

To

The Secretary

Telangana State Electricity Regulatory Commission

5th floor, Singareni Bhavan, Red Hills

Hyderabad – 500 004

February 19, 2021

Respected Sir,

Sub : Submission of objections and suggestions in OP No.5 of 2021 and O.P.No.6 of 2021 and IA No.1 of 2021 relating to true-up claims of TS Genco for revised fixed charges for the third control period (2014-19)

With reference to the public notice dated 4.2.2021 on the subject petitions filed by TS Genco, inviting objections and suggestions for the consideration of the Hon'ble Commission, I am submitting the following points:

- 1. OP No.5 and OP No.6 of 2021 are two different petitions. Whatever be the reasons for filing of true-up petition claiming revised fixed charges for the 3rd control period and petition and capital cost and tariff for KTPS stage VII; and determination of capital cost for new stations and generation tariff for existing stations and new stations for the 4th control period (2019-2024) simultaneously by TS Genco and the Hon'ble Commission taking up the same for public hearing simultaneously, it does not provide sufficient time to interested objectors to study the voluminous filings of TS Genco, analyse the same and make detailed submissions. There is no inter-connection between the two petitions and the same should have been filed and taken up for public hearing separately - the petition for 3rd control period should have been filed during 2019 and the petition for 4th control period during 2018. At least, sufficient time gap should have been provided for inviting suggestions and objections on the two petitions by taking up the same separately for public hearing. Moreover, the information submitted by TSGenco is found wanting in meeting requirements of the regulatory process and public hearings. Submissions of the respondents also should be made public and sufficient time be given to interested objectors to study the same and submit their views during the scheduled public hearings.**
- 2. Among the reasons for delay in filing the subject petitions, TS Genco has stated that final comments from C&AG were received on 26th September, 2019, and that the 5th general body meeting of TS Genco held on 10.12.2019 adopted the annual accounts. However, TS Genco has not attached the final comments of C&AG along with the petition concerned. Moreover, based on the abstract data given by TS Genco, it is not possible to understand justifiability and permissibility of various expenditures it claimed to have incurred during the 3rd control period or otherwise, in the absence**

of detailed information pertaining thereto. Therefore, we request the Hon'ble Commission to direct TS Genco to submit the final comments of C&AG and detailed information relating to the expenditures it incurred during the third control period and make the same available to us to study the same and make submissions thereon.

3. TS Genco has claimed true up of Rs.19374.96 crore for the third control period against Rs.20645.98 crore after adjustments of Rs.1271.02 crore for the reasons given in its petition towards fixed charges. Going by the commercial operation dates (COD), most of the stations are old ones. For power being supplied to the Discoms, TS Genco must have billed and collected the fixed and variable charges applicable from time to time as per terms and conditions in the respective power purchase agreements approved by the Hon'ble Commission. On the face of it, claiming a hefty sum of Rs.19374.96 crore under true-up for the past period of five years of the third control period is abnormal and found wanting in observing prudence in the operations of the power stations of TS Genco. If such claims of TS Genco (and of TS Transco and Discoms) are allowed by the Hon'ble Commission, it will lead to a disaster. Whether such abnormal burdens can be imposed on consumers of power of the Discoms even in a phased manner by treating the same as regulatory assets one shudders to think.
4. The standard practice of ERCs as per regulations applicable is to determine permissible capital cost of the power project concerned with which the distribution licensee/licensees enter into PPA, give consent to PPA and determine tariff. The terms and conditions in the PPA continue to be binding on parties thereto till its expiry. This regulatory process is within the jurisdiction of ERCs for regulating purchase of power by the distribution licensees. Revision of capital cost and fixed charges by the Commission on the basis of the claims of a developer of the power project for a control period is contrary to the standard practice. Developers of power plants are not licensees of the Commissions. Unless the Discoms enter into an agreement with a power plant and come before the Commission, the latter cannot entertain any petition for revision of capital cost filed by the developer of power plant. Contrary to the standard practice of determining capital cost of a power project with whom the Discoms enter into a PPA, TSERC had brought about sweeping amendments to tariff determination with Regulation No.1 of 2019, making provision for claiming true-up by power plants, submission of capital investment plan and business plan seeking revision of capital cost approved by the Commission. This is one of the regulatory aberrations that had taken place when TSERC acted as a one-man Commission heavily dependent as it was at that point of time on the services of private consultants. Since purchase of power by the Discoms from the power project concerned is governed by the terms and conditions of the PPA between them as consented by the Commission, there is no need for allowing claims

of true-up by the developer of the project. Once the Commission determines permissible capital cost of the project, as a part and parcel of its regulatory process, the need for revision of the determined capital cost for a control period does not arise. The developers are expected to execute their power project as per the terms and conditions of the agreement between them and the Discoms and applicable regulations of the Commission. This is intended to ensure that the benefit of completing the project as per agreed time schedule accrues to the developers and the consumers. When Discoms are permitted to claim true-up/true-down, it is due to uncontrollable factors. In the case of developers of power projects, for reasons other than the terms and conditions of the PPA, if they incur additional expenditure or loss, it should be treated as their business risk, which is projected as one of the reasons for seeking higher percentage of return on equity by the developers. Allowing claims of true-up and revision of capital cost after one year of declaration of COD of the last unit of the project as per the original agreed time schedule negates balanced approach and acts against the interest of the consumers of the Discoms. The very fact that the amendments brought about by TSERC have not been opposed by the developers confirms this. The true-up claim of TS Genco is the kind of adverse impact on the tariffs to be paid by the consumers, if approved by the Commission. The said regulation of TSERC would provide a cover of protection to developers of power projects with whom Discoms enter into PPAs, for the failures of commission and omission causing delay in execution of the projects concerned and the resultant avoidable increase in capital cost, including interest during construction, and additional expenditure after one year after declaration of COD of the project concerned. Allowing such additional costs through revision of capital cost and fixed charges is nothing but rewarding inefficiency of the developers of power plants and penalizing the Discoms and their consumers of power. In bringing about such irrational amendments detrimental to larger consumer interest and for undue benefit of developers, the role of the Commission, the authorities heading the power utilities of the Government of Telangana and developers is perplexing. Keeping in view the above-submitted points, among others, the Hon'ble Commission can deviate from the regulation by recording the reasons for the same in writing for determining and approving what is permissible and rejecting what is impermissible in the subject true-up claims of TS Genco.

5. As a part and parcel of fixed charges, as approved by the Hon'ble Commission, when Genco is collecting all the components thereof in the monthly bills being raised for supply of power to the Discoms from different stations, it is difficult to understand justifiability or otherwise of the fresh claims of TS Genco under various heads for hefty additional amounts.

