



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
#11-4-660, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad – 500004.

COMMON ORDER PASSED BY THE COMMISSION IN THE MATTER OF DECIDING THE JURISDICTION

Dated: 31.10.2016

Present

Sri. Ismail Ali Khan, Chairman
Sri. H. Srinivasulu, Member

O. P. No. 25 of 2015
(O P No 12 of 2008 on the file of erstwhile APERC)

Between

M/s GVK Industries Limited,
“Paigah” House, 156-159, Sardar Patel Road,
Secunderabad – 500 003

.... Petitioner

AND

1. Eastern Power Distribution Company of Andhra Pradesh Limited, P & T Colony, Seetahammadhara, Visakhapatnam 530 013
 2. Southern Power Distribution Company of Andhra Pradesh Limited, Upstairs, Hero Honda Showroom, Renigunta Road, Tirupati 517 501
 3. Central Power Distribution Company of Andhra Pradesh Limited, Corporate Office, 6-1-50, Mint Compound, Hyderabad 500063
 4. Northern Power Distribution Company of Andhra Pradesh Limited, 1-1-504, Chaitanyapuri, Hanamkonda, Warangal 506 004
 5. Andhra Pradesh Power Coordination Committee
Vidyut Soudha, Somajiguda, Hyderabad 500 082
- Respondents

O. P. No. 27 of 2015
(O P No 33 of 2009 on the file of erstwhile APERC)

Between

M/s Lanco Kondapalli Power Limited,
Plot No. 4, Softsol Building,
Software Units Layout, Hitech City,
Madhapur, Hyderabad – 500 081

.... Petitioner

AND

1. Andhra Pradesh Power Coordination Committee
Vidyut Soudha, Somajiguda, Hyderabad.
2. Transmission Corporation of Andhra Pradesh Limited,
Vidyut Soudha, Somajiguda, Hyderabad.
3. Central Power Distribution Company of Andhra Pradesh Limited,
Corporate Office, 6-1-50, Mint Compound, Hyderabad 500063
4. Southern Power Distribution Company of
Andhra Pradesh Limited, Upstairs,
Hero Honda Showroom, Renigunta Road, Tirupati 517 501
5. Northern Power Distribution Company of
Andhra Pradesh Limited, 1-1-504,
Chaitanyapuri, Hanamkonda, Warangal 506 004
6. Eastern Power Distribution Company of
Andhra Pradesh Limited, P & T Colony,
Seetahammadhara, Visakhapatnam 530 013

.... Respondents

O. P. No. 58 of 2015
(O P No 12 of 2014 on the file of erstwhile APERC)

Between

M/s Reliance Infrastructure Limited
IDA, Peddapuram, Samalkot-533440, East Godavari Dist.

.... Petitioner

AND

1. Central Power Distribution Company of Andhra Pradesh Limited,
Corporate Office, 6-1-50, Mint Compound, Hyderabad 500063
2. Eastern Power Distribution Company of Andhra Pradesh Limited,

3. P & T Colony, Seetahammadhara, Visakhapatnam 530 013
Southern Power Distribution Company of
Andhra Pradesh Limited, Upstairs,
Hero Honda Showroom, Renigunta Road, Tirupati 517 501
4. Northern Power Distribution Company of
Andhra Pradesh Limited, 1-1-504,
Chaitanyapuri, Hanamkonda, Warangal 506 004
5. Andhra Pradesh Power Coordination Committee
Vidyut Soudha, Somajiguda, Hyderabad.

.... Respondents

O. P. No. 65 of 2015
And
I. A. No. 14 of 2015
(O P No 37 of 2014 on the file of erstwhile APERC)

Between

M/s Spectrum Power Generation Limited
8-2-293/82/A/241/A, SSC-3, 4th floor,
Razala Centre, Road No. 36, Jubilee Hills,
Hyderabad – 500 033

.... Petitioner

AND

1. Transmission Corporation of Andhra Pradesh Limited,
Vidyut Soudha, Khairatabad, Hyderabad – 500 082
2. Central Power Distribution Company of Andhra Pradesh Limited,
Corporate Office, 6-1-50, Mint Compound, Hyderabad 500063
3. Southern Power Distribution Company of
Andhra Pradesh Limited, Upstairs, Hero Honda Showroom,
Renigunta Road, Tirupati 517 501
4. Northern Power Distribution Company of
Andhra Pradesh Limited, H.No. 2-5-31/2, Corporate Office,
Vidyut Bhavan, Nakkalgutta, Warangal – 506001
5. Eastern Power Distribution Company of
Andhra Pradesh Limited, P & T Colony,
Seetahammadhara, Visakhapatnam 530 013
6. Andhra Pradesh Power Coordination Committee
Vidyut Soudha, Somajiguda, Hyderabad.

.... Respondents

O.P.No. 43 of 2015

Between

M/s. GMR Vemagiri Power Generation Ltd
Skip House,
Bangalore

....Petitioner

And

1. Andhra Pradesh Power Coordination Committee
Soudha, Somajiguda, Hyderabad.
2. Transmission Corporation of Andhra Pradesh Power Limited,
Khairatabad, Hyderabad.
3. Central Power Distribution Company of Andhra Pradesh Limited,
Corporate Office, 6-1-50, Mint Compound, Hyderabad 500063
4. Eastern Power Distribution Company of Andhra Pradesh Limited,
P & T Colony, Seetahammadhara, Visakhapatnam 530 013
5. Southern Power Distribution Company of
Andhra Pradesh Limited, Upstairs,
Hero Honda Showroom, Renigunta Road, Tirupati 517 501
6. Northern Power Distribution Company of
Andhra Pradesh Limited, 1-1-504,
Chaitanyapuri, Hanamkonda, Warangal 506 004

.... Respondents

O. P. No. 41 of 2015

And

I. A. No. 7 of 2015

(O P No 9 of 2013 & IA No. 2 of 2013 on the file of erstwhile APERC)

Between

M/s GVK Industries Limited (Phase-II)
Paigah House, 156-159, SP Road,
Secunderabad – 500 003.

