, questioning the improprieties involved in the whole process. It is a matter record that the predecessor TSERC permitted, without even holding public hearings, extension of period for COD by a number of solar power plants with whom TSDISCOMs entered into PPAs, on highly questionable grounds, thereby denying the consumers of the benefit of reduction in capital costs for setting up those plants with latest available technology. In our submissions, we made it clear that purchase of solar power from SECI and NTPC, which were acting as middlemen to procure power from private solar power plants and supplying to TSDISCOMs at higher tariffs than the tariffs discovered through competitive biddings in the country at that point of time.

34. **What is the purpose, as well as basis, for fixing the threshold limit of Rs.300 Crores for the new intra-state transmission projects to be awarded under TBCB? In the explanatory note, the Commission has pointed out that** "it is observed that the Standard Bidding Guidelines and the Standard Bidding Documents does not specify any Threshold Limit for Transmission Project to be considered under TBCB mode. The only reference to the capital expenditure is with regards to qualification criteria wherein in order to qualify, a Bidder must have executed projects amounting to a minimum of Rs. 500 Crore in the last five years and in order for a project to qualify to meet the above requirement, the minimum individual project experience should be Rs. 100 Crore. However, as the National Committee on Transmission has been constituted, the Committee based on the requirement and in association with CEA formulates and recommends to the Ministry of Power, Schemes to be either executed under TBCB mode or through Regulated Tariff Mechanism (RTM). The Committee does take care of the aspect that the project should not be too small as it will not attract competitive tariff thus, curtailing competition. Further, higher the cost of the project higher will be the saving in terms of reduction in tariff if the project gets implemented through TBCB. Therefore, taking a cue from the above and the actual investment approval data for various schemes executed and under execution, the Threshold Limit should not be too small as the same may not attract competition. Based on the actual investment approval data towards cost of projects and in order to encourage competition amongst various stakeholders, it is proposed that the Threshold Limit be kept as Rs. 300 Crore for new transmission projects to be developed through TBCB process." **It is well known that power transmission system used to be in the public sector, both of the governments at the centre and in the states, till entry of private capital is allowed into the transmission system under the neo liberal reforms. The quoted stipulation that** in order to qualify, a Bidder must have executed projects amounting to a minimum of Rs. 500 Crore in the last five years and in order for a project to qualify to meet the above requirement, the minimum individual project experience should be Rs. 100 Crore **implies that only those private companies which qualify themselves accordingly will be eligible under TBCB. In other words, it curtails scope of competition, leaving no scope for participation in TBCB by other entities without such experience. Under its discretion, the GoI has been allowing private corporate entities of its choice to take up inter-state transmission projects in the country, initially without any stipulations of the experience included in the guidelines of the GoI. Now, imposing such stipulations for eligibility to participate in TBCB would naturally confine the so-called competition between such corporate entities already favoured by the GoI as a**

matter of pampering crony capitalism. In other words, such restrictive stipulations do not leave scope for as wider a participation of bidders as possible under TBCB for ISTPs. As such, the proposed TBCB with such restrictions itself is manipulatory.

35. **It is wrong to presume that, if only some specific threshold limit is fixed in monetary terms, there will be competition. Depending on the nature of requirement, irrespective of monetary level, competitive biddings can be held and are being held for entrusting projects, schemes and contracts and for purchase of materials. In fact, the higher such a threshold level, the lower the scope for competition will be. The said committees have made recommendations as per and in consonance with terms of reference given to them, without going into the merits and demerits of entrusting inter-state, inter-regional and intra-state transmission projects and schemes to private corporate companies.**

36. **It is noteworthy that the fixing of the threshold limit is a subjective decision of the Hon'ble Commission. As pointed out in the explanatory note, different threshold limits are fixed by some other SERCs for ISTPs under TBCB. For example, the Maharashtra Electricity Regulatory Commission has fixed a threshold limit of Rs.500 crore for the purpose of TBCB for intra-state transmission projects, thereby leaving scope for the state governments to get ISTPs below that threshold level developed by their respective STUs. The higher the threshold limit, the wider will be the scope for state governments and their STUs to identify and design ISTPs and schemes below such limits, thereby getting those projects and schemes developed by their STUs, without entrusting the same to private corporate companies under the process of TBCB sought to be imposed by the GoI and facilitated by the willing SERCs. Conversely, it is evident that, determining a lower threshold level for the purpose of TBCB for ISTPs facilitates and makes it mandatory to entrust more and more ISTPs to private corporate groups.**

37. **Just as TSGENCO has not been participating in biddings for setting up generation projects, or has not been allowed to participate in competitive biddings, TS TRANSCO also may not participate in the proposed TBCB or may not be allowed to participate. Even if TSTRANSCO participates in TBCB, it may be forced to quote very high rates and get disqualified under governments of ruling classes obsessed with pampering crony capitalists as a part and parcel of serving their class interests. Moreover, it is a strange approach to see that TSTRANSCO, as the STU, has to identify intra-state transmission projects and GoTS has to go in for TBCB to award such projects to private corporate houses. If TSTRANSCO is not going to set up such projects itself, where is the need for it to identify such projects? TSTRANSCO will not be the user of those projects for its requirements. For procurement of power, DISCOMs are entering into PPAs with projects of utilities of the governments and private power projects; the generation projects are not being identified by TSGENCO for floating competitive biddings. Need for transmission capacity arises when DISCOMs and other users of power like open access generators and consumers decide to supply/procure power based on projects to be set up in specific areas. It is TSTRANSCO which has been setting up such intra-state transmission projects and**

operating and maintaining them. If a state government wants to award any ISTP to a private company through TBCB, it does not require any regulation or permission of the Hon'ble Commission. Nor can the Commission direct the GoTS not to go in for TBCB for awarding any intra-state transmission project. The regulatory role of the Hon'ble Commission comes into play for the purpose of determining transmission tariff for that project. In the explanatory note, the Hon'ble Commission has maintained that "TSTRANSCO, as STU, is responsible for undertaking all activities related to transmission planning, co-ordination and ensuring development of an efficient, coordinated and economical system of intra-State transmission for smooth flow of electricity from generating stations to the load centres, within the State. The system for conveyance of electricity by transmission lines within the area of the State and including all transmission lines, sub-stations and associated equipment of Transmission Licensees in the State has been defined as the Intra-State Transmission System (InSTS). The onus of InSTS planning lies with TSTRANSCO, as STU." **TSTRANSCO being the only transmission licensee in the state, the said responsibilities rest with it and that is the reason why it is considered the state STU. If private entities are permitted to develop and maintain ISTPs under TBCB or otherwise in the state and get license from the Commission, TSTRANSCO ceases to be the state STU and becomes one of the transmission licensees in the state. As rightly pointed out by the Hon'ble Commission, the onus of InSTS planning lies with TSRANSCO, as STU, i.e., if, and only if, it continues to be the sole transmission utility for the entire state. It is ridiculous to entrust to TSTRANSCO, as implied in the proposed arrangement of TBCB for ISTPs, the responsibility of transmission planning for ISTPs to be awarded to private corporate companies. Under the EA, 2003, as pointed out by the Commission, the functions of the STU include, inter alia, "to discharge all functions of planning and co-ordination relating to intra-State transmission system" with "licensees," among others. Apart from TSTRANCO, licensees of TSERC in the state are TSDISCOMs, apart from deemed licensees. Depending on requirement of the DISCOMs and other generators and consumers under open access or captive users of power, TSTRANSCO plans for addition of transmission capacity for transmission of power from the point of generation to the required point of supply, based on agreements for such transmission. Entrusting transmission planning to TSTRANCO under TBCB would tantamount to forcing it not to take up such ISTPs for planning, designing, developing and operating and maintaining by itself, but to facilitate privatization of such ISTPs. If the DISCOMs prefer, or forced to prefer, or other generators or consumers prefer transmission of power accordingly by a private ISTP permitted by the state government or through TBCB, it is for the company concerned to plan, design, develop and operate and maintain that ISTP or scheme depending on requirement of transmission capacity and agreements with users of transmission system within its area of operation as per terms and conditions of TBCB and as demarcated in the license it gets from the Commission.**