- 6. When interest rates are falling steeply, there is no justification in Genco claiming return on equity @ 15.5% on net fixed asset for old plants and @ 16% for KTPS state VII. We request the Hon'ble Commission to reexamine the issue keeping in view the trend of falling interest rates and reduce the percentage of return on equity/net fixed asset appropriately. This is all the more necessary in view of the fact that income tax being paid by TS Genco also is being allowed as pass-through, though it defies logic in the sense that income tax is to be paid on the profits earned by Genco.**
- 7. Against the claims of Genco for depreciation charges, we request the Hon'ble Commission to consider rates of depreciation as per regulations of CERC, or of the Ministry of Power, GoI, whichever is lesser.**
- 8. Genco has claimed an increase in operation and maintenance charges of Rs.877.03 crore for 2014-15 and Rs.1447.57 crore for 2018-19, i.e., an increase of 60.58 per cent during the 3rd control period. Moreover, it has not given break-up of different components of O&M expenditure, except claiming that enhancement of employee cost is 40% which translates to 20% increase in O&M expenses. We request the Hon'ble Commission to direct TS Genco to give year-wise break-up of all the components of O&M expenditure. We also request the Hon'ble Commission to confine the claims of TS Genco for O&M expenses, including pay and allowances, within the normative values specified in applicable regulations or decide and implement rational normative parameters for the same. The Commission has been allowing the financial impact of periodical wage revision for the employees of TS Genco and other power utilities of the State Government, though the rates of revision tended to be higher, irrespective of permissible norms of O&M expenses. While pay revision for its employees is being decided and the impact of pay revision is being borne by GoTS, the impact of pay revision for employees of the power utilities is being passed on to the consumers of power as a part and parcel of the tariffs to be paid by them as determined by the Commission. As such, under this regulatory regime, the impact of pay revision on tariffs needs to be regulated as a part and parcel of determining total O&M expenditure as per applicable norms. In the case of private power projects with whom the Discoms had PPAs, the O&M costs, including pay and allowances of their employees, of those projects are being determined by the Commission as per applicable norms. The private power projects are not claiming the financial impact of revision of pay and allowances to their staff separately and the Commission also is determining O&M expenditure, which is inclusive of the requirement of pay and allowances, with annual escalation. The claims for administrative costs, including pay and allowances of employees, by power utilities should be subjected to applicable norms; they cannot claim the same as they like and the Commission should apply applicable regulations and norms for determining the same in order to ensure prudence in expenditure by power utilities and protect larger consumer interest. Allowing such expenditures as claimed by the**

power utilities arbitrarily would tantamount to failure of the Commission to apply applicable regulations and norms, giving its approvals mechanically, and shirking its regulatory responsibility. I would like to remind the Hon'ble Commission that, during a public hearing on MYT of TS Genco, the then Hon'ble Member of TSERC, Sri Srinivasulu garu, had orally observed that the claims of TS Genco for pay revision would not be allowed as they were for the purpose of determining O&M expenditure. Pay revision is not within the regulatory purview of the Hon'ble Commission, no doubt. Need for periodical revision of pay and allowances of the employees also cannot be denied. Seen in this background, it is difficult to agree with observations like the one that, "though the employee cost as part of O&M expenditure has been classified as a controllable item, these needs to be considered for true-up as part of the force majeure factors," for, this kind of strange logic implies that the decisions of those who determine and implement wage revision come under conditions of force majeure, as if they were a law unto themselves, and encourage them to continue to decide wage revision periodically as they want to, without any prudence check and accountability and unmindful of the cascading affect it will have on tariffs to be paid by the consumers. If the authorities concerned display unwarranted benevolence at the cost of consumers of power in fixing wage revision, even exceeding the demands made by the employees, as had happened in the past, it reflects an unhealthy tendency of monopoly in decision-making by the authorities concerned. But for this kind of unquestioning approval for passing on the expenditure on wage revision to the consumers, without any prudence check, no organization can compete in the market and will become bankrupt, if such tendencies continue to operate periodically. Whatever be the impact of pay revision effected periodically, we request the Hon'ble Commission to determine such an impact for the purpose of O & M expenditure based on prudent norms, not as it is.

9. TS Genco is claiming actual interest on pension bonds over and above the schedule interest. It is a standard practice that pension funds have to be maintained from the contributions of the Management and employees and used appropriately to earn interest thereon. Since the erstwhile APSEB used those funds for other purposes, without accounting for the same, as a part and parcel of the first transfer scheme, after revaluation of assets of all the power utilities of the then GoAP in the undivided Andhra Pradesh, the first APERC allowed the same to be collected from consumers and subsequent Commissions also have been following the same pattern and interest on pension bonds. This kind of unjustifiable arrangement detrimental to larger consumer interest, if allowed repeatedly, will continue for many more years to come. We request the Hon'ble Commission to give a piece of advice to the Government of Telangana State to take over liabilities of pension bonds of its power utilities to settle the issue once for all, without continuing to impose such unjust burdens on consumers of power.

- 10. Renovation and Modernisation should be based on cost-benefit analysis. TS Genco claims that the gross fixed assets for the balance control period (2016-19) are projected based on actual R&M expenditure/additional capital expenditure as per the audited accounts. The comments of C&AG, along with details of expenditure and the procedure adopted for implementing R&M, need to be submitted by Genco and examined by the Hon'ble Commission. I request the Commission to make the same available to us. Expenditures as per audited accounts, ipso facto, are not permissible mechanically or automatically; whether they are unavoidable and justifiable or not needs to be examined.**
- 11. I request the Hon'ble Commission to direct TS Genco to submit details as requested above and its responses to our submissions, put responses of the respondents in its website and give us sufficient time to study the same and make further submissions, by extending time of public hearing, if necessary. I request the Hon'ble Commission to provide me an opportunity to make further submissions in person during the public hearing on the subject issue.**

Thanking you,

Yours sincerely,

**M. Venugopala Rao
Senior Journalist &
Convener, Centre for Power Studies
H.No.1-100/MP/10, Monarch Prestige
Journalists' Colony, Gopanpally, Serilingampally Mandal,
Hyderabad - 500 032**

**Copy to:
CMD, TS Genco, Hyderabad**

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

February 24, 2021

Respected Sir,

Sub : Submission of objections and suggestions in O.P.No.6 of 2021 relating to determination of capital cost for new stations and generation tariff for the existing and new stations for the 4th control period (2019-24) for the electricity being and to be supplied by TS Genco to the Discoms

With reference to the public notice dated 4.2.2021, I am submitting the following points for the consideration of the Hon'ble Commission on the subject issues:

- 1. The way TS Genco has submitted its subject petition, without relevant information, gives scope for making the regulatory process and public hearing a mere formality, as far as new projects are concerned. Clubbing new projects like KTPS stage VII and BTPS with determination of station-wise tariff for the energy to be supplied to the Discoms during the 4th control period by old stations of TS Genco is unwarranted. As per information furnished by Genco, PPA with KTPS stage VII was signed on 19.3.2018 and with BTPS on 17.9.2019. While COD of KTPS stage VII was achieved on 26.12.2018, COD of BTPS (4x270 MW) stage I was achieved on 5.6.2020, of stage II was achieved on 7.12.2020, COD of stage III was proposed to be achieved in January, 2021 and of stage IV in March 21. For determination of tariff of new stations, their PPAs, original estimated cost, time schedule of implementation of the stations, source of coal, etc., need to be submitted and examined. This is imperative to meet requirements of regulatory process, as well as public hearing. While CODs of the new stations are achieved/to be achieved in March, 2021, TS Genco has shown gross fixed assets of KTPS VII (800 MW) as Rs.4605 crore as on 1.4.2019 and an addition of GFA of Rs.1800 crore by the end of 2023-24. It works out to a total of Rs.6405 crore. Similarly, for BTPS, TS Genco has projected a GFA of Rs.9959 crore by the end of 2023-24. While capital cost per MW of KTPS VII, as per the projections of Genco, works out to Rs.8 crore per MW, that of BTPS works out to Rs.9.22 crore per MW. How these two projects were taken up, to whom orders were given for implementing them and with what terms and conditions, whether there has been delay in implementing them, whether the abnormal and prohibitive capital cost is permissible or not, whether power from these plants is required, if so, from which period, whether COD, generation and supply of power from these projects is in consonance with growing demand and load forecast, if any, source of supply of coal, its cost, GCV, station heat rate, mode and costs of transportation, terms and conditions in the PPAs, etc., need to be examined thoroughly with due prudence for determining permissible capital cost, fixed charges, variable cost and tariff. The Hon'ble Commission should have directed TS**