.... Petitioner

AND

1. Central Power Distribution Company of Andhra Pradesh Limited,
Corporate Office, 6-1-50, Mint Compound, Hyderabad 500063
2. Southern Power Distribution Company of
Andhra Pradesh Limited, Upstairs, Hero Honda Showroom,
Renigunta Road, Tirupati 517 501
3. Northern Power Distribution Company of

Andhra Pradesh Limited, H.No. 2-5-31/2, Corporate Office,
Vidyut Bhavan, Nakkalgutta, Warangal – 506001

4. Eastern Power Distribution Company of
Andhra Pradesh Limited, P & T Colony,
Seetahammadhara, Visakhapatnam 530 013
5. Transmission Corporation of Andhra Pradesh Power Limited,
Khairatabad, Hyderabad. Respondents

O. P. No. 40 of 2015

And

I. A. No. 6 of 2015

(O P No 8 of 2013 & IA No. 1 of 2013 on the file of erstwhile APERC)

Between

M/s GVK Gautami Power Limited.

Paigah House, 156-159, SP Road,

Secunderabad – 500 003. Petitioner

AND

1. Central Power Distribution Company of Andhra Pradesh Limited,
Corporate Office, 6-1-50, Mint Compound, Hyderabad 500063
2. Southern Power Distribution Company of
Andhra Pradesh Limited., Upstairs, Hero Honda Showroom,
Renigunta Road, Tirupati 517 501
3. Northern Power Distribution Company of
Andhra Pradesh Limited, H.No. 2-5-31/2, Corporate Office,
Vidyut Bhavan, Nakkalgutta, Warangal – 506001
4. Eastern Power Distribution Company of
Andhra Pradesh Limited., P & T Colony,
Seetahammadhara, Visakhapatnam 530 013
5. Transmission Corporation of Andhra Pradesh Power Limited,
Khairatabad, Hyderabad. Respondents

O. P. No. 26 of 2015
(O P No 19 of 2009 on the file of erstwhile APERC)

Between
Transmission Corporation of Andhra Pradesh
Vidyut Soudha, Hyderabad-82 & 4 Others Petitioners

AND

M/s GVK Industries Limited,
Paigah House, 156-159, Sardar Patel Road,
Secunderabad – 500 003. Respondent

O. P. No. 28 of 2015
and
I. A. No. 2 of 2015
(O P No 42 of 2009 & IA No. 4 of 2010 on the file of erstwhile APERC)

Between
M/s Lanco Kondapalli Power Limited,
Plot No. 4, Softsol Building,
Software Units Layout, Hitech City,
Madhapur, Hyderabad – 500 081 Petitioner

AND

Andhra Pradesh Power Coordination Committee
Vidyut Soudha, Somajiguda, Hyderabad & 5 Others Respondents

O. P. No. 33 of 2015
(O P No 57 of 2011 on the file of erstwhile APERC)

Between
Transmission Corporation of Andhra Pradesh Limited,
Vidyut Soudha, Somajiguda, Hyderabad & 4 Others Petitioners

AND

M/s Spectrum Power Generation Limited.
Plot No. 231, 8-2-293/82/A/231, 3rd Floor,
Road No. 36, Jubilee Hills,
Hyderabad – 500 033. Respondent

O. P. (SR) No. 7 of 2015
(O P (SR) No 27 of 2010 on the file of erstwhile APERC)

Between

M/s Spectrum Power Generation Limited
Plot No. 8-2-293/82/A/231, Road No. 36
Jubilee Hills, Hyderabad – 500 033 Petitioner

AND

Transmission Corporation of Andhra Pradesh Limited,
Vidyut Soudha, Somajiguda, Hyderabad & 5 Others
.... Respondents

R. P. (SR) No. 5 of 2015
(R P (SR) No 62 of 2013 IN op No. 6 & 7 of 2009 on the file of erstwhile APERC)

Between

M/s Guttaseema Wind Energy Company Private Limited,
Plot No. 1112/A, Road No. 56,
Jubilee Hills, Hyderabad – 500 033 Petitioner

AND

Transmission Corporation of Andhra Pradesh Limited,
Vidyut Soudha, Somajiguda, Hyderabad & 5 Others
.... Respondents

R. P. (SR) No. 6 of 2015
(R P (SR) No 98 of 2013 in OP No. 6 & 7 of 2009 on the file of erstwhile APERC)

Between

Transmission Corporation of Andhra Pradesh Limited,
Vidyut Soudha, Somajiguda, Hyderabad & 5 Others
.... Petitioners

AND

M/s Guttaseema Wind Energy Company Private Limited,
Plot No. 1112/A, Road No. 56,
Jubilee Hills, Hyderabad – 500 033Respondent

O. P. No. 52 of 2015
(O P No 85 of 2012 on the file of erstwhile APERC)

Between

M/s Lanco Kondapalli Power Limited
Plot No. 4, Softsol Building, Software Units Layout,
HITECH City, Madhapur, Hyderabad – 500 081

.... Petitioner

AND

Andhra Pradesh Power Coordination Committee
Vidyut Soudha, Somajiguda, Hyderabad & 5 Others

.... Respondents

O. P. No. 67 of 2015
(O P No 40 of 2014 on the file of erstwhile APERC)

Between

M/s Bharat Aluminium Company Limited
'Aluminium Sadan', Core – 6, Socpe Complex,
7 Lodhi Road, New Delhi – 110 003.