38. **In the explanatory note, the Hon'ble Commission has pointed out that** the provisions contained in Part VII of the draft TSERC MYT Regulation, 2023 shall apply to the determination of Tariff for access and use of the intra-State transmission system pursuant to a Bulk Power Transmission Agreement or other arrangement entered into with a

Transmission System User. **If a private company under the said arrangement transmits power to the concerned user, obviously, from a generating entity in its area of operation as permitted in the license it obtains from the Commission, the question of competition between different ISTPs does not arise. If only there is existence of different ISTPs in the same area of operation and transmission of power by them from the same generating entity to the same or different users of transmission system within the area of their operation, there may be competition. But such an arrangement is not prevalent in either transmission or distribution of power. Whether the private corporate companies prefer to set up ISTPs in this manner is a big question mark, as, such an arrangement leads to overlapping and transmission capacity becoming idle, instead of promoting competition between such ISTPs, with resultant adverse consequences.**

39. **In its resolution dated 10.8.2021 on guidelines for encouraging competition in development of transmission projects, MoP, GoI, proposed that** "for intra-state transmission projects, the project assets along with substation land with rights, right of way and clearances shall compulsorily be transferred to an agency as decided by the State Government after expiry of contract period of project, at zero cost and free from any encumbrance and liability. The contract period for the intra state transmission projects may be 35 years or any period as fixed by the LTTCs or BPC as per the relevant regulations of the Appropriate Commission. The STU (being the planning agency), in the year which is three (3) years prior to the expiry of the project, will examine the need of upgradation of the system or renovation and modernization of the existing system depending on technological options and system studies at that time. The project may then be awarded to successor bidder selected through a competitive bidding process for renovation and modernization, if required, and operation and maintenance after contract period of project. In case, any cost is incurred by STU towards examining the need of upgradation or renovation and modernization of the existing system and transfer of assets, the same may be recovered from successor selected bidder.**" It is the height of crudity and perversity of the approach of the GoI. After 35 years or any period fixed as per regulations of the appropriate Commission, what would be the condition or usefulness of an intra-state transmission project awarded under TBCB and implemented and run by the private company concerned will be uncertain. Transferring the assets of such a project to an agency after expiry of the said period as decided by the state government, with the rider that the STU, here, TSTRANSCO, will have to examine three years prior to the expiry the need of upgradation of the system or renovation and modernization of the existing system depending on technological options and system studies at that time, the project may then be awarded to successor bidder selected through a competitive bidding process for R&M, if required, and O&M after contract period of the project concerned. In other words, the role of transmission utility of the state government would be reduced to one of facilitating handing over of the project concerned in its entirety to a private bidder selected again through a competitive bidding, thereby making a mockery of transferring the project, with all its assets, to an agency as decided by the state government and ensuring perpetuation of privatisation of the project till the end of its useful lifespan.**

40. If private bidders cannot complete intra-state transmission project/projects in time and fail in proper maintenance of the system, what kind of impact it will have on TSTRANSCO in terms of transmission losses, maintenance of grid frequency, grid safety, ensuring transmission of power to the areas for which the project concerned is intended, and who should be held responsible and how for the deficiencies and failures of commission and omission in monetary and technical terms are relevant questions which find no clarity in the subject and other regulations and guidelines of the authorities concerned. It is well known that the GoI has been proposing to allow private operators to enter into distribution business in areas of their choice now under DISCOMs of state governments. It is proposed to force the DISCOMs in a crude way to allow the private operators for using their distribution network on rental basis, leaving the responsibility of maintenance of the system to the DISCOMs. Where such private operators are allowed and working in distribution system, disputes between different operators, even between the private operators, have been cropping up, leading to legal litigations. Distribution network is an integral system. Transmission network is more so in the sense that the entire transmission system in a state is interconnected and it is interconnected with regional grid and efforts are being made for integration of national grid as well. It is well known that the private distribution companies in Odisha left the system, without any responsibility, when it was devastated in cyclone in the past, and engineers and workers of the power utilities of GoAP in the undivided Andhra Pradesh had to go there and restore the system. Several projects taken up by profit-greedy private corporate houses have been becoming the so-called non-performing assets, creating insurmountable risks to the banks and financial institutions for recovering dues of enormous loans – public money deposited with them - lent by them to those projects and a spree of writing off of such loans has been going on unabated, with more intensity under the Modi dispensation. There are no instances of dues of loans taken by power utilities of the governments and other public sector utilities being written off like that. Where there are agreements like PPAs and others with private power projects in the state and the country, disputes and legal litigations have become an endless trend. Policies of the governments and the regulatory processes have been found to be deficient and inadequate in arresting such trends. The private sector has been afflicted with ailments like industries becoming sick, bankruptcies, coming under NCLT, perennial defaults in clearing dues of debts to banks and financial institutions, evasion of taxes, insider trading manipulations, laundering of black money, inflating capital costs, managing to facilitate irrational and inflationary pricing mechanisms through policy decisions of the governments and otherwise, the process of getting concessions and benefits, due or undue, from governments under the process of quid pro quo or reciprocity in the form of electoral bonds and through other means to the ruling dispensations, etc. – it will be a long list.

41. If the Hon'ble Commission, which has been approving multi-year business and investment plans, etc., of TSTRANSCO, is satisfied that the capital investments for intra-transmission projects, their implementation, operation and maintenance are satisfactory, the need for floating tenders under TBCB to award them to private corporate houses, instead of allowing TSTRANSCO to take up, implement and

operate and maintain those projects, does not arise. If capital costs, implementation in terms of timely completion and prudent costs, and operation and maintenance of intra-state transmission projects by TSTRANSCO are not satisfactory, they need to be improved. If that is not happening, it implies that prudence check by, and regulatory process of, the Hon'ble Commission have been found wanting; they also need to be improved to ensure transparency and accountability.