Genco to submit all the relevant information relating to KTPS VII and BTPS and got the same uploaded in its web site. Without examining the above-mentioned information, among others, with due diligence, how can the Hon'ble Commission determine permissible capital cost, fixed charges and tariff for these two projects? Certainly, it is not possible for objectors to analyse the relevant issues, make meaningful and purposeful submissions, if the said relevant information is not made available/accessible to them. Despite signing PPAs with the two projects already and the fact that CODs of the two new projects/plants are already declared/to be declared next month, the approach of TS Genco in not submitting the relevant information to the Hon'ble Commission, but seeking determination of capital costs and interim tariff, and clubbing the same with issues of determination of tariff of its old plants, confirms beyond the shadow of a doubt, that it wants to conceal reality, and its questionable implementation of the two new projects and claims. It is strange that TS Genco is requesting the Hon'ble Commission to provide legal basis for its claims and recovery of fixed, variable and other costs and amounts, pending final disposal of its application, without providing required information and without explaining the reasons, if any, for not submitting the same to the Hon'ble Commission. The way BTPS was purchased by TS Genco from a private company was questioned and criticised seriously by knowledgeable quarters in the past. Therefore, I request the Hon'ble Commission to direct TS Genco to submit all the relevant information, as explained above and as required for the regulatory process and public hearing, get the same uploaded in the web site of the Commission, and give sufficient time to interested public to study the same and make their submissions, and postpone public hearing on issues pertaining to KTPS VII and BTPS accordingly. We request the Hon'ble Commission to get responses of the respondent Discoms also uploaded in its web site and enable interested public to study the same and make further submissions. We request the Hon'ble Commission to take up PPAs of KTPS VII and BTPS, determination of their permissible capital costs and tariffs simultaneously station/project-wise for public hearing and its consideration. There is every need to direct the Discoms and generators of power projects with whom the former enters into PPAs, to submit the same, along with projected capital costs and tariffs, much before implementation of the projects concerned for its consideration and public hearing. If necessary, applicable regulations of the Hon'ble Commission may be amended or a new regulation be brought about accordingly. There is no justification in seeking determination of interim tariffs, even after signing PPAs and declaration of CODs of projects concerned and without submitting the same for the consideration of the Hon'ble Commission and public hearing.

- 2. For some of its old plants - KTPS V, KTPP II, LJHES and PCHES, TS Genco has claimed additional amounts under gross fixed assets. As a part and parcel of fixed charges, as approved by the Hon'ble Commission, when Genco is collecting all the components thereof in the monthly bills being raised for supply of power to the Discoms from different stations, it is difficult to understand justifiability or otherwise of the claims of TS Genco for additional amounts under addition of gross**

fixed assets during the 4th control period. We request the Hon'ble Commission to reject such claims.

3. Genco has shown a claim for Rs.489.04 crore towards “provisions” during the 4th control period and included the same in proposed fixed charges. Genco has to explain what it meant by “provisions” and their justifiability and permissibility. Otherwise, such claims should be rejected by the Hon'ble Commission.
4. When interest rates are falling steeply, there is no justification in Genco claiming return on equity @ 15.5% on net fixed asset for old plants. We request the Hon'ble Commission to reexamine the issue keeping in view the trend of falling interest rates and reduce the percentage of return on equity/net fixed asset appropriately. This is all the more necessary in view of the fact that income tax being paid by TS Genco also is being allowed as pass-through, though it defies logic in the sense that income tax is to be paid on the profits earned by Genco. The higher rate of interest on working capital shown by TS Genco also needs to be pruned in tune with falling rates of interest on loans.
5. For the 4th control period, Genco has claimed a hefty sum of Rs.6448.38 crore towards additional interest on pension bonds (over and above schedule) as a part and parcel of fixed charges. It is a standard practice that pension funds have to be maintained from the contributions of the Management and employees and used appropriately to earn interest thereon. Since the erstwhile APSEB used those funds for other purposes, without accounting for the same, as a part and parcel of the first transfer scheme, after revaluation of assets of all the power utilities of the then GoAP in the undivided Andhra Pradesh, the first APERC allowed the same to be collected from consumers and subsequent Commissions also have been following the same pattern and interest on pension bonds. This kind of unjustifiable arrangement detrimental to larger consumer interest, if allowed repeatedly, will continue for many more years to come. We request the Hon'ble Commission to give a piece of advice to the Government of Telangana State to take over liabilities of pension bonds of its power utilities to settle the issue once for all, without continuing to impose such unjust burdens on consumers of power.
6. Genco has claimed year-wise increase in operation and maintenance charges during the 4th control period totalling Rs.7560.89 crore, excluding KTPS VII and BTPS. The employee cost of Rs.6005.62 crore works out to 79.43% of the proposed total O&M expenditure for the 4th control period. This excludes the impact of pay revision that would take place during the 4th control period which would be claimed by Genco under true-up later. We request the Hon'ble Commission to confine the claims of TS Genco for O&M expenses, including pay and allowances, within the normative values specified in applicable regulations or decide and implement rational normative parameters for the same. The Commission has been allowing the financial impact of periodical wage revision for the employees of TS Genco and

other power utilities of the State Government, irrespective of permissible norms of O&M expenses. While pay revision for its employees is being decided and the impact of pay revision is being borne by GoTS, the impact of pay revision for employees of the power utilities is being passed on to the consumers of power as a part and parcel of the tariffs to be paid by them as determined by the Commission. As such, under this regulatory regime, the impact of pay revision on tariffs needs to be regulated as a part and parcel of determining total O&M expenditure. In the case of private power projects with whom the Discoms had PPAs, the O&M costs, including pay and allowances of their employees, of those projects are being determined by the Commission as per applicable norms. The private power projects are not claiming the financial impact of revision of pay and allowances to their staff separately and the Commission also is determining O&M expenditure, which is inclusive of the requirement of pay and allowances, with annual escalation. The claims for administrative costs, including pay and allowances of employees, by power utilities should be subjected to applicable norms; they cannot claim the same as they like and the Commission should apply applicable regulations and norms for determining the same in order to ensure prudence in expenditure by power utilities and protect larger consumer interest. I would like to remind the Hon'ble Commission that, during a public hearing on MYT of TS Genco earlier, the then Hon'ble Member of TSERC, Sri Srinivasulu garu, had orally observed that the claims of TS Genco for pay revision would not be allowed as they were for the purpose of determining O&M expenditure. Pay revision is not within the regulatory purview of the Hon'ble Commission, no doubt. Need for periodical revision of pay and allowances of the employees also cannot be denied. Seen in this background, it is difficult to agree with observations like the one that, "though the employee cost as part of O&M expenditure has been classified as a controllable item, these needs to be considered for true-up as part of the force majeure factors," for, this kind of strange logic implies that the decisions of those who determine and implement wage revision come under conditions of force majeure, as if they were a law unto themselves, and encourage them to continue to decide wage revision periodically as they want to, without any prudence check and accountability and unmindful of the cascading affect it will have on tariffs to be paid by the consumers. But for this kind of unquestioning approval for passing on the expenditure on wage revision to the consumers, without any prudence check, no organization can compete in the market and will become bankrupt, if such tendencies continue to operate periodically. Whatever be the impact of pay revision effected periodically, we request the Hon'ble Commission to determine such an impact for the purpose of O & M expenditure based on prudent norms, not as it is.

7. Against the claims of Genco for depreciation charges, we request the Hon'ble Commission to consider rates of depreciation as per regulations of CERC, or of the Ministry of Power, GoI, whichever is lesser.

8. We request the Hon'ble Commission to postpone public hearing on issues relating to KTPS VII and BTPS and take up the same separately station-wise, after TS Genco submits the PPAs and all other relevant information and giving sufficient time to interested public to submit their objections and suggestions.
9. We request the Hon'ble Commission to direct TS Genco to send their responses to our submissions on the subject issue well in advance to enable us to study the same and make further submissions during the public hearing in person.