.... Petitioner

AND

M/s PTC India Limited,
2nd floor, NBCC Tower, 15 Bhikaji Cama Place,
New Delhi – 110 066 & 2 Others

.... Respondents

O. P. No. 75 of 2015
And
I A No. 16 of 2015
(SR No 39 of 2014 & SR No. 40 of 2014 on the file of erstwhile APERC)

Between

1. Northern Power Distribution Company of Telangana State Limited
H. No. 2-5-31/2, Corporate Office,
Vidyut Bhavan, Nakkalgutta, Warangal – 506001
2. Southern Power Distribution Company of Telangana Limited,
Corporate Office, 6-1-50, Mint Compound,
Hyderabad 500063

.... Petitioners

AND

Andhra Pradesh Power Generation Corporation
Vidyut Soudha, Khairatabad, Hyderabad. 500 004

....Respondent

O.P.No. 47 of 2015

Between

Central Power Distribution Company of Andhra Pradesh Limited,
Corporate Office, 6-1-50, Mint Compound, Hyderabad 500063 & 3 others

.... Petitioners

And

M/s GVK Gautami Power Limited.
Paigah House, 156-159, SP Road,
Secunderabad – 500 003.

...Respondent

O.P.No. 48 of 2015

Between

Central Power Distribution Company of Andhra Pradesh Limited,
Corporate Office, 6-1-50, Mint Compound, Hyderabad 500063 & 3 others

.... Petitioners

And

M/s GVK Industries Limited.
Paigah House, 156-159, SP Road,
Secunderabad – 500 003.

...Respondent

O. P. No. 54 of 2015

And

I. A. No. 11 of 2015

(O P No 24 of 2013 & I A No. 14 of 2013 on the file of erstwhile APERC)

Between

M/s GVK Industries Limited (Phase-II)
“Paigah” House, 156-159, Sardar Patel Road,
Secunderabad – 500 003

.... Petitioner

AND

Eastern Power Distribution Company of
Andhra Pradesh Limited, P & T Colony,
Seetahammadhara, Visakhapatnam 530 013 & 4 Others

.... Respondents

O. P. No. 55 of 2015
(O P No 23 of 2013 on the file of erstwhile APERC)

Between
M/s GVK Industries Limited (Phase-I)
“Paigah” House, 156-159, Sardar Patel Road,
Secunderabad – 500 003

.... Petitioner

AND

Eastern Power Distribution Company of
Andhra Pradesh Limited, P & T Colony,
Seetahammadhara, Visakhapatnam 530 013 & 4 Others

.... Respondents

O. P. No. 56 of 2015
(O P No 23 of 2013 on the file of erstwhile APERC)

Between
E.I.D. Parry (India) Limited

.... Petitioner

AND

Transmission Corporation of Andhra Pradesh Limited,
Vidyut Soudha, Hyderabad & 4 Others

.... Respondents

O. P. No. 57 of 2015

Between
M/s Spectrum Power Generation Limited
8-2-293/82/A/241/A, SSC-3, 4th floor,
Razala Centre, Road No. 36, Jubilee Hills,
Hyderabad – 500 033

.... Petitioner

AND

Transmission Corporation of Andhra Pradesh Limited,
Vidyut Soudha, Khairatabad, Hyderabad – 500 082 & 5 Others

.... Respondents

O. P. No. 63 of 2015
(O P No 34 of 2014 on the file of erstwhile APERC)

Between

M/s GVK Industries Limited (Phase-I)
“Paigah” House, 156-159, Sardar Patel Road,
Secunderabad – 500 003

.... Petitioner

AND

Eastern Power Distribution Company of
Andhra Pradesh Limited, P & T Colony,
Seetahammadhara, Visakhapatnam 530 013 & 5 Others

.... Respondents

O. P. No. 66 of 2015

Between

M/s Spectrum Power Generation Limited
8-2-293/82/A/241/A, SSC-3, 4th floor,
Razala Centre, Road No. 36, Jubilee Hills,
Hyderabad – 500 033

.... Petitioner

AND

Transmission Corporation of Andhra Pradesh Limited,
Vidyut Soudha, Khairatabad, Hyderabad – 500 082 & 5 Others

.... Respondents

O. P. No. 69 of 2015

Between

M/s Spectrum Power Generation Limited
8-2-293/82/A/241/A, SSC-3, 4th floor,
Razala Centre, Road No. 36, Jubilee Hills,
Hyderabad – 500 033

.... Petitioner

AND

Transmission Corporation of Andhra Pradesh Limited,
Vidyut Soudha, Khairatabad, Hyderabad – 500 082 & 7 Others

.... Respondents

O. P. No. 70 of 2015

Between

M/s Spectrum Power Generation Limited
8-2-293/82/A/241/A, SSC-3, 4th floor,
Razala Centre, Road No. 36, Jubilee Hills,
Hyderabad – 500 033

.... Petitioner

AND

Transmission Corporation of Andhra Pradesh Limited,
Vidyut Soudha, Khairatabad, Hyderabad – 500 082 & 7 Others

.... Respondents

O. P. No. 71 of 2015

Between

M/s Spectrum Power Generation Limited
8-2-293/82/A/241/A, SSC-3, 4th floor,
Razala Centre, Road No. 36, Jubilee Hills,
Hyderabad – 500 033