42. If the real purpose is to see that all expenditures related to intra-state transmission projects are prudent, implementation and maintenance of the projects is efficient and time-bound, in order to minimize tariff, it is implied that there is scope for such improvements under TSTRANSCO as well. The Hon'ble Commission may take into account, by conducting a thorough assessment of experiences elsewhere in the country, including results of biddings under TBCB, and approve proposals of TSTRANSCO for setting up required intra-state transmission projects, determining realistic capital costs, timelines for implementation and expenditures for operation and maintenance of the projects, providing some margin, if necessary, on account of any additional factors specific to each project through effective prudence check and regulatory process. The same approach can be adopted by the Commission in permitting renovation and modernisation of existing transmission projects as and when need arises for the same. The required regulation can confine to such an approach, without threshold level and TBCB, and guidelines for determination of tariffs. One cannot entertain the illusion that the Hon'ble Commission cannot do that. Similarly, one cannot entertain the illusion that such results cannot be achieved under TSTRANSCO and that only private corporate houses can achieve them. The so-called TBCB is not the panacea for existing deficiencies, if any, as the real intention under the crude moves of the GoI is privatising new intra-state transmission projects to be taken up under the guise of TBCB, unable as it has been to force the states to privatise their existing power transmission and distribution networks. We would like to remind the Hon'ble Commission that there has been no answer from the champions of the philosophy and practice of privatisation to the points: 1. If a project or company can be run efficiently and profitably by privatising it, it implies that there is scope for running it accordingly in the public sector by taking necessary remedial steps. 2. If a public sector project or company cannot be run efficiently and profitably, what is the ability and competence of the rulers concerned to run the country/state and its administration efficiently?

43. Public hearings on Multi-year plans of TSTRANSCO and the DISCOMs for the 5th and 6th control periods are already held and reserved for orders of the Hon'ble Commission. Without finalising and approving the same, that the Commission has proposed the subject regulation shows or implies that it is intended to bring the ISTPs identified/designed by TSTRANSCO for implementation during the next two control periods under TBCB. We request the Hon'ble Commission to first finalise and approve the state electricity plan and resource plan of TSTRANSCO and various plans of TSDISCOMs for the 5th and 6th control periods and issue its orders and consider the subject issue later.

44. For implementation of ISTPs and related works, TSTRANSCO has been following bidding process for procurement of materials and awarding work contracts. TSERC is expected to subject them to prudence check. If prudence check is effective, ensuring prudent expenditures, there would be no problem and no need for TBCB. If it is not effective, how can ERCs do effective prudence check under TBCB, especially when manipulations take place in various factors relating to proposed projects and terms and conditions of bidding?

45. Capital costs of ISTPs taken up by TRANSCO may be inflated or it may incur expenditure lesser than the one approved by the Commission during specific periods. Such variations lead to true-up or true-down. If such variations take place in the case of private ISTPs, how should the ERCs deal with such variations and what would be their impact on determination of transmission charges for the ISTPs is not clear and the scope for prolonged legal litigations by the private companies concerned on orders issued by ERCs cannot be ruled out, especially relating to what is not permitted by ERCs and true-down to be implemented.

46. In the subject draft, the Hon'ble Commission has not explained the criteria based on which it has proposed the threshold level for ISTPs under TBCB, except in monetary terms and experience of the prospective bidders. The terms and conditions for bidding process that may be issued by the MoP, GoI, from time to time and modifications/exemptions for such conditions by the authorities concerned, including the ERCs, may lead to manipulations to unduly favour corporate houses of the choice of the powers-that-be, without ensuring level-playing field and as wider a scope for participation of as many bidders as possible. That is evident from serious allegations and experiences in various sectors like coal mines, power projects, including transmission projects, in the country.

47. The contents of the order of the Hon'ble Supreme Court given in Civil Appeal No.1933 of 2022 dated November 23, 2023, indicate the kind of disputes at the stage of identifying, designing and awarding the inter-state transmission project, including HVDS, concerned from Maharashtra between private corporate houses and the kind of delays for various reasons, including obtaining from, or giving required clearances by, the authorities concerned for taking up the said transmission project. Those developments also indicate complicity of the players concerned to ensure awarding of the project to the private corporate house which got it finally. The directions given in the said order of the Supreme Court pertain to bringing about regulations by ERCs for determination of tariffs in view of failure of some of the ERCs to do so; they do not pertain to following mandatorily TBCB for awarding transmission projects and schemes and determination of threshold level for that purpose. On the contrary, the SC rejected the submission of the appellant Tata Power Company Ltd. - Transmission that TBCB was not followed by the authorities concerned in awarding the said transmission project to another private corporate company Adani Electricity Mumbai Infra Ltd. for the reasons given in the order (copy of the SC is enclosed).

48. Comparisons need to be made between projects of similar nature executed or to be executed during the same period. With changes in technology and market trends, comparing past costs with present and likely future costs cannot be the proper approach to decide benefits of TBCB. For example, capital costs of VRE units have come down tremendously not because of efficiency in setting up those units through competitive biddings or otherwise, but because of technological developments and drastic reduction in prices of materials. Qualitative superiority and price variations apply to all during the same period. In other words, terms and conditions of biddings should ensure level playing field to prospective bidders, leaving no scope for manipulatory discrimination to unduly favour corporate houses of the choice of the powers-that-be and prevention of other bidders from participating in bidding. Airports to Adani, ports to Adani, purchase of solar power from Adani, purchase of smart meters from Adani, pumped storage hydel power projects to Adani, hybrid RE projects to Adani - it will be no wonder if ISTPs also find a place in this growing list through TBCB in Andhra Pradesh, for example.

49. It is well-known that the lion's share of capital investments being made by private corporate houses for projects is public money obtained through loans from banks and financial institutions and, as such, preferring private projects vis a vis public sector projects is no virtue.

50. The moves like this proposal lend credence to the view that the Government of India is making ERCs into instrumentalities to push through its pro-corporate and anti-consumer policy approaches. For the reasons explained above, among others, we request the Hon'ble Commission to withdraw its proposal for fixing a threshold level in monetary terms and making it mandatory to permit intra-state transmission projects or schemes through TBCB with restrictive terms and conditions confining competitive bidding to a few bidders, who are beneficiaries of getting transmission projects and schemes awarded through them without competitive bidding, and hindering participation of other prospective bidders under TBCB.

51. I once again request the Hon'ble Commission to extend time for making further submissions on the subject issue, get views of GoTS, TSTRANSCO and TSDISCOMs on the issue and get them and submissions made by objectors posted in its web site and allow interested stakeholders to make submissions before and during public hearings.