Thanking you,

Yours sincerely,

M. Venugopala Rao
Senior Journalist &
Convener, Centre for Power Studies
H.No.1-100/MP/10, Monarch Prestige
Journalists' Colony, Gopanpally, Serilingampally Mandal,
Hyderabad - 500 032

Copy to:
CMD, TS Genco, Hyderabad.

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

March 30, 2021

Respected Sir,

Sub : Submission of additional objections and suggestions in O.P.No.6 of 2021 relating to determination of capital cost for new stations and generation tariff for the existing and new stations for the 4th control period (2019-24) for the electricity being and to be supplied by TS Genco to the TS Discoms

I thank the Hon'ble Commission for rescheduling public hearing from the 17th March again in OP No.5 and OP No.6 of 2021, as it provides us further time to study the voluminous additional information submitted by TS Genco and file our additional submissions. Further to our submissions dated 24.2.2021 in O.P.No.6 of 2021, and in response to the replies of TS Genco to the same received on 15.3.2021, I am submitting the following additional points for the consideration of the Hon'ble Commission:

1. Need for new power projects, even if they are included in the long-term generation capacity for the 4th control period approved by the Hon'ble Commission in its order dated 2.3.2020 in O.P.No.2 of 2019, has to be reviewed in light of changing scenario for demand in the State of Telangana. While Bhadradi TPS (4 x 270 MW) and Yadadri TPS (5x800 MW) are included in the generation capacity approved by the Hon'ble Commission for the 4th control period, only the first phase of 1600 MW of Telangana State Thermal Power Project of NTPC is included therein. As per A.P. Reorganisation Act, 2014, TSTPP with a total capacity of 4000 MW has to be implemented by NTPC exclusively for the State of Telangana. However, the balance 2400 MW capacity of the project is not included in the generation capacity for the 4th control period. Even for the first phase of 1600 MW, it is not made public whether TS Discoms and NTPC have submitted the revised PPA as directed by the Hon'ble Commission in its interim order dated 30.7.2016 in O.P.No.10 of 2016. In light of the said direction of the Hon'ble Commission, the basis for taking into account only 1300 MW, instead of 1600 MW, in the order relating to generation capacity approved by the Hon'ble Commission is not explained. Since no public hearing is held on the PPA of first phase, if resubmitted as directed by the Hon'ble Commission, whether it is approved by the Hon'ble Commission is also not known. It is pertinent here to remind that the Hon'ble Commission, in the said order dated 30.7.2016, pointed out that "the Commission considers that the draft agreement after amendments will have to be placed before the stakeholders and after hearing all the persons a final order can only be passed" (Para 50). What is the agreement between NTPC and the TS Discoms relating to the remaining 2400 MW of TSTPP? Whether that capacity is required by the TS Discoms, and, if so, from which period is also not made public. Why are BTSPS and YTPS given precedence, ignoring the

balance capacity of 2400 MW from TSTPP? Though YTPS is included in the generation capacity approved by the Hon'ble Commission for the 4th control period, the same is not included in the subject petition for determination of capital cost, tariff and approval of PPA. Does it mean that that power is not required during the 4th control period or that units of YTPS cannot, or need not, be commissioned during the 4th control period?

2. As per the said order of the Hon'ble Commission, the generation capacity for the 4th control period includes the entire capacities of BTPS and YTPS. The total installed capacity available to TS Discoms, as approved by the Hon'ble Commission in the said order, ranges from 19487.31 MW for the financial year 2020-21 to 22893.73 MW for 2023-24. Since annual revenue requirement and tariff proposals for the years 2019-20, 2020-21 and 2021-22 have not been filed by the TS Discoms, information relating to actual demand growth, requirement of power and need for addition of generation capacity, balance in power mix, whether there has been availability of surplus power or shortage for power, etc., has not been in the public domain. TS Genco is seeking determination of capital costs of new projects and generation tariffs for old and new projects, without seeking approval for PPAs it had with the TS Discoms for supplying power from its new projects. It is the obligation of the TS Discoms to substantiate and justify need for power from the projects of TS Genco as proposed in the subject petition. Even the Hon'ble Commission has to review the factual position relating to demand growth, availability of generation capacity, energy, surplus or deficit and then determine whether power from the new projects of TS Genco, as proposed by it, is required, and, if so, to what extent, and then take an informed decision whether to give approval to the pending PPAs, after holding public hearings on the same. The scope for availability of power from four new gas-based power projects - i.e., share of 783 MW to TS Discoms from Konaseema, GVK, Vemagiri & Gowthami projects - as and when natural gas is reallocated and supplied to them, also needs to be taken into account. What are the efforts being made by GoTS and GoAP to get supply of natural gas to these projects, especially in view of availability of natural gas in KG D6 basin as reported widely?
3. Determination of capital costs and generation tariffs, especially for new projects included in the subject petition, would imply that power from them is required during the 4th control period. It would be a fait accompli, unrelated to requirement of power by the TS Discoms. It may even lead to imbalance in power mix and availability of unwarranted surplus power with resultant avoidable burdens on the consumers of power of the Discoms. Therefore, I request the Hon'ble Commission to direct the Discoms to submit information relating to demand growth, availability of power and generation capacity, whether they are saddled with surplus power, and if so, whether they are able to sell the same in the market profitably or backing down the same and paying fixed charges, etc., for the same, or whether they are purchasing additional power on short-term basis or through exchanges to meet peak deficit, if any. Whether there is equilibrium to the extent possible between fluctuating demand curve and power mix, especially in view of addition of new

generation capacities, including solar and wind power capacities, already made and proposed to be made, needs to be examined. If there is imbalance, its financial impact and burdens on consumers need to be examined; it needs to be corrected to the extent possible. It is regulatory imperative for the Hon'ble Commission to examine factual position relating to all these issues, among others, in order to determine actual requirement of addition of generation capacity and give or reject approvals to PPAs of new projects appropriately. Therefore, we once again request the Hon'ble Commission to direct the TS Discoms to submit their responses in the subject petition and the information as pointed out above, among others. For the 4th control period, TS Genco has proposed fixed charges for 16 projects/stations to the tune of Rs.40,116.71 crore. In view of Genco claiming such a huge amount towards fixed charges, it is all the more important to examine the above-mentioned issues and information, among others.

4. In its additional information, TS Genco has referred to environmental clearances and need for implementing new norms relating to emissions from thermal power plants as per notification issued by the Ministry of Environment, Forests and Climate Change dated 7.12.2015. These norms mandate Flue gas desulfurization (FGD) to remove sulphur dioxide (SO₂) from emissions of thermal power plants. When the works relating to FGD would be taken up and completed is not explained, though notification of MoEF&CC was issued more than five years back and CODs of units of BTPS are already declared. TS Genco has contended that on environmental clearance issue, due to direction of National Green Tribunal, works relating to BTPS were suspended for 15 and a half months. It shows how casually TS Genco proceeded with implementation of the project, without getting prior permissions/clearances required. Heavy rains every year, prevalence of covid pandemic, acute shortage for manpower are cited as other reasons by TS Genco for delay in execution of the project. Whatever be the reasons for delay and whether they are uncontrollable and justifiable or not, needless to say, delay in execution of projects is leading to escalation in capital cost, including IDC, and claims for higher generation tariffs, thereby imposing additional burdens on consumers of power. The information submitted by TS Genco shows that capital costs of projects have been revised, re-revised repeatedly and will be revised again and again.
5. Auditor's certificates for capitalisation of different projects, submitted in additional information by TS Genco, do not provide justification for delays in execution of the projects and escalation in capital costs and IDC. They simply certify that what has been spent and what has been shown in accounts of TS Genco tally - a simplistic formality. Relating to implementation of projects by TS Genco, relevant observations of the Comptroller and Auditor General of India, if any, need to be examined.
6. TS Genco has also contended that per MW cost of the projects may vary project to project depending on the various factors involved during execution of the works. Such a sweeping claim does not provide any justification for delays in execution of projects and escalation in capital costs, including IDC. Time is the essence of any

agreement, it is generally considered. It is not a question of variations in costs per MW of various projects. Whether the projects are executed as per applicable regulations and prudently is the moot point. Execution of projects as per agreed timelines is intended to ensure prudent expenditure, timely declaration of COD, starting generation and supply of power to the Discoms, thereby protecting interests of the generators and Discoms and their consumers of power. That is missing in the terms and conditions of the PPAs, both in letter and spirit, and the way in which projects are being executed. As and when PPAs are taken up for public hearing, we will point out those deficiencies and submit our suggestions. In this connection, it is necessary to re-examine Regulation No.1 of 2019 of the Hon'ble Commission to bring about required amendments.