.... Petitioner

AND

Transmission Corporation of Andhra Pradesh Limited,
Vidyut Soudha, Khairatabad, Hyderabad – 500 082 & 12 Others

.... Respondents

O. P. No. 72 of 2015

Between

M/s Spectrum Power Generation Limited
8-2-293/82/A/241/A, SSC-3, 4th floor,
Razala Centre, Road No. 36, Jubilee Hills,
Hyderabad – 500 033

.... Petitioner

AND

Transmission Corporation of Andhra Pradesh Limited,
Vidyut Soudha, Khairatabad, Hyderabad – 500 082 & 7 Others

.... Respondents

O. P. No. 73 of 2015

Between

M/s Spectrum Power Generation Limited
8-2-293/82/A/241/A, SSC-3, 4th floor,
Razala Centre, Road No. 36, Jubilee Hills,
Hyderabad – 500 033

.... Petitioner

AND

Transmission Corporation of Andhra Pradesh Limited,
Vidyut Soudha, Khairatabad, Hyderabad – 500 082 & 7 Others

.... Respondents

R. P. No. 6 of 2015

Between

Transmission Corporation of Andhra Pradesh Limited,
Vidyut Soudha, Khairatabad, Hyderabad – 500 082 & 5 Others

.... Petitioners

AND

M/s Spectrum Power Generation Limited
8-2-293/82/A/241/A, SSC-3, 4th floor,
Razala Centre, Road No. 36, Jubilee Hills,
Hyderabad – 500 033

.... Respondent

O. P. No. 39 of 2015

Between

M/s Reliance Infrastructure Limited
IDA, Peddapuram, Samalkot-533440, East Godavari Dist.

.... Petitioner

AND

Central Power Distribution Company of Andhra Pradesh Limited,
Corporate Office, 6-1-50, Mint Compound, Hyderabad 500063 & 4 Others

.... Respondents

Between

Central Power Distribution Company of Andhra Pradesh Limited,
Corporate Office, 6-1-50, Mint Compound, Hyderabad 500063 & 4 Others

.... Petitioners

AND

M/s Reliance Infrastructure Limited
IDA, Peddapuram, Samalkot-533440, East Godavari Dist

.... Respondent

These petitions have come up for hearing specifically on the issue stated at page 1 of this order on 04.07.2015, 09.07.2015, 10.07.2015, 14.07.2015, 24.07.2015 and 01.08.2015 in the presence of the Advocates and persons representing the parties who have appeared before the Commission on the respective dates, the details of which are stated. After considering the material available on record and after hearing the arguments of the learned counsel, the Commission passed the following common order:

Present: - Shri K.Gopal Choudary, Shri P.Shiva Rao, Shri Y.Rama Rao, Shri Anand K.Ganesan, Shri Ch.Pushyam Kiran, Shri Challa Gunaranjan, Shri P.Vikram, Shri Rajiv Bharadwaj, Shri Vizay Babu, Shri Bhatt, Advocates for respective parties. Shri M.Sodekar, AGM (Law) and Shri T.V.Bhaskar representative for GVK Industries.

COMMON ORDER

(1) O.P.No.25 of 2015 (Brief facts)
M/s. GVK Industries Ltd vs Four APDISCOMS and APPCC

GVK Industries Ltd (the petitioner) initially filed a petition before the erstwhile Andhra Pradesh Electricity Regulatory Commission (hereinafter referred to as 'APERC') on 22.07.2008 making various claims against the four DISCOMS (APCPDCL, APEPDCL, APNPDCL and APSPDCL, (distribution companies are collectively referred to as 'Discoms' and individually referred to as a 'Discom') of the undivided State of Andhra Pradesh emanating from a Power Purchase Agreement (hereinafter referred to as 'PPA') entered into by the petitioner on 19.04.1996 with the erstwhile Andhra Pradesh State Electricity Board (hereinafter referred to as 'APSEB'). The petitioner company is engaged in the business of generation and sale of energy and is a company

incorporated under the Companies Act, 1956 having its registered office in Secunderabad – 500008. The petitioner's plant is located at Jegurupadu, Kadiam Mandal, East Godavari District. The respondents are the four Distribution Companies (DISCOMs) constituted under Sub-section 6 of Section 23 of Andhra Pradesh Electricity Reform Act, 1998 (Act of 30 of 1998) (hereinafter referred to as the 'Reform Act') by the Government of Andhra Pradesh (hereinafter referred to as 'GoAP') in pursuance of the second transfer scheme notified by the Government of Andhra Pradesh under Sections 23 & 24 of the Reform Act. In terms of the third transfer scheme notified by the GoAP on 07.06.2005 under the Reform Act and came into effect from 09.06.2005, the procurement and bulk supply of electricity and trading of electricity and allocation of PPAs from Transmission corporation of Andhra Pradesh Ltd (hereinafter referred to as 'APTRANSCO') was transferred and vested in Central Power Distribution Company of Andhra Pradesh limited (hereinafter referred to as 'APCPDCL'), Eastern Power Distribution Company of Andhra Pradesh limited (hereinafter referred to as 'APEPDCL'), Northern Power Distribution Company of Andhra Pradesh limited (hereinafter referred to as 'APNPDCL') and Southern Power Distribution Company of Andhra Pradesh limited (hereinafter referred to as 'APSPDCL'). According to the transfer schemes, the PPA has devolved on each Discom individually. Thus, all the contractual obligations, and the rights of APTRANSCO had devolved on each Discom as specified in the third transfer scheme.