Thanking you,

Yours sincerely,

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Copy to : 1. CMD, TSTRANSCO
2. CMD, TSSPDCL
3. CMD, TSNPDCL

The Secretary
Telangana State Electricity Regulatory Commission
11-4-660, 5th floor
Singareni Bhavan, Red Hills
Hyderabad - 500 004 **December 12, 2023**

Respected Sir,

Sub : Further submissions on draft TSERC (Multi-year tariff) Regulation, 2023

We thank the Hon'ble Commission for extending time for filing submissions on the subject issue by one week. Further to my submissions dated 6.12.2023, am submitting the following additional points on the subject issue for the consideration of the Hon'ble Commission:

1. **In the subject draft, the Hon'ble Commission has proposed to continue the control period for five years. In the past, we requested the Hon'ble APERC in the undivided Andhra Pradesh and the Hon'ble Commission after it is set up for the State of Telangana to dispense with the system of MYT regulatory framework for the reasons explained in our submissions. However, the ERCs are continuing that arrangement as per the principles and guidelines in the EA, 2003, the national electricity and tariff policies of the GoI and periodical notifications being issued by the MoP, GoI. The implied stand in continuing the MYT system is that, the ERCs are bound to follow EA, 2003, the policies, notifications and directions being issued by the MoP, GoI, irrespective of the merits and demerits thereof. MYT regulatory framework and the rules issued on 22.10.2022 by the Ministry of Power, GoI, are a part and parcel of the endless reform process in the power sector and mutually contradictory in their intended purport and purpose. The said rules of the MoP, though apparently in the interest of the DISCOMs, are really intended to serve the interests of generators who supply power to the DISCOMs under power purchase agreements in force. It has to be seen in the background of the DISCOMs failing to pay bills for power received by them in time as per the terms and conditions in the PPAs and directions being given by MoP compelling the DISCOMs in one form or another for making such payments. The very fact that the Hon'ble Commission, in the subject draft, has proposed to apply MYT for the generating entities also, besides continuing it for STU, SLDC and distribution licensees, confirms the same.**

2. **Questioning the regulatory practice of MYT and truing up or truing down after end of the control period, we have repeatedly requested the ERCs to review the performance of the utilities and implement true-up/true-down annually by including them in the petitions of ARR and tariff revision proposals being filed by the DISCOMs annually. While introducing annual review of performance of licensees so far, the move of the Hon'ble Commission, in the subject draft, to apply true-up/true-down also annually for the licensees is a welcome step. However, the way controllable and uncontrollable factors have been considered and proposed in the subject draft need reconsideration.**

3. **In the explanatory note, it is pointed out that** "the broad objectives of any regulatory framework are to: (a) Provide regulatory certainty to the Utilities, investors and consumers by promoting transparency, consistency and predictability of regulatory approach, thereby minimizing the perception of regulatory risk; (b) Address the risk sharing mechanism between Utilities and consumers based on controllable and uncontrollable factors; (c) Ensure financial viability of the sector, ensure growth and safeguard the interest of the consumers; (d) Establish operational norms for Generation, Transmission, and Distribution businesses; (e) Promote operational efficiency." **We once again request the Hon'ble Commission to consider the following points, among others, relating to controllable and uncontrollable factors and supposed benefits to the consumers:**

   a) **Para 8.1 of national tariff policy states that implementation of multi-year tariff (MYT) framework** "would minimize risks for utilities and consumers, promote efficiency and appropriate reduction of system losses and attract investments and would also bring greater predictability to consumer tariffs on the whole by restricting tariff adjustments to known indicators on power purchase prices and inflation indices. The framework should be applied for both public and private utilities." **Experience has confirmed that in the case of AP Transco in the undivided Andhra Pradesh and also in the case of TS Transco the claimed objectives of MYT are belied. Irrespective of claims of efficiency improvement, MYT has led to collection of excess tariffs by TS Transco, as was the case with AP Transco, from the Discoms and their true down after the control period.**

   b) **As per terms and conditions in the PPAs to which the ERCs give consents, permissible variations in variable and fixed costs are covered. Generating entities, not being licensees of the Commission, and PPAs being in force for the entire period agreed, mechanism of MYT and annual true-up shall not apply to them. Therefore, we request the Hon'ble Commission to make it clear that MYT and annual true-up shall not apply to generating plants and units.**

   c) **National tariff policy says, inter alia, that "**the operating parameters in tariffs should be at "normative levels" only and not at "lower of normative and actuals". This is essential to encourage better operating performance. The norms should be efficient, relatable to past performance, capable of achievement and progressively reflecting increased efficiencies and may also take into consideration the latest technological advancements, fuel, vintage of equipments, nature of operations, level of service to be provided to consumers etc. Continued and proven inefficiency must be controlled and penalized." **The normative parameters being determined by the ERCs tend to be liberal much to the undue advantage of the licensees and generating entities at the cost of consumers of power at large. A number of questionable terms in the PPAs approved by the ERCs are an irrefutable testimony to this practice and reality and the experience so far confirms this beyond the shadow of a doubt. In order to achieve the normative parameters, all the required investments are being allowed by the ERCs both for the licensees and the generating entities as a pass through to be collected from the consumers**

in the retail supplytariffs. The very fact that ERCs are determining incentive for generation and supply of power exceeding the threshold levels of PLF/CUF to the generating entities confirms this. Other parameters relating to performance of licensees and generating entities are also liberal. If audited annual accounts of generating entities are examined, the additional revenue/profit they get exceeding the permitted RoE confirms this. That manipulations in inflating capital costs of projects and schemes and terms and conditions in PPAs are not being curtailed through regulatory process can be confirmed through several examples. When actual performance is better than "normative levels," it is clear that normative parameters are fixed in an unrealistic manner. The condition that "lower of normative and actual" should not be considered confirms that determination of normative parameters is not being done on the basis of actual performance in a realistic manner. When the burden of investments approved by the ERCs required for achieving efficiency as per normative parameters by generating entity and licensees, by taking various factors pointed out in the tariff policy into consideration, is being imposed on the consumers, imposing a resultant burden of non-achievement of parameters fixed by the Commission on consumers of power is nothing but imposing additional burden on the consumers for the failures of the generating entity and licensees. If the normative parameters are objective and optimum, there will be no scope for improving efficiency exceeding the normative parameters by the licensees and generating entities. The contention that "this (the operating parameters in tariffs should be at "normative levels" only) **is essential to encourage better operating performance" is questionable, because penalization of continued and proven inefficiency would force the licensees and the generating entities to achieve optimum efficiency within practicable limits in their own interest. Therefore, we request the Hon'ble Commission to make it clear that performance or efficiency as per normative parameters or actual, whichever is lower, shall be applicable in tariffs, if it considers that it has the power to stipulate accordingly on merits. It should be made applicable to various relevant parameters, including for station heat rate, auxiliary consumption, secondary fuel oil consumption, transit loss, etc.**

d) The Hon'ble Commission has proposed to retain the mechanism for sharing of gains and losses on account of uncontrollable and controllable factors as per clause 12.5 of the Regulation No.4 of 2005, while listing both the factors in the subject draft. Variation in sales is considered as one of the uncontrollable factors. Projecting revenue requirement and revenue gap at a lower level in order to show that need for tariff hike and subsidy from the government is lesser than what is otherwise required, when a realistic projection of sales is made, the licensees tend, maybe, at the behest of the government, to project sales in an unrealistic or even manipulated way. In such situations, actual sales will lead to higher revenue gap and higher requirement of revenue, thereby resulting in imposition of additional burdens on consumers of power under true-up later. Experience is confirming this situation repeatedly. Second, when power cuts or load shedding are to be imposed, due to technical constraints and/or deficit for power, some prudent principles need to be stipulated and followed to maintain

some kind of a balance. For example, for emergency services power cuts should not be imposed. For agriculture, power cut should not be imposed, if it leads to withering away of crops due to non-supply of water. Industries with continuous process of production also needs reasonable exemptions from power cuts. Licensees may tend to impose power cuts or restrictions in supply of power for subsidised consumers and ensure supply to HT industries and commercial consumers or other consumers with higher tariffs on commercial consideration of getting cross subsidy. In order to maintain equity in ensuring supply of power to different categories of consumers, some principles need to be stipulated by the Commission, keeping in view need for power by different categories of consumers and scope for imposing burdens of true-up on consumers. Moreover, it is incorporated in the subject regulation that "variation in the cost of power purchases due to variation in the rate of power purchase, subject to clauses in the power purchase agreement or arrangement approved by the Commission" as one of the uncontrollable factors. If there is any dispute between the generating entity and the DISCOMs on claims made by the former on variations in fixed and variable costs, it is always open to the aggrieved party to approach the Hon'ble Commission with an appropriate petition seeking resolution of the dispute.