7. As per additional information submitted by TS Genco, commercial operation dates of various units/projects are declared as under:

As per additional information submitted by TS Genco, the following PPAs have been signed with TS Discoms:

S.No	Name of the Generating station	Installed capacity (MW)	PPA Date	Valid Upto	Commissioning/ COD of units
1	KTPS- ABC	420(3X60+ 2X120)	17.09.2019	31.03.2020	04.07.1966 to 10.01.1978
2	KTPS Stage -V	500(2X250)	17.09.2019	31.03.2024	31.03.1997 to 28.02.1998
3	KTPS- Stage- VI	1X500	22.12.2009	22.10.2036	23.10.2011
4	RTS -B	1X62.5	17.09.2019	31.03.2024	17.10.1971
5	KTPP Stage – I	1X500	22.12.2009	13.09.2035	14.09.2010
6	KTPP Stage II	1X600	27.01.2016	23.03.2041	24.03.2016
	Hydel Stations				
7	N' Sagar HES(Main power house & left canal)	875.6(1X110+ 7X100.8 & 2X30)	17.09.2019	31.03.2029	07.03.1978 to 27.09.1992
8	SLBHES	900(6X150)	17.09.2019	31.03.2029	26.01.2001 to 04.09.2003

9	Small Hydel (Singur, Pochampad, Nizam sagar & Palair HES)	54(2X7.5+ 3X9+2X5 1X2) &	17.09.2019	31.03.2029	07.03.1978 31.03.2000	to
10	Mini hydel (Peddapalli HES)	9.16(6X0.22+3 X0.23+ 2X0.325+ 10X0.5+ 2X0.75)	17.09.2019	31.03.2029	31.03.1986 29.01.2004	to
11	Pochampad -II	1X9	22.12.2009	11.10.2045	12.10.2010	
12	Priyadharshini Jurala HES	234(6X39)	19.05.2014	03.08.2046	31.08.2008 04.08.2011	to
13	Lower Jurala HES	240(6X40)	30.12.2010	30.09.2051	19.10.2015 to 01.10.2016	
14	Pulichinthala HES	120(4x30)	30.12.2010	07.09.2053	29.09.2016 To 08.09.2018	
15	KTPS Stage VII	1X800	19.03.2018	25.12.2043	26.12.2018	

Even after declaration of CODs of various projects/units, why TS Genco is still seeking determination of provisional tariffs for its projects concerned, without seeking approval, along with TS Discoms, to the PPAs relating thereto, remains inexplicable. This kind of ad hocism reflects on the regulatory process as well. It also indicates implied apprehensions of the powers-that-be of TS Genco that the Hon'ble Commission may disallow substantial expenditure while determining permissible capital expenditure, after considering PPAs concerned, as happened earlier.

8. Regulation No.1 of 2019 of the Hon'ble Commission relating to terms and conditions of generation tariff stipulates, inter alia, that "the Generating Entity shall file the application for determination of final tariff for new Generating Station within one hundred and eighty Days (180) from the COD 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 COD" Clause 4.2.7).

It further says: "where there is no power purchase agreement or arrangement, the supply of electricity by such Generating Entity to the Distribution Licensee after April 1, 2019 shall be in accordance with a power purchase agreement approved by the Commission. Provided that the petition for approval of such power purchase

agreement or arrangement shall be filed by the Distribution Licensee with the Commission within three months from the date of notification of these Regulations” (clause 4.3.2).

The Regulation stipulates that “The Commission shall, within one hundred and twenty (120) days from receipt of a complete petition, and after considering all suggestions and objections received from the public:- (a) Issue a Tariff Order accepting the Petition with such modifications or conditions as may be stipulated in that Order” (clause 4.5.1)

Several clauses of the Regulation underline need for financial prudence. It emphasises that “variations in capitalisation on account of time or cost overruns or inefficiencies in the implementation of a capital expenditure scheme not attributable to an approved change in its scope, change in statutory levies or Force Majeure Events,” “Variation in Operation And Maintenance Expenses” and “variation in coal transit losses, among others, may be attributed by the Commission to controllable factors (clause 6.7) have to be subjected to prudence check. “Prudence check may include scrutiny of the reasonableness of the capital expenditure, financing plan including the choice and manner of funding, interest during construction, use of efficient technology, cost over-run and time over-run, and such other matters as may be considered appropriate by the Commission for determination of tariff” (clause 7.10).

Clause 7.19.1 says: “Any additional capitalization after COD needs prior approval of the Commission.”

Clause 7.22.4 emphasises that “(a) The entire cost due to time over run has to be borne by the Generating Entity in case the causes for over-run are entirely attributable to the Generating Entity. For example, imprudence in selecting the contractors/suppliers and in executing contractual agreements including terms and conditions of the contracts, delay in award of contracts, delay in providing inputs like making land available to the contractors, delay in payments to contractors/suppliers as per the terms of contract, mismanagement of finances, slackness in project management like improper coordination between the various contractors, etc.” Further it says: (b)..... “Provided that the consumers should get full benefit of the Liquidated Damages (LDs) recovered from the contractors/suppliers of the Generating Entity and the insurance proceeds, if any, to reduce the capital cost.”

9. Being the distribution licensees, TS Discoms have the obligation to establish need for power from the plants with which they had entered into PPAs and submit the same to the Hon’ble Commission for its consideration and approval, as per the said Regulation. They have to protect their interests and those of their consumers of power. They cannot shirk their responsibility; they cannot act like disinterested and silent spectators. The Hon’ble Commission should not allow the Distribution

Licensees to shirk their responsibility to adhere to and meet regulatory requirements.

- 10. For determining permissible capital expenditure, it is imperative to disallow impermissible expenditure, as the Hon'ble Commission did earlier in the case of some of the projects of TS Genco itself and thermal power project of Singareni Collieries Co. Ltd. Determination of permissible capital expenditure of generating entities is invariably interlinked with PPAs and terms and conditions therein. Even for the Hon'ble Commission, consideration of PPAs is imperative for determination of permissible capital cost and tariff for generation. The regulatory process should ensure transparency, responsibility, accountability and public participation. Standard practice and experience of this Hon'ble Commission and other Regulatory Commissions, Electricity Act, 2003 and Regulations of the Hon'ble Commission, among others, underline need for holding public hearings on all issues, including determination of capital costs of, and tariffs for, generation projects, with whom the distribution licensees enter into PPAs, consideration and decision on PPAs, etc., which have a bearing on the tariffs to be paid by the consumers of power.**
- 11. I request the Hon'ble Commission to consider my above-mentioned submissions in addition to my earlier written submissions, among others, and take appropriate decisions. I once again request the Hon'ble Commission to provide me an opportunity to make further submissions during the public hearings on the subject petition.**