2. Andhra Pradesh Power Coordination Committee (hereinafter referred to as 'APPCC') is the committee formed by the GoAP in pursuance of the Government notification No. 58, Energy (Power-III), dated 07.06.2005 and G.O.Ms.No.59, dated 07.06.2005 and it is one of the respondents. It is an arrangement made by the Government of the Andhra Pradesh for the purpose of coordination of bulk purchases on behalf of the four Discoms and it is not a statutory body.

3. (i) The petitioner's project is one of the first private sector power projects selected by the GoAP for implementation. The petitioner initially signed a PPA on 17.06.1993 and an amended and restated PPA was entered into on 19.04.1996. The petitioner achieved Commercial Operation Date (COD) on 06.08.1996. The petitioner claimed that after date of the COD, the respondents did not pay the tariff and other charges and made the following claims from the respondents:

- (a) wrong calculation of interest on working capital, revision by the respondents of bills already entertained and paid, deduction of amounts by reason of such revision together with interest thereon
- (b) Non reimbursement of Minimum Alternate Tax (MAT) and Dividend distribution taxes paid by the petitioner as a part of the tariff;
- (c) Non reconciliation of fixed charges for generation in open cycle period;
- (d) Non payment of incentive payment;
- (e) Non payment of Minimum fuel off take charges;
- (f) Non payment of Naphtha handling charges;
- (g) Non payment of Additional O&M claims;
- (h) Claims relating to interest for delayed payment and overdue interest;
- (i) Claims regarding the costs of the proceedings

(ii) With the above issues, the prayer of the petitioner is as under:

- (a) Admit the present petition and either adjudicate the claims of the petitioner against the respondents or in the alternative refer such claims to arbitration in terms of Section 86(1)(f) r/w Section 158 of the Electricity Act, 2003;
- (b) Allow the claims of the petitioner amounting of Rs.2,620,926,719/- as detailed in schedules A to H to the petition and direct the respondents to make payment of the amounts settled in favour of the petitioner together with interest at the rate of 18% per annum from the date of filing of the present petition to the date of adjudication and thereafter on the adjudicated amount till payment;
- (c) Award cost of the present proceedings; and
- (d) Pass such further order or orders as this Hon'ble Commission may deem just and proper in the circumstances of the case.

4. The petition of the petitioner has been transferred to this Commission by the present APERC on 18.11.2014.

5. **O.P.No. 27 of 2015 (Brief facts)**
M/s. Lanco Kondapalli Power private Limited vs. APPCC & 5 others

M/s. Lanco Kondapalli Power Private Limited (petitioner) (Lanco) is engaged in the business of generation and sale of electricity and owns a power project of 355MW

capacity located at Kondapalli Industrial Development Area, Krishna Dist., Andhra Pradesh. The petitioner has entered into a PPA with the erstwhile APSEB on 31.03.1997 for selling of the total power to the four Discoms in the State of undivided Andhra Pradesh. The petitioner claims that first generating unit of the project was successfully declared the COD on 26.07.2000 and so also the second generating unit on 24.09.2000. The total capacity of the project had come into commercial operation on 25.10.2000. The respondents are under an obligation to purchase the power from the date of commercial operation and they have to pay the capacity charges under the terms of the PPA from the date of commercial operation of each generating unit. The petitioner submitted various claims towards capacity charges in accordance with the provisions of the PPA aggregating to a sum of Rs.76,18,13,282/- but the respondents have failed to make the said payment. By invoking the provisions of the PPA, an arbitrator was appointed by the petitioner company but the respondents did not cooperate in nominating their arbitrator. The petitioner had approached the Hon'ble High Court of Andhra Pradesh for appointment of an arbitrator on behalf of the respondents. Hon'ble High Court of Andhra Pradesh vide order dated 18.03.2009 had disposed of the petition by directing the petitioner to approach the APERC u/s 86(1)(f) of the Electricity Act,2003.

6. The prayer of the petitioner is as under:

- (a) Declare that the petitioner company is entitled for capacity charges of Rs.76.18crs as per the provisions of PPA dated 31.03.1997 and consequently direct the respondents 1 to 6 to pay Rs.78.16crs as claimed vide Bill Nos. 3A, 4A, 5A, 6A, 7A and 8 for the period from 27.07.2000 to 01.01.2001;
- (b) Declare that the petitioner company is entitled for interest of Rs.86,35,87,699/- for delay in payment of capacity charges and energy charges for the Bill Nos. 3A, 4A, 5A, 6A, 7A and 8 in terms of PPA dated 31.03.1997 from 09.02.2001 till the date of filing of this petition and consequently direct the respondents 1 to 6 to pay the same;
- (c) Direct the respondents to pay interest on Rs.78.16crs and Rs.86,35,87,699/- at working capital interest rate from the date of this petition till the date of realisation; and
- (d) Pass such further order or orders as this Hon'ble Commission may deem just and proper in the interest of justice.

7. **O.P.No. 58 of 2015**

M/s. Reliance Infrastructure Limited vs Four Discoms and APPCC

The petitioner has filed a petition u/s 86(1) of the EA 2003 on 25.10.2013 before the erstwhile APERC seeking to declare that High Speed Diesel (HSD) as an alternate fuel under the PPA dated 31.03.1997 and refund the deduction of a sum of Rs.96,68,92,198/- made by the four Discoms from the bills payable to it.

8. The petitioner entered into a PPA with the erstwhile APSEB on 31.03.1997 for supply of power having the plant capacity of 220MW. The project is located at Samalkota, East Godavari Dist. There were changes in the name of the petitioner from time to time. It is a natural gas based project. The petitioner entered into an agreement for supply of natural gas with the supplier of gas but ultimately there was an inadequate supply. It is the claim of the petitioner that the PPA provides for the alternate fuel, namely, HSD oil. The respondents did not agree to the alternate fuel and deducted a sum of Rs.96.68crs from the capacity charges payable to the petitioner. Aggrieved by this deduction the petitioner filed the appeal before the erstwhile APERC which was pending on the date of bifurcation of the State and before the Joint Regulatory Commission. This petition has been transferred to this Commission as the claims are made against the Discoms of the State of Telangana.