e) There are other factors for variation in the cost of power purchase which can be caused by controllable factors. The DISCOMs have been purchasing power through power exchanges and open market as and when they consider it necessary to meet demand. Sometimes, it is taking place by backing down thermal power in order to purchase must-run renewable energy under PPAs in force, imposing dual burdens on the consumers in the form of paying higher tariffs for renewable/non-conventional energy and in order to purchase the must-run power, backing down thermal power and paying fixed charges therefor, i.e., for power which is neither generated, nor purchased, nor supplied, nor consumed. Such anarchic situation is arising as a result of hasty and imprudent policies and directions being imposed on the States and SERCs by the GoI, and decisions taken, approved and implemented for purchasing unwarranted renewable energy which cannot meet peak demand, daily or seasonal. There are several absurdities that are taking place under the reform process being thrust in the power sector by the GoI, RPPO and must-run status to NCE/RE units being part of such absurdities. Treating variations in power purchase costs that take place as a result of entering into PPAs indiscriminately and regulatory consents given to the same, without carefully considering fluctuating demand curve and need to maintain harmonious power mix to suit the same to the extent practicable, as "uncontrollable" means taking imprudent decisions, entering into questionable PPAs and giving consents to the same as unquestionable, without any responsibility and accountability on the part of the authorities concerned at the central and state level for their questionable actions and inactions. It is nothing but treating controllable factors as "uncontrollable," leading to imposition of unjust and avoidable burdens on the consumers of power under true-up claims, thereby penalising them for their no fault.

Regulating power purchases in a prudent manner is within the purview of the Hon'ble Commission as a part of its regulatory process by giving or rejecting consents to power purchase agreements by taking a holistic view of demand, availability of power under PPAs in force at threshold levels of PLF/CUF, power to be available from power plants of TS GENCO under execution, scope for availability of power from other sources at relatively lower tariffs, need for determining minimum percentage of renewable power to be purchased by the DISCOMs under RPPO prudently, if the system of RPPO is not dispensed with, need for addition of generation capacity periodically in tune with fluctuating and growing demand for power, ideal power mix to the extent practicable to be in tune with demand curve, periodical review and appropriate modification required of load forecast and procurement plans, prudent practices to be adopted by the DISCOMs to purchase power through real competitive biddings, leaving no scope for manipulations in terms and conditions of bids, dispensing with the system of determining generic tariffs for non-conventional and renewable energy, availability of some surplus and need for purchasing power from exchanges and market at the same time for a very limited time due to inherent limitations in generation capacities and meeting peak demand with those generation capacities, etc. But the subject regulation finds no mention of these controllable factors, leave aside incorporating appropriate clauses for preventing adverse consequences that would arise as a result of such factors coming into play and fixing responsibility for the same. Such factors also need to be considered as controllable and variations in cost of power purchase on account of such controllable factors should not be permitted under true-up.

f) Variation in freight rates is proposed by the Commission as another uncontrollable factor. There is scope for choosing mode of transportation of fuel, especially coal, from the source of supply to the destination of the power plant. The transportation charges fixed by the Railways for transporting coal, even if at higher level, leave no scope for manipulation. But when it comes to transportation of coal by road by private transporters, there is scope for manipulations of inflating transportation charges and sharing undue benefits between the transporter and purchaser of coal. The DISCOMs simply accept claims of coal-based thermal power plants for transportation charges and pay the same, and variations in such charges are being claimed by them under true-up and being permitted by ERCs. There is no regulation to verify the veracity, justifiability and permissibility of transportation charges for coal being claimed by thermal power plants, whether going by the market trends prevailing at the time of transporting coal accordingly transportation charges are justifiable and permissible or manipulated and impermissible. When the issue has been raised repeatedly over the years during public hearings, except giving some directions to the DISCOMs, no concrete information is being made public and examined. Instead of treating variation in freight rates in generalised terms as an uncontrollable factor, we request the Hon'ble Commission to incorporate appropriate clauses in the subject regulation under generation tariffs for prudence check of freight rates and get the same implemented. Subject to

opportunities available for transportation facilities, the shortest possible route and the lowest freight rate for transportation of coal should be the justifiable basis for permissible freight rates based on market trends from time to time. Contrary to that, not only covering up its failure to provide adequate number of rakes by the Railways for transportation coal to power plants, the GoI has even issued a direction that coal should be transported through rail-ship-rail route in identified routes with a view to pampering crony capitalists to whom ports were handed over through privatisation or otherwise to serve their interests at the cost of consumers of power.

g) **For verification of quality in terms of grade and quantum of coal transported to power plants from coal fields also, an effective and verifiable mechanism is required. We request the Hon'ble Commission to incorporate appropriate clauses for the purpose of determination of energy charges in the subject regulation. It is all the more required in view of the proposal of the Hon'ble Commission to add to the existing formula for determination of energy charges that** "the weighted average calorific value of primary fuel for tariff purposes is proposed to be changed to "as received" minus 85 kcal/kg on account of variation during storage at generating station."

h) **Variation in fuel cost on account of variation in price of primary and/or secondary fuel prices also is proposed to be treated as an uncontrollable factor. However, variation in fuel cost on account of using fuel from alternative sources should be subject to the conditions as suggested under point numbers 29 and 30 in our written submissions dated December 6, 2023.**

i) **Variation in income tax rates also is considered as another uncontrollable factor. As already suggested, income tax should be borne by the generating entity and licensee, without allowing it as pass through to be collected from the consumers. Therefore, variation in income tax rates should be deleted from the uncontrollable factors.**

j) **Revenue from sale of power from consumers also is proposed to be one of the uncontrollable factors. However, its implication is not made clear. Treating variation in revenue from sale of power from consumers may mean, by implication, allowing revenue gap on account of the same under true-up. If sale of power to subsidizing consumers comes down and sale of power to subsidized consumers increases compared to sales projected and determined in the RSTO, revenue to the DISCOMs would come down compared to the revenue estimated in the RSTO. To bridge that revenue gap, unjustified burdens should not be imposed on the consumers under true-up. Conversely, if sale of power to subsidizing consumers increases and sale of power to subsidized consumers decreases, then revenue to the DISCOMs would increase compared to the revenue estimated in the RSTO. Apart from unrealistic estimates of demand for power by different categories of consumers, fluctuation in sale of power may take place due to unexpected factors. In other words, for variation in revenue to**