Thanking you,

Yours sincerely,

**M. Venugopala Rao
Senior Journalist &
Convener, Centre for Power Studies
H.No.1-100/MP/101, Monarch Prestige
Journalists' Colony, Gopanpally, Serilingampally Mandal,
Hyderabad - 500 032**

**Copy to:
CMD, TS Genco, Hyderabad.**

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

March 30, 2021

Respected Sir,

Sub : Additional submissions in OP No.5 of 2021 relating to true-up claims of TS Genco for revised fixed charges for the third control period (2014-19)

Further to our submissions dated 19.2.2021 in the subject petition filed by TS Genco, and in response to the replies given by the latter on 15.3.2021, I am submitting the following additional points for the consideration of the Hon'ble Commission:

- 1. TS Genco has maintained that the additional capitalization claimed towards undischarged liabilities and pending works which are in the original scope of the projects. When permissible capital costs of the projects are not approved by the Hon'ble Commission, additional capitalization cannot be taken for granted; it should be within the limits of capital costs to be approved by the Hon'ble Commission.**
- 2. Nowhere in the subject petition TS Genco has mentioned that the amount claimed under true-up for the third control period is Rs.1169.04 crore. The standard practice is that the amount claimed under true-up should be mentioned in the main petition itself. In the subject petition, the said amount is not shown either in the main petition, or even in the prayer. Annexures are intended to substantiate the points raised in the main petition by giving break-up of details, etc.; they are no substitute for what is shown in the main petition. Even while making reference to annexures relating to issues concerned in the petition, Genco has not made any reference to the annexures relating to the amount claimed under true-up, except showing a hefty sum of Rs.19374.96 crore. During my participation in the regulatory process of APERC and TSERC for more than two decades, I have not come across this kind of statistical jugglery performed by financial wizards. What is the purpose for which TS Genco has presented the subject petition in this questionable manner and why has it failed to show the actual amount claimed under true-up in the main petition and prayer, but shown a hefty sum which is several times more than the true-up claim, is inexplicable and intelligible.**
- 3. TS Genco contends that backing down of the units is under the purview of SLDC as per the grid demand. If thermal units of TS Genco were backed down during the third control period, as per directions of SLDC, the details must be available with**

the Genco. That fixed charges from the Discoms are claimed as per the provisions of PPA and variable charges for the actual generation, as stated in its replies by TS Genco, goes without saying. Why is TS Genco reluctant to provide information relating to backing down of its thermal projects, if any, and the fixed charges and variable charges claimed/received by it for the capacities of its plants backed down during the third control period?

- 4. TS Genco has submitted that the PPAs signed with TS Discoms are submitted to the Hon'ble Commission. Did TS Genco submit any petitions, along with TS Discoms, seeking approvals of the Hon'ble Commission to the said PPAs? If not, why not? How can the Hon'ble Commission determine tariffs, especially fixed charges, for generation units without approving permissible capital costs and PPAs? How long TS Genco wants determination of provisional tariff for its generation stations, without determination of permissible capital costs and without approval of PPAs by the Hon'ble Commission? Regulation No.1 of 2019 of the Hon'ble Commission relating to terms and conditions of generation tariff stipulates, inter alia, that "the Generating Entity shall file the application for determination of final tariff for new Generating Station within one hundred and eighty Days (180) from the COD 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 COD" (Clause 4.2.7). It further says: "where there is no power purchase agreement or arrangement, the supply of electricity by such Generating Entity to the Distribution Licensee after April 1, 2019 shall be in accordance with a power purchase agreement approved by the Commission. Provided that the petition for approval of such power purchase agreement or arrangement shall be filed by the Distribution Licensee with the Commission within three months from the date of notification of these Regulations" (clause 4.3.2). The Hon'ble Commission is expected to enforce its applicable Regulations.**
- 5. TS Genco has maintained that the 800 MW stage VII of KTPS has been commissioned within the timeline as per the CERC regulations and that in its filing it has claimed expenditure actually incurred and proposed to be within the original scope. Whatever be the "original scope," expenditure to be permissible should be within the scope of capital cost approved by the Hon'ble Commission. Claiming expenditure actually incurred and proposed to be incurred based on "original scope" cannot be taken for granted. Such claims may contain elements of impermissible arbitrariness. Moreover, fixed charges need to be worked out based on capital expenditure and other terms and conditions of PPAs approved by the Hon'ble Commission, and depreciation charges paid every year need to be deducted from capital cost for working out revised fixed charges year-wise.**
- 6. There are questionable deficiencies in the terms and conditions of the PPAs of the power plants of TS Genco, as well as applicable Regulations of the Hon'ble**

Commission. When PPAs are taken up for public hearing, we can point them out and submit our suggestions.

- 7. I request the Hon'ble Commission to consider my above-mentioned submissions in addition to my earlier written submissions, among others, and take appropriate decisions. I once again request the Hon'ble Commission to provide me an opportunity to make further submissions during public hearings on the subject petition.**

Thanking you,

Yours sincerely,

**M. Venugopala Rao
Senior Journalist &
Convener, Centre for Power Studies
H.No.1-100/MP/101, Monarch Prestige
Journalists' Colony, Gopanpally, Serilingampally Mandal,
Hyderabad - 500 032**

Copy to: CMD, TS Genco, Hyderabad.

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

June 3, 2021

Respected Sir,

Sub : Final submissions in O.P.No. 5 of 2021 and OP No.6 of 2021 relating to true-up claims for the 3rd control period, and determination of capital cost for new stations and generation tariff for the existing and new stations for the 4th control period (2019-24) for the electricity being and to be supplied by TS Genco to the TS Discoms, respectively.

I thank the Hon'ble Commission for permitting me to submit my final written submissions on the subject OPs, after my oral submissions made during the public hearing on the subject petitions on 31.5.2021. In response to the presentation made by TS Genco during the said public hearing and its written replies dated 29.5.2021 to my written submissions dated 30.3.2021, I am submitting the following points, mostly my oral submissions made during the public hearing, for taking the same on record and for the consideration of the Hon'ble Commission:

1. Despite my request to the Hon'ble Commission to direct the Discoms to submit their counter in the subject petitions as respondents and make the same accessible to the objectors by uploading the same in the web site of the Hon'ble Commission, there is no response to the same, either from the Commission or from the Discoms. With powers of a civil court bestowed on it as per law, the Hon'ble Commission can direct the Discoms to file their counters as respondents in the subject petitions. It is all the more imperative in view of the need for responding to several points raised by the objectors like need for purchasing power from the projects of TS Genco, overall situation of availability of power to the Discoms under power purchase agreements in force and PPAs already signed, fluctuating demand for power in the State of Telangana, whether there is surplus or deficit for energy, whether the Discoms have been purchasing additional power in the market to meet peak demand, whether they have been backing down surplus power and paying fixed charges therefor, etc. All such points, which are very much interlinked with regulatory process, should be explained by the Discoms, not by TS Genco. Any attempt to answer on behalf of the Discoms by TS Genco is untenable, for, a petitioner is not expected to answer or argue on behalf of the respondents concerned; it is simply improper and untenable. Simply because TS Genco and Discoms are companies of the State Government, the proposals or claims of one entity are not binding on the others, here, the claims of TS Genco in the subject petitions are not binding on the Discoms, which are supposed to be independent entities. Conflict of interest between them also cannot be ruled out, if the claims of TS Genco are unfair, untenable, impermissible and detrimental to the interests of the Discoms and of their consumers of power. Moreover, as per the applicable regulations of the Hon'ble Commission, and the