9. The prayer of the petitioner is as under:

- (a) declare HSD can be used as an alternative fuel in terms of Article 1.1.27 of the PPA;
- (b) declare the action of the respondents in deducting from the capacity charges of Rs. 96,68,92,198/- from the monthly bills payable to the petitioner for the months of 24.12.2012 to 10.10.2013 as being illegal and contrary to the terms of the PPA;
- (c) direct the respondents to refund the amount of Rs.96,68,92,198/- illegally deducted together with interest forthwith;
- (d) restrain the respondents in terms of Article 5.7 of the PPA from deducting any further sum from the monthly bills payable to the petitioner on any ground.

10. **O.P.No.65 of 2015**
M/s. Spectrum Power Generation Ltd vs. APTRANSCO, APPCC & DISCOMS

M/s. Spectrum Power Generation Ltd (Petitioner) has filed a petition before the APERC on 13.12.2013. The petitioner is engaged in the business of generation and sale of electrical energy. The petitioner entered into an amended and restated PPA on 23.01.1997 with the erstwhile APSEB. It is the claim of the petitioner that a sum of Rs.18,53,49,515/- was due for the payment for the tariff year 2012-13 towards incentive. Further, APTRANSCO/APPCC recovered a sum of Rs.1,07,14,629/- on account of balance of disincentives from the monthly energy bill submitted by the petitioner on 10.10.2013. The petitioner requested for the above sums along with interest in its prayer.

11. **O.P.No. 43 of 2015**
M/s. GMR Vemagiri Power Generation Ltd vs APPCC, APTRANSCO & DISCOMS

M/s. GMR Vemagiri Power Generation Ltd (Petitioner) has filed a petition before the APERC on 24.01.2013. The petitioner is engaged in the business of generation and sale of electricity. The petitioner had entered into a PPA dated 31.03.1997 with the erstwhile APSEB. The petitioner declared commercial operation date on 16.09.2006. It is the claim of the petitioner that on account of failure to supply gas by Gas Authority of India Ltd, the power producing plant was shut down for a period of two and half years. The petitioner stated that respondents had unilaterally deducted capacity charges from the monthly invoices amounting to Rs.121.62crs from October 2012 onwards. In the present petition, the petitioner made the following prayer:

- (a) Admit the petition and adjudicate on the disputes which have arisen between the petitioner and the respondents in regard to the claims of the petitioner as set out in the petition
- (b) Declare that the respondents are liable to refund forthwith the capacity charges deducted from the monthly invoices of the petitioner from October 2012 onwards amounting to Rs.121,62,28,800/-;
- (c) Award interest on the amount due from the date of the petition till the date of the order and thereafter till the payment and discharge; and
- (d) Pass any such further order(s) as deemed just and proper in the circumstances of the case.

The counsel for the petitioner stated that the jurisdiction comes under the purview of the Central Electricity Regulatory Commission (CERC) and has already heard the matter and reserved the case for orders by the CERC and sought adjournment. Subsequently, CERC had passed an order and the same has been challenged before the High Court of Andhra Pradesh and Telangana and a stay has been granted by the Hon'ble Court.

12. O.P.No. 41 of 2015
M/s. GVK Industries Ltd (Phase-II) vs DISCOMS and APTRANSCO

M/s. GVK Industries Ltd (Phase-II) (petitioner) has filed a petition before the APERC on 31.10.2012. The petitioner entered into a second PPA with APTRANSCO on 18.06.2003 for supply of power of 220MW. The petitioner has expanded its capacity and the second PPA is for the expanded capacity. In the present petition, the petitioner made the following claims against the four DISCOMS and the APTRANSCO on the terms and conditions contained in the PPA.

(a)	Capacity charges & incentives with interest due for the period from 22 January 2006 till 14.04.2009	Rs.798,51,53,649
(b)	Reimbursement of Gas Transmission charges / Ship or Pay charges paid / payable by the petitioner under the Gas Transmission Agreement	Rs.3,24,32,269
(c)	Reimbursement of Imbalance Charges payable / paid by the petitioner to the Gas suppliers	Rs.2,49,11,421
(d)	Reimbursement of the amount deducted for alleged non-achievement of targeted PLF with interest	Rs.16,67,24,123
	Total	Rs.820,92,21,462

The petitioner also requested for awarding of interest and also sought for the interim orders.

13. O.P.No. 40 of 2015
M/s. GVK Gautami Power Ltd vs Four DISCOMS and APTRANSCO

M/s. GVK Gautami Power Ltd (Petitioner) has filed a petition before the APERC on 07.12.2015. The petitioner entered into a PPA on 31.03.1997 with the erstwhile APSEB. Subsequently, PPA was modified on 17.07.1999. Thereafter, another

amendment was made to PPA on 18.06.2003. It is the claim of the petitioner that the respondents are liable to compensate for the capacity charges under the PPA dt.18.06.2003 and made the following claims in the petition.