the DISCOMs from sale of power, controllable and uncontrollable factors may be the reasons. As such, variation in revenue on account of fluctuations in sale of power to the consumers should not be treated as an uncontrollable factor mechanically. Above all, how that variation in revenue on sale of power to the consumers, when it leads to revenue deficit to the DISCOMs, should be treated under true-up or fuel cost adjustment (FCA) is an issue with serious implications. Such revenue gap should not be allowed as a pass through to be collected from the consumers under true-up or FCA mechanically. We request the Hon'ble Commission to examine the following points, among others, and incorporate them appropriately in the subject regulation:

i) For imprudent decisions of the GoTS and its DISCOMs and orders issued by the Hon'ble Commission, as explained under point No.3(e) above, it will lead to additional expenditure for power purchase and variation in revenue from sale of power to the consumers. For the failures of commission and omission of the GoTS, its DISCOMs and the regulatory process, avoidable burdens are being imposed on the consumers in the form of additional costs that arise as a result of such failures and recovery of the same under FCA and true-up. That is the reason why variation in revenue from sale of power to consumers should not be treated as an uncontrollable factor mechanically. Such a situation implies regulatory failure to regulate, in a prudent manner, the decisions of the GoTS and its DISCOMs to enter into PPAs to purchase unwarranted and costly power.

ii) Even in a situation of availability of abnormal quantum of surplus power to the DISCOMs as a result of imprudent decisions and orders for purchasing unwarranted and high-cost power, purchase of power in the market and through exchanges at very high prices, through a process of legalised black marketing of selling power to the highest bidder, is imposing avoidable and unjust burdens on the consumers and leading to variations on requirement of revenue by the DISCOMs through sale of power to the consumers. Regulations of the Hon'ble Commission are found wanting in curtailing and correcting such a situation, thereby failing to protect larger consumer interest.

iii) The Hon'ble Commission has proposed to continue the condition that the maximum amount of FCA charges that can be levied on the consumers as per this Regulation without the prior approval of the Commission is Rs.0.30 per unit (in kWh) every month. We reiterate that this provision is arbitrary. When FCA proposal was made earlier, we submitted our submissions against that arrangement and are not repeating the same here. Tariffs are being determined by the Commission and permitted to be collected by the licensees, after considering their petitions and holding public hearings. Allowing collection of a certain amount per unit of consumption every month under FCA, without prior permission of the Commission, is like keeping the regulatory process upside down. When public hearings are being held for determination of permissible tariffs, there is no justification in not following the same process for determination of permissible FCA, the financial impact of which is generally

turning out to be several times higher than that of annual tariff hike. How the arrangement of allowing the DISCOMs to collect a certain amount per unit under FCA every month, without prior permission of the Commission and without holding public hearings, turns out to be arbitrary can be explained with one glaring example in Andhra Pradesh. The APDISCOMs paid a hefty sum of Rs.1234 crore to Hinduja National Power Corporation Limited towards "balance" of fixed charges for the period from 21st August, 2020 to 2nd February, 2022 against the interim tariff (Rs.3.82 per unit) determined by Hon'ble APERC in the past and paid by the DISCOMs for the power supplied supplied by its project in Visakhapatnam with an installed capacity of 1040 MW. In its order dated 1.8.2022, the Hon'ble Commission made it clear, inter alia, that "Ordinarily any tariff approved by the Commission shall date back from the commencement of PPA. However, the case on hand has undergone a chekered carrier. There was an air of acute uncertainty as to whether the PPA between the parties will come through. The DISCOMs have even gone to the extent of repudiating the PPA by withdrawing the OP filed for its approval. Due to the enormous Renewable Energy obligation, the requirement of scheduling Renewable Energy from the developers who are having must run status is also imposing a huge financial burden on the DISCOMs. Added to this the Covid pandemic has caused enormous loss to the DISCOMs. The DISCOMs are also bleeding with financial losses to the tune of Rs.28,000 Crores. In the realm of uncertainties, application of tariff now fixed for the anterior period from the date of CoD results in heavy true-up against the DISCOMs which will ultimately be passed on to the consumers. This, in our opinion, causes heavy damage to the public interest. Therefore, in the extraordinary facts and circumstances of the case, we direct that the adhoc tariff fixed from time to time shall be the final tariff for the period from actual CoD of unit-1 till 31.7.2022" (page 74 and para 66). A review petition No.08 of 2022 in O.P.No.21of 2015 and O.P.No.19 of 2016 filed by HNPCL on 5.9.2022 was set aside by the Hon'ble Commission, seeking review of its order dated 1.8.2022 on various grounds. In the review petition, HNPCL has questioned (para 35 of review petition), inter alia, the stand of the Hon'ble Commission that "the adhoc tariff fixed from time to time shall be the final tariff for the period from actual CoD of unit-I till 31.07. 2022." Despite the clear position, the APDISCOMs, at the behest of the GoAP, paid Rs.1234 crore to HNPCL and collected the same in the form of FPPCA @ Rs.0.40 per unit. Reacting to our submissions, the Hon'ble APERC took the stand that as and when the issue comes up before it, it would examine it and take a decision. The issue must have been incorporated in the petitions of the DISCOMs for a true-up of Rs.7200 crore for the year 2022-23 which were filed by the DISCOMs a few months back, but not taken up for public hearing by the Commission so far. What stand the Hon'ble APERC would take on the issue and when is to be seen. It is clear that, since the hefty sum is paid to HNPCL by APDISCOMs, public money has gone down the drain. Whatever the stand APERC takes later on the issue, whether it would protect larger public interest and the damage done can be undone is a big question mark. Therefore, we request the Hon'ble Commission to incorporate an appropriate clause under FCA to the effect that

DISCOMs have to claim and collect FCA amounts, monthly or quarterly, after the Commission holds public hearings on their petitions and gives its order.

iv) **In the subject regulation, the Hon'ble Commission has reiterated that "**FCA charges shall be passed on to all categories of consumers except LT-V Agricultural consumers and distribution licensee shall claim the FCA charges of LT-V Agricultural consumers from the Government of Telangana. Such claims if not received from the Government of Telangana shall not be allowed in annual true up filings." **In the past, we made elaborate submissions, explaining how it was unjust to impose the burdens of FCA charges on all categories of non-agricultural consumers. The direction of the Hon'ble Commission that FCA charges for LT-V agriculture shall be claimed from GoTS and that, if such claims are not received from the GoTS, they shall not be allowed in annual true up filings is absolutely justified and correct, because it is the policy of the GoTS to supply power to this category of agricultural consumers free of cost and providing required subsidy for the purpose. Similarly, GoTS is providing subsidy to some other categories of consumers and the same principle, which is applied to FCA charges of LT-V agricultural consumers, should also be applied in the case of FCA charges of other non-agricultural subsidised consumers proportionate to the subsidy the GoTS is providing vis a vis the cost of service or full cost tariffs determined by the Commission for such subsidised consumers. We request the Hon'ble Commission to incorporate an appropriate sub-clause in the subject regulation to this effect. The principle in providing subsidy is the same, the difference being in percentage of subsidy being provided to different categories of consumers.**

v) **Irrespective of cost of service to each category of consumers, tariffs are being determined by the Commission, taking into account cross subsidy and government subsidy, among others, differently. But, FCA under true-up is being imposed on all categories of consumers, except LT-V agriculture, equally per unit of consumption, thereby giving a go-by to the principle of redistributive social justice involved in determining differential tariffs to different categories of consumers. Therefore, we request the Hon'ble Commission to impose FCA per unit proportionate to the tariffs applicable to different categories of consumers and incorporate an appropriate provision under FCA for this purpose.**