standard practice that has been followed by ERCs for the last more than two decades, as purchasers of power and licensees of ERCs, the Discoms have to submit the PPAs to the Hon'ble Commission, seeking its consent to the same. Above all, the Discoms have an inherent obligation to protect their interests and those of their consumers through their effective participation in the regulatory process of the Hon'ble Commission. Despite his presence in the virtual public hearing on 31.5.2021 on the subject petitions, the CMD of TSSPDCL maintained silence all through. The presumption that non-response of the Discoms in the subject petitions shows that they have no objections to the claims of TS Genco implies taking things for granted, without questioning. Whether the Discoms were directed by higher authorities to keep quiet on the subject petitions is also not known and such a possibility cannot be ruled out, especially in view of the standard practice and experience of participation over the years of the Discoms in the regulatory process in all the petitions which have been related to their transactions with developers of power projects, etc. Even if the Discoms do not have any objections to the claims of TS Genco in the subject petitions, the same position should be submitted to the Commission as their response. Non-response and silence on the part of the Discoms implies the insular approach that whatever claims of TS Genco the Hon'ble Commission may permit in the subject petitions, the burden will be passed on to the consumers and collected from them and that the Discoms have nothing to lose! One of the fundamental requirements of the regulatory process and existence of the ERCs is to protect interests of the stakeholders, especially of the unorganised and vast multitude of consumers of power in the State. If agreements and transactions between the Discoms and other entities like TS Transco, TS Genco and developers of private power plants with whom the Discoms enter into PPAs or agreements contain elements of manipulations and collusion much to the detriment of larger consumer interest, it is for the Hon'ble Commission to come to the rescue of the consumers at large within the limitations of the law and through the regulatory process. In a court of law, if the respondents concerned do not respond to the petition, the Court can draw adversarial inference and give its order, and the respondents suffer the consequences thereof. Here, in the subject petitions, it is not a lis between TS Genco and the Discoms only, because, ultimately, it is the consumers of power who have to bear the entire burden of claims of Genco as may be approved by the Hon'ble Commission finally, after holding public hearings. Issuance of public notice, calling for views, objections and suggestions in the petitions concerned, is intended for the public at large, not for petitioners and respondents. As petitioners and respondents, TS Genco and TS Discoms, respectively, have to invariably participate in the regulatory process and argue their case. In this connection, I would like to bring to the notice of the Hon'ble Commission that, when the petition of AP Transco relating to its true-up claims came up for hearing before the Hon'ble APERC very recently, I submitted that AP Discoms, who have to pay the amounts that may be permitted by the Commission to AP Transco and collect the same from their consumers of power, should be made respondents and directed to submit their responses to the petition of AP Transco. The Hon'ble APERC promptly responded to my submission and directed issuance of a notice to the Discoms to file their responses to the petition and the Discoms agreed to be impleaded in the said petition (Record of proceedings

of APERC dated 24.3.2021 relating to OP 46 of 2020 and IA No.1 of 2021 of AP Transco).

2. We were informed on the 29th May that virtual public hearing would be held in the subject petitions on 31.5.2021. TS Genco sent its replies to my written submissions dated 30.3.2021 on the 29th May, i.e., after nearly two months from the date of my submissions and on the very day when date of public hearing was conveyed. This kind of questionable practice does not provide adequate time to the objectors to study the replies of TS Genco and prepare further submissions. In the past also, a similar tendency was exhibited by Genco (SCCL did not send its replies). That is the reason why we have been repeatedly requesting the Hon'ble Commission to direct the petitioners and the Discoms to send their replies to the submissions of objectors well in time, i.e., at least one week before scheduled public hearing on the issue concerned to enable the objectors to study the same and make further submissions during the public hearings.
3. In response to the issue of need for capacity addition raised by the objectors, TS Genco, in its presentation during the virtual public hearing, narrated various issues like power for all, consideration of capacity addition of 18430 MW under "State sector" by Ministry of Power, increasing demand from industrial sector, shortage for power due to bifurcation of the State (even after seven years of bifurcation and contrary to the claims of the authorities concerned that surplus has been achieved earlier), retirement of 720 MW capacity of KTPS O&M, power for lift irrigation schemes, EP Survey of CEA, etc. Such generalised narration does not give factual ground reality. In fact, availability of power from various sources contracted under PPAs in force, and PPAs already signed, etc., fluctuations in demand, availability of surplus or deficit, need for addition of generation capacity periodically to meet growing demand, purchase of additional power from the market, etc., to meet peak deficit, if any, during the last two to three years, and other related issues, it is the Discoms who have to make their submissions, not TS Genco. The generalised way in which TS Genco narrated various issues, without specific substantiation, also confirms that it is for the Discoms to give such information to justify their stand. In response to our submissions, in their reply dated 29.5.2021, TS Genco informed that, during the third control period, some of its thermal units were backed down to the tune of 5455.76 MU. The very fact that Genco could not give total backing down of generating capacities in the State, including those of the central generating stations, by TS Discoms/SLDC and the information relating to backing down during the financial years 2019-20 and 2020-21 again confirms that it is for the Discoms to furnish such information. In view of slump in the economy and prevalence of Covid pandemic, it is widely reported that there has been substantial slump in demand for power in the country and various States. The Hon'ble Commission should have directed the Discoms to submit such relevant information relating to the State of Telangana and examine the same and make such information accessible to the objectors who requested for the same to enable them to study the same and make further submissions. With TS Discoms continuing to defy regulatory requirements and directives, if any, of the Hon'ble Commission, to submit their proposals for

ARR and tariff proposals within specified time limit, information relating to the above-mentioned issues, among others, continues to be shrouded in secrecy. Though the TS Discoms have not submitted their ARR and tariff proposals for the financial years 2019-20, 2020-21 and 2021-22 so far, the Hon'ble Commission has not taken up the same issue suo motu as permitted by law. To what extent revenue deficits, and losses, the Discoms have got accumulated are not made public. If the Discoms claim the same under true-up later, will it be possible to impose the same on consumers to the extent permissible as may be decided by the Hon'ble Commission and for the consumers to bear the same burden?

- 4. In response to the issue of submitting PPAs between TS Genco and TS Discoms seeking consent of the Hon'ble Commission and holding public hearings on the same, as raised by us, TS Genco submitted that, in OP Nos.14 to 25 of 2012 (suo moto) dated 11.8.2014 the Hon'ble Commission maintained that "Regulation does not anywhere mention the need for the Commission's consent for Power Purchase Agreements (PPAs) entered between Distribution company and Generating companies for them to become effective." The Commission further maintained that "The Commission holds that the PPA under consideration cannot be found void for want of the Commission's formal approval." It further maintained that "PPAs relate to generating stations whose tariff has been regulated by the Commission after following due process. Thus the Commission has effectively fulfilled its obligations under Section 62 of Electricity Act and Regulation 1 of 2008 and no formal consent to the PPA is necessary." TS Genco argued that "as the Tariff of TSGENCO is determined and regulated by the commission under section 62 of Electricity Act, it can be stated that the Regulatory Consent to the Power Purchase Agreements (PPAs) entered between TSGENCO and TSDISCOMS is not mandatory." Since the order was issued suo moto, it has not been in the public domain. The standard practice since the inception of the erstwhile APERC and later of APERC and TSERC after bifurcation of the erstwhile united Andhra Pradesh, as well as practice of other SERCs and CERC, PPAs have been taken up for public hearing, because the consumers of power at large have to bear the entire burden as per the PPAs approved by ERCs. No Regulation categorically and specifically maintains that consent of ERC to PPA is not mandatory for the same to come into force. The interpretation and stand of the then Hon'ble Commission defies logic for the following reasons, among others:**
 - a) ERCs are expected to take a pro-consumer stance and ensure transparency, accountability and public participation through the process of holding public hearings on PPAs, among others which have a bearing on the tariffs to be paid by the consumers of power. There is no provision for public participation and holding public hearings by Courts of law. That is the difference between the procedural approach being followed by Courts of law and ERCs.**
 - b) If the terms and conditions in a PPA are manipulative, irrational and detrimental to larger consumer interest and to the undue benefit of developers of power projects, the stance that consent of ERC is not necessary to PPA is tantamount to shirking regulatory responsibility of ERC and by implication allowing such questionable**

terms and conditions in PPA to come into force. It is nothing but miscarriage of justice.