(a)	Capacity charges with interest due for the period from 01 October 2006 till 05.06.2009	Rs.13,88,82,33,088
(b)	Reimbursement of Gas Transmission charges / Ship or Pay charges paid / payable by the petitioner under the Gas Transmission Agreement	Rs.11,34,54,286
(c)	Reimbursement of Imbalance Charges payable / paid by the petitioner to the Gas suppliers	Rs.2,12,85,535
(d)	Reimbursement of the amount deducted for alleged non-achievement of targeted PLF including disincentives with interest	Rs.76,65,09,456
	Total	Rs.14,789,482,365

14. Brief facts before considering the above petitions:

The Andhra Pradesh Electricity Regulatory Commission was constituted on 31.03.1999 under the Andhra Pradesh Electricity Reform Act, 1998 (hereinafter referred to as the 'Reform Act'). The present 34 (Thirty Four) petitions were filed on various dates before the erstwhile APERC and on such petitions this Commission is adjudicating on the issue of jurisdiction in this order. The Parliament has passed the Andhra Pradesh Reorganisation Act, 2014 (hereinafter referred to as 'Reorganisation Act') and received the assent of the President of India on 01.03.2014. The Reorganisation Act was passed to meet the democratic aspirations of the people of Telangana region and ensure peace, goodwill, progress and prosperity among all the sections of the people of State of Telangana and State of Andhra Pradesh. Under Sections 3 and 4 of the Reorganisation Act, two new States viz., State of Telangana and State of Andhra Pradesh were formed w.e.f 02.06.2014. The Twelfth Schedule of the Reorganisation Act provides for the establishment two separate Electricity Regulatory Commissions in the successor states. The relevant portion from the Twelfth Schedule of Sub-Clause 3 of Clause C is reproduced as under:

“C. Power

3. *The existing Andhra Pradesh Electricity Regulatory Commission (APERC) shall function as a joint regulatory body for a period not exceeding six months within which time separate SERCs will be formed in the successor States.”*

15. To give effect to the above provision, the Government of Telangana State (hereinafter referred to as 'GoTS') has constituted a Commission under Section 92 of the Reorganisation Act r/w Section 82 of the Electricity Act, 2003 (hereinafter referred to as the 'Electricity Act, 2003') by issuing G.O.Ms.No.3 dated 26.07.2014 known as 'Telangana State Electricity Regulatory Commission' (hereinafter referred to as 'TSERC'). The GoTS has issued G.O.Ms.No.13, dated 22.10.2014 appointing the Chairman and the Members of the TSERC and the Commission started functioning w.e.f 03.11.2014. Consequent to constitution of TSERC a joint meeting was convened by the Principal Secretary, Energy Department, Govt. of Telangana with the Secretary, Energy Department, Govt. of Andhra Pradesh on 29.10.2014 and a provisional allotment of employees and infrastructure was decided in the joint meeting.

16. Similarly, at the relevant time, the present GoAP has also constituted a new Electricity Regulatory Commission known as 'Andhra Pradesh State Electricity Regulatory Commission' vide G.O.Ms.No.35, Energy (Power-III) dated 01.08.2014. The Chairman of APERC has assumed the office on 11.10.2014 by taking office of oath. Thus, as per the Reorganisation Act, 2014, the erstwhile APERC had functioned as a Joint Regulatory Commission till the two separate SERCs were formed. By operation of the provisions of Law of the Reorganisation Act, 2014, the Chairman and two Members of the erstwhile APERC who were managing the Joint Regulatory Commission for the two States had ceased to exist on formation of the two separate Commissions and their services were dispensed with. Thus, the present APERC had been constituted on 01.08.2014 and the erstwhile APERC is a *functus officio*.

17. A letter dated 13.11.2014 was addressed by the Secretary, TSERC to the Secretary(i/c), APERC requesting him to transfer the files pending before the APERC relating to the State of Telangana. In response, the Secretary(i/c), APERC vide letter dated 18.11.2014 had transferred 128 petitions / files which contained 43 original petitions including the review petitions. Upon receipt of the pending litigation list, all the cases were posted for hearing by issuing notices in January,2015, scheduling the hearings between 27.01.2015 and 05.02.2015. In respect of petitions which squarely fell in the domain of TSERC, the petitions were heard and disposed of. In respect of petitions / cases relating to Independent Power Producers (IPPs) with whom the Power Purchase Agreements ('PPAs') exist, it has been brought to the notice of this

Commission that the issue of jurisdiction between the two new Commissions viz. TSERC and APERC requires to be decided before proceeding to adjudicate the petitions on merit. Towards this end, the petitioners have to undertake the amendment of cause title of the petitions reflecting the present reality and also to show that such petitions shall fall within the jurisdiction of this Commission. On receiving the suggestions from the petitioners, the Commission issued a general circular in this regard and this circular dated 04.03.2015 is reproduced as under:

“CIRCULAR

The Andhra Pradesh Reorganisation Act, 2014 in its Twelfth Schedule has envisaged the formation of separate State Electricity Regulatory Commissions in the successor States in the place of the then existing Andhra Pradesh Electricity Regulatory Commission. Accordingly, the Telangana State Electricity Regulatory Commission has been constituted with effect from 26.07.2014 for the State of Telangana by the State Government.