4. **Under mechanism for sharing of gains or losses on account of controllable factors, the Hon'ble Commission has proposed that two-third of the amount of such gain shall be passed on as a rebate in tariff and the balance amount of such gain shall be retained by the generating entity or licensee or SLDC. Similarly, the Hon'ble Commission has proposed that one-third of the amount of loss to the generating entity or licensee or SLDC on account of controllable factors "may be passed on as an additional charge in tariff over such period as may be stipulated in the Order of the Commission" and that the balance amount of such loss shall be absorbed by the generating entity or licensee or SLDC. Here, too, we reiterate that efficiency that is determined to be achieved by the generating entity or licensee or SLDC on account**

of controllable factors as per normative parameters or actual, whichever is lower, should be considered and that loss incurred on account of failures of the generating entity or licensee or SLDC in achieving the determined level of efficiency shall not be imposed on consumers fully or partly for the reasons explained under point No.3(c) above. In view of these suggestions, the mechanism for sharing of gains or losses on account of controllable factors becomes superfluous and needs to be deleted from the subject regulation.

5. **The Hon'ble Commission has reiterated in the subject regulation that** "the Commission will prudently verify the calculations and relevant information submitted by the distribution licensee and determine the FCA charges of each month in that quarter as per the procedure stipulated in "Conduct of Business" Regulations, 2015 [Regulation No.2 of 2015] as amended from time to time." **It should be further stipulated that the Commission will issue its order, after holding a public hearing, determining the permissible FCA charges for that quarter, directing the distribution licensee to true up or true down, as the case may be, the FCA charges so determined for that quarter. Otherwise, the proposed exercise does not serve the purpose it should in time. Similarly, some reasonable time schedule should be fixed for holding public hearings and disposing of the FCA claims of the DISCOMs by the Hon'ble Commission from the date of submission of such petitions. To avoid unnecessary delay, the Hon'ble Commission should prescribe submission of all relevant information and data and reasons justifying their claims for FCA by the licensee. Based on experience over the years, and keeping in view the kind of relevant information being sought by objectors, the Hon'ble Commission has to prescribe appropriate formats and stipulations for submission of all relevant information by licensees.**

6. **The Hon'ble Commission has also proposed that** "the distribution licensee, after completion of audited annual accounts, shall file the true up petition for passing through of gains and losses by claiming variations in "uncontrollable" items in the ARR for the year and also submit details of FCA charges already passed on to the consumers along with the true up petition to the Commission. In case of failure of distribution licensee in filing of true ups of uncontrollable items, the distribution licensee shall not claim the FCA charges in the consumers bill till the true-up petitions for claiming the variations in uncontrollable items are filed." **It should also be made clear that for the period delayed in filing true-up petition, the distribution licensee shall not be allowed to claim carrying costs and that, in case of truing down, it shall pay specific interest on the amount to be trued down for such delay to the consumers. This should be in addition to the stipulation the Hon'ble Commission has reiterated in the subject regulation that "**in case of delay in submission of tariff/true-up filings by the generating entity or licensee or SLDC, as required under this Regulation, rate of RoE shall be reduced by 0.5% per month or part thereof."

7. **The Hon'ble Commission, even while asserting that all future procurement of short-term or medium-term or long-term power shall be undertaken only through tariff based competitive bidding in accordance with guidelines notified by the**

Government of India under Section 63 of the EA, 2023, has proposed that "if the Licensee proposes to procure the power by a process other than that specified by the Competitive Bidding Guidelines, it shall, in its filing with the Commission, seek the consent of the Commission and demonstrate to the Commission's satisfaction that the proposed procurement is the preferred least cost option, with reference to the economic, technical, system and environmental aspects of commercially viable alternatives, including arrangements for reducing the level of demand. The Licensee shall describe the procurement procedure, proposed to be adopted, including the steps to be taken to ensure that the purchase is made on the best possible terms." **This stand of the Commission implies that there is scope for** least cost option, without tariff-based competitive bidding, **This position also holds good in allowing the TSTRANSCO, as the STU and licensee, to itself taking up inter-state transmission projects and schemes in a similar manner, without the need for TBCB to award such projects to private corporate companies. Since so many issues are involved in this exercise and the consumers will have to foot the bill ultimately, public hearing on such a filing by the licensee for least cost option, without TBCB, for procurement of power should be held.**

8. **The Hon'ble Commission has proposed that "**in case of generating station or unit thereof under shutdown due to Renovation and Modernisation, the Generating Company shall be allowed to recover O&M expenses and interest on loan only." **During the period of execution of works of renovation and modernisation, there will be no operation of the generating station. Moreover, during the same period, along with R&M works, annual overhauling of the station also can be taken up, with permissible repairs, if any. As full fixed costs are covered at threshold level of PLF, the remaining PLF is intended for covering the period of annual overhauling of the station. As such, no additional fixed costs are required during annual overhauling. When a generating station reaches a stage for renovation and modernisation, by that time 90% of value of the plant would be recovered through depreciation charges paid already and debt component of the capital cost of the station would be cleared. Once R&M works are completed, the permissible capital cost, including interest during the period of execution of those works, would be taken into account by the Commission for fixed charges and for determining generation tariff during post-R&M period of the PPA. Therefore, during the period of shutdown of the plant for execution of R&M works, the generating company shall not be allowed to claim O&M costs and interest on loan separately. As such, we request the Hon'ble Commission to delete the above-quoted provision from the subject regulation.**