- c) The Regulations of the Hon'ble Commission, which I quoted in my earlier written submissions in the subject petitions, mandate that the Discoms should submit PPAs for consideration of the Hon'ble Commission within stipulated time.
- d) Since several terms and conditions normally incorporated in PPAs have a direct bearing on the permissible capital cost and tariffs to be determined by ERC, even as per the said Regulations, ERC has to examine several aspects as stipulated in the said Regulations. Without that, determination of permissible capital cost and tariffs would be an incomplete exercise.
- e) When generators of power, here TS Genco, supplies power to TS Discoms and bills the same, it can take into account variations in fixed and variable charges for the purpose of billing, if terms and conditions in the PPAs permit the same. For that purpose also terms and conditions in the PPAs need to be examined by the Hon'ble Commission and its consent/order given appropriately, if necessary, by directing the parties to PPAs to incorporate amendments to the terms and conditions of the PPAs, after holding public hearings. The interim order given by TSERC relating to PPA between SCCL and TS Discoms is a shining example of this fair approach.
- f) It is a standard practice for ERCs to reject impermissible components of capital costs of projects claimed by the developers concerned. Even for that, the impact of terms and conditions in PPAs like schedule of time agreed/permissible for execution of projects, original estimated capital costs, conditions of force majeure, penalties to be paid by generators to Discoms for delay in execution of projects, penalties to be collected by the generators for delay in execution of projects from the contractors concerned, if the latter are responsible for the impermissible delay in execution of works of the projects as per terms and conditions in the agreements developers of projects had with them, etc., need to be examined and taken into account by ERCs. When I referred to disallowing of a substantial part of capital costs of their projects claimed by TS Genco itself and SCCL by the Hon'ble TSERC earlier, the CMD of TS Genco, Sri D. Prabhakar Rao garu, maintained that the Commission did not finalise the permissible capital cost of the project of SCCL. In its order in OP No. 09 of 2016 dated 19.6.2017 related to the project of SCCL (2x600MW), the Hon'ble TSERC permitted a capital cost of Rs.6705.71 crore against Rs.7440.87 crore claimed by SCCL (pp 52 & 53).
- g) A stand taken by ERC relating to a specific issue, if it is untenable, unfair and questionable, need not necessarily be binding on successive ERCs ad infinitum. It is well known that there have been many instances of orders given by lower courts being set aside by higher courts and orders given by a single judge or a bench being set aside by a bench of the same court, orders given by SERCs being set aside by APTEL and the latter's orders being set aside by the Hon'ble Supreme Court. There are instances of the same ERC taking a stand in the same or similar issue contrary to the order given by an earlier ERC. There is nothing sacrosanct and unalterable. It applies to questionable sections and clauses and deficiencies in some of the Regulations also. The very fact that new Regulations are being issued in place of old ones confirms that they are not sacrosanct and unalterable.

h) When a Commission takes a stand on any issue and if the affected parties, including objectors, feel that that stand is not tenable, but detrimental to their interest, they have the option to raise the issue at appropriate time, submit their reasons and request the Commission to correct it. It is not a question of the authority of the Commission; it is a question of propriety of the stand taken by it. When submissions are made by objectors or petitioners or respondents or interveners, on what the Commission should have done or should do, they should be taken in the right spirit. It is upto the Commission to accept or reject such submissions after careful consideration of the same. I would like to bring to the notice of the Hon'ble Commission that Hon'ble APERC had taken the stand, in the retail supply tariff order for 2020-21, that AP Discoms should take into account the average tariff of Rs.4.48 per unit for purchasing wind and solar power, when the order given by the Hon'ble High Court of Andhra Pradesh that the Discoms should pay interim tariff of Rs.2.43 per unit for wind power and Rs.2.44 per unit for solar power continued to be in force. During the public hearing on the ARR and tariff proposals of AP Discoms for the year 2021-22, we raised objections to the said stand taken by the Hon'ble APERC and made elaborate submissions, requesting the Commission to take the interim tariffs into account as given in the order of the Hon'ble HC as long as that continues to be in force for all purposes, including power purchase cost. After considering our submissions and weighing pros and cons, the Hon'ble APERC considered our request and decided to take into account the tariffs given in the order of the Hon'ble High Court for purchase of wind and solar power by the Discoms in the retail supply tariff order for the year 2021-22 (page 98). It is a shining example of the Hon'ble APERC taking submissions of objectors in the right spirit and correcting the stand it itself had taken earlier.

5. In response to our submission that PPAs between TS Genco and TS Discoms should be taken up for public hearing, the Hon'ble Chairman Sri T Sriranga Rao garu, rightly posed the question whether the Commission had given consent to a PPA without holding public hearing. Similarly, the Hon'ble Chairman also asserted that the Commission can take its stand and need not necessarily adopt a stance taken by an earlier Commission. With these reassuring assertions of the Hon'ble Chairman, we hope that the Commission would take up PPAs between TS Genco and TS Discoms for public hearing, preferably one by one, in time.

6. In OP No.5 of 2021, TS Genco had shown in the subject petition a sum of Rs.19374.96 crore under its true-up claims for the third control period. In response to my written submissions, Genco maintained that the amount claimed under true-up for the third control period was Rs.1169.04 crore as shown in one of the annexures to the main petition. Now, in the power point presentation made by Genco during the virtual public hearing held on 31.5.2021, TS Genco had shown "net claim" under true-up as -101.98 crore Rupees for the period 2014-19. If it is minus Rs.101.98 crore, it should be trued down. Even in the lengthy power point presentation, Genco did not specify in its prayer for how much amount it was actually seeking approval of the Hon'ble Commission under true-up. It is nothing

but further compounding the confusion TS Genco already created in the subject main petition (OP No.5 of 2021).

7. In its presentation, relating to truing up, TS Genco relied on TSERC Regulations 1 of 2019, CERC Regulations of 2019 and a letter dated 26.4.2021 of Ministry of Power, Government of India (that truing up should be carried out regularly and preferably every year). Regulations of CERC and the so-called directive of the Ministry of Power, GoI, conveyed through a letter are not binding on the Hon'ble Commission. Regulations cannot be applied with retrospective effect. TSERC Regulations 1 of 2019 cannot be applied with retrospective effect for the third control period (2014-19). We request the Hon'ble Commission not to apply its Regulations 1 of 2019 with retrospective effect for the third control period, as that would be detrimental to larger consumer interest; earlier Regulations applicable for that period have to be applied. We once again request the Hon'ble Commission to re-examine its Regulations 1 of 2019 and take necessary action to amend questionable sections/clauses and deficiencies in a fair way.
8. Regarding truing up of capital costs of projects of TS Genco to PPAs of which the Hon'ble Commission has not yet given its consents by holding public hearings, I request the Hon'ble Commission to complete the latter process first and then take appropriate decisions for the reasons explained above and earlier in my written submissions.
9. I request the Hon'ble Commission to take the above submissions, along with my earlier written submissions, among others, into consideration and take appropriate decisions in the subject petitions.

Thanking you,

Yours sincerely,

M. Venugopala Rao
Senior Journalist &
Convener, Centre for Power Studies
H.No.1-100/MP/101, Monarch Prestige
Journalists' Colony, Gopanpally, Serilingampally Mandal,
Hyderabad - 500 032

Copy to: CMD, TS Genco, Hyderabad.