9. **When schemes like AGL solar pump sets, energy efficient pump sets, DELP, etc., with or without subsidy from the governments, the expenditure, minus subsidy, if any, should be borne by the governments or collected from the consumers concerned; it should not be allowed to be included in the ARR and collected from all the consumers. We request the Hon'ble Commission to incorporate a clause appropriately in the subject regulation to this effect. In Andhra Pradesh, earlier in the undivided Andhra Pradesh, the DISCOMs have been showing, under other costs, expenditures for implementing schemes like agricultural solar pump sets, energy efficient pump sets, DELP, etc. We have been raising objections on imposing**

such expenditure on other consumers who are not beneficiaries of such schemes. We have made it clear repeatedly that the beneficiaries are the consumers for whom such schemes are implemented and/or the GoAP by virtue of reduction of requirement of subsidy due to energy saved, especially, in the case of consumers subsidised, fully or partly. The successive Commissions continue not to pay heed to our valid objections and allow that expenditure to be collected from the consumers for whom such schemes are not implemented or from the government. In response to our objections, the Hon'ble APERC has maintained that "savings on account of energy saving and energy efficiency measures would be passed on to all consumers which would reduce the ARR of the DISCOMs and that the expenditure has been spent by the DISCOMs after due approval from the Commission." **It is further pointed out by APERC that** "APSPDCL is passing on Rs.58.53 Cr. to the consumers which it has received from REC as an interest subsidy and grant towards energy efficiency measures" **(pages 99-100 of RSTO for 2022-23). Savings on account of energy saving and energy efficiency go to the consumers for whom such measures are implemented in the form of reduction of their consumption of power and the resultant saving in their monthly bill, if they are partly subsidised consumers. In case of fully subsidised consumers, obviously, there is no saving for them on account of implementing such measures, since it is free supply of power, they do not see any saving for them with free supply of power continuing. But, it results in savings to the government in terms of proportionate reduction in need for providing subsidy to such consumers. If such measures are implemented for consumers, who are cross-subsidising, with reduction in their consumption of power, there will be saving for them in the form of proportionate reduction in the periodical bill they have to pay. On the other hand, reduction in consumption of power by cross-subsidising consumers leads to reduction in cross-subsidy, as well as profit, to the DISCOMs and the resultant increase in their revenue gap proportionately which leads to increase in need for tariff hike or increase in subsidy to be provided by the GoAP. In other words, savings achieved on account of such measures are not being passed on to "all consumers." Though reduction of power purchase on account of savings in energy consumption reduces ARR of the DISCOMs, relatively, that does not bestow any benefit on consumers for whom such measures are not being implemented. ARR depends on the cost of power purchase and other permissible costs from the point of generation and purchasing and supplying power to the end consumer, but such a reduction does not provide any benefit to the non-subsidised consumers, because they have to pay full tariffs for the power they consume. Energy saving may lead to reduction in need for power purchase, but such a saving need not necessarily lead to reduction in average cost of power purchase per unit. On the contrary, saving in energy consumption may even lead to increase in availability of surplus power and need for backing down the same. Tariffs are being determined on the basis of average cost per unit of power purchased, among other factors. With new service connections being given, need for purchase of power also increases. Savings in power consumption by the targeted consumers do not lead to reduction in average cost of power purchase per unit. As such, savings on account of energy saving and energy efficiency are not, and cannot be, passed on to those consumers for whom such measures are not being implemented. On the contrary, the**

expenditure incurred for implementing such measures to the targeted consumers is being imposed on other consumers proportionately for whom such measures are not being implemented and no benefit is derived by them. In other words, benefits to some targeted consumers and GoAP and burdens to other non-targeted consumers. This lopsided and inequitable arrangement is what we have been objecting to. We support implementation of energy saving and energy efficiency measures based on cost-benefit analysis. We reiterate that the expenditure incurred for such measures should be borne by the governments and/or the consumers concerned to whom those measures are being implemented. Passing on interest subsidy and grant given by REC to the targeted consumers, directly or indirectly, does not cover the total expenditure being incurred for such measures. The expenditures for such measures being shown by the DISCOMs are after adjusting such interest subsidy and grant. Simply because an incorrect stand was taken by the Commission in the past, the same need not be continued by successive Commissions. Equanimity, fairness and balance demand reconsideration and correction of such a stand, ensuring avoidance of imposition of proportionate burden of such expenditure for measures intended for energy saving and energy efficiency on the consumers for whom such measures are not being implemented.

10. **The Hon'ble Commission has proposed that** employee cost including unfunded liabilities of pension and gratuity **shall be part of operation and maintenance expenses of the generating station. When the erstwhile APSEB was unbundled, due to lack of proper maintenance of accounts and unfunded liabilities of pension and gratuity, the then APERC permitted such liabilities as pass through to be collected from the consumers as a part and parcel of O&M expenditure. Successive Commissions have been continuing that approach in the case of successor entities of erstwhile APSEB, i.e., APGENCO, APTRANSCO and APDISCOMS, and after formation of the state of Telangana to TSGENCO, TSTRANSCO and TSDISCOMS. We repeatedly suggested that the state governments concerned should take over such liabilities once for all, instead of continuing to impose those questionable burdens on consumers of power, but to no avail. The proposal of the Hon'ble Commission is in the nature of applying this provision for all generating stations for which there is no rational and material basis. Moreover, employee cost needs to be determined as a percentage of overall O&M costs based on normative parameters of employees required for performing specific duties. Therefore, we request the Hon'ble Commission to make it clear in clause 45.1 that "unfunded past liabilities of pension and gratuity" shall not be applicable to generating stations, except to the generating stations of TSGENCO.**

11. **After formation of the new government in the state, in the first review meeting held on 8.12.2023 by the Chief Minister, Sri A Revanth Reddy, the issues of power sector figured prominently. In the power point presentation made by officers, it is reported in the media widely that the debt of TSGENCO, TRANSCO and the DISCOMs increased from Rs.22,423 crore in 2015-16 to Rs.81,516 crore by the end of October, 2023. For paying dues to generators for supply of power, the DISCOMs have taken short-term loans to the tune of Rs.30,406 crore and that a sum of Rs.1300 crore per**

month is required to repay the debt in instalments. "Losses" of DISCOMs are reported to have increased from 2014-15 to 2024 to an abnormal level of Rs.50,275 crore. It is also estimated that the DISCOMs are likely to incur a loss of Rs.11,058 crore for a period of six months ending May, 2024. It is also reported that in a report submitted to the CM, it is revealed that a hefty sum of Rs.40,655 crore is due towards power bills to the DISCOMs - Rs.28,140 crore from entities of the state government and Rs.12,515 crore towards true-up amount the state government agreed to pay in five years, in addition to dues of power bills to the tune of Rs.721 crore from entities of the central government. Neither the policies of the governments, nor regulations of the Commission could bail out the DISCOMs from this alarming financial crisis. The regulatory process of the Hon'ble Commission could not make this alarming situation transparent periodically. Whether the Hon'ble Commission has examined the situation and issued any directions to the DISCOMs to take necessary steps to collect dues is not made public. When the TSDISOMs made a presentation on 30.6.2021 before the Commission in connection with a public hearing on some PPAs, they gave statistical details about the growth of power sector in the state after formation of the state of Telangana. When I wanted them to give details of the financial position of the power utilities of the GoTS at the time of formation of the state and at present, there was no response from the DISCOMs. Nor did the Hon'ble Commission direct the DISCOMs to give details of their financial condition. There have been a number of instances when the DISCOMs did not provide relevant information and data sought by objectors during public hearings held in connection with various petitions. Experience confirms that mere regulations cannot improve the situation to the extent possible within the limitations of the regulatory process, unless they are matched by effective and timely regulatory action ensuring transparency and accountability. Giving responses to submissions, including those of objectors, and reasoned orders is one of the ingredients of effective regulatory process.

12. **I request the Hon'ble Commission to take the above submissions and my earlier submissions, among others, on the subject issue into consideration and take appropriate decisions.**

Thanking you,

Yours sincerely,

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