2. *Proceedings in the Original Petitions, Review Petitions and Interlocutory Applications pending before the erstwhile Andhra Pradesh Electricity Regulatory Commission have to be continued before this Commission, in so far as the present Commission has territorial jurisdiction, jurisdiction over the subject matter and jurisdiction over the parties to the proceedings. The pending proceedings have to be suitably amended in respect of the parties or the subject matter or the relief claimed or concerning any other relevant aspect so as to confine them to the extent of existence of jurisdiction of this Commission.*

3. *To achieve the said purpose, the following procedure is to be followed in all the proceedings:*

- i) *The petitioners have to report to the Commission whether their petitions / applications as framed and as pending are within the jurisdiction of the present Commission and need no amendment.*
- ii) *If the respondents desire to question the existence of such jurisdiction, it is open to them to file an additional pleading to that effect, in response to which, the petitioners can file their rejoinder. The question of jurisdiction will be decided by the Commission on merits, if so raised.*
- iii) *If the petitioners report that the petitions / applications require to be amended in respect of the parties or the subject matter or the relief or otherwise in respect of any part of the pending proceedings, they can come up with appropriate Interlocutory Applications which can be resisted by the respondents by filing counters and the Commission will decide the amendment applications on merits.*
- iv) *If the amendment applications are allowed, necessary consequential procedural steps will be ordered and respondents will have a right to file additional pleadings in response to the amended petitions / applications.*

4. *In following the above general principles in the matters pending with this Commission, the provisions of the Electricity Act, 2003 and the Andhra Pradesh*

Electricity Reform Act, 1998 to the extent they are not inconsistent with the Central Act, the Statutory Rules and Regulations will be duly observed and complied with.

5. *All original petitions, review petitions and interlocutory applications filed before the erstwhile Andhra Pradesh Electricity Regulatory Commission or this Commission and not yet taken on file and all such petitions and applications that will be henceforth filed before this Commission will be entertained, enquired into and decided on merits in accordance with law to the extent of the jurisdiction of this Commission.*

Sd/-

COMMISSION SECRETARY

Hyderabad
04.03.2015”

18. The petitioners and respondents in the petitions transferred to this Commission argued that the amendment of the cause title cannot be done by the Commission *suo-motu*. The above circular was placed on the website of the Commission and also specific notices were given to all the petitioners wherein the issue of jurisdiction was raised. Despite notices, none of the petitioners had taken steps to amend the cause title and sought adjournment of the cases. Accordingly, the cases were listed on dates between 13.04.2015 and 30.04.2015. The adjournments by the petitioners continued till June 2015, thereafter the Commission fixed the date of hearing of the issue of jurisdiction on 04.07.2015. All the cases were posted for hearing wherein in the opinion of the Commission the issue of jurisdiction is involved. The hearings were scheduled on 04.07.2015 and continued on several dates i.e., 04.07.2015, 09.07.2015, 10.07.2015, 14.07.2015, 24.07.2015 and 01.08.2015.

19. On a perusal of the petitions transferred to this Commission, the issue of jurisdiction between the two Commission i.e., TSERC or APERC is involved in 34 petitions. Out of 34 petitions, 32 petitions emanated from the Power Purchase Agreements (PPAs long term and short term) entered by the petitioners and the remaining 2 petitions relate to review petitions. In brief, the issue of jurisdiction is arising on account of the fact that the petitions were filed before the erstwhile APERC wherein four Discoms of the undivided State are involved and such petitions were pending on the date of bifurcation i.e., 02.06.2014 and also till the constitution of TSERC and APERC. As observed earlier, the TSERC was constituted on 26.07.2014 and the APERC was constituted on 01.08.2014. In our view, the Joint Regulatory Commission for both the States ceased to exist on or before 01.08.2014. Thus, all

these 34 petitions were pending before the Joint Regulatory Commission at the time of its dissolution by operation of Law.

20. According to the learned counsel who appeared before this Commission in response to the notices submitted that there are three Forums for adjudication of pending petitions viz., TSERC, APERC and CERC (Central Electricity Regulatory Commission) and one of them has the jurisdiction to decide the claims, liabilities and issues arising from the Power Purchase Agreements and Review Petitions which were pending and not disposed of by the Joint Regulatory Commission on or before 01.08.2014.

21. On various dates, the learned counsel of the petitioners and respondents have made their submissions before this Commission and briefly the submissions made by each counsel are summarised as under:

22. **Sri K.Gopal Choudary, Advocate:**

Learned counsel elaborately made the submissions before the Commission and also filed the written submissions dated 05.08.2015.

- (i) At the outset, he clarified that submissions made by him are (a) non-adversarial basis with a view to assisting the Commission to decide on the questions of jurisdiction with regard to that remained pending before the erstwhile APERC (since dissolved) as at the date of its dissolution.
- (ii) He gave a brief background by stating; on coming into force of the Reorganisation Act the cases pending before the APERC continued with the same APERC as a joint Commission in pursuance of clause C (3) of the Twelfth Schedule of the Reorganisation Act. The TSERC was constituted by a notification dated 26.07.2014 and the APERC was constitution by a notification dated 01.08.2014. Thus, the joint regulatory commission stood dissolved w.e.f 01.08.2014 and several petitions, review petitions and remand cases pending before the erstwhile APERC functioning in the interim as a joint regulatory Commission remain pending. Upon the two separate Commissions commencing their functioning, that were pending before the Joint Commission and relating to exclusively to Telangana were transferred to TSERC. There is no issue arising there from.

- (iii) In respect of matters that were before the erstwhile APERC functioning in the interim as a Joint Commission and not exclusively relating to Telangana and where the distribution licensees of both the States are parties, the issue has arisen. While the APERC takes the proceedings on its file, the TSERC has also issued notices on the very same proceedings.
- (iv) Learned counsel suggested broad categorisation of issues that emanate from the pending petitions.
- (v) The Central Electricity Regulatory Commission (CERC) has no jurisdiction to resolve the pending petitions not disposed of by the Joint Regulatory Commission. The CERC order in GMR case holding that the generating station has acquired the status of an inter-state generating station by reason of the operation of the Reorganisation Act and that the CERC has the jurisdiction to determine the issues relating to the implementation of the tariff is erroneous. The order by CERC was made at the admission stage without notice to the respondents and has not correctly and properly appreciated the provisions of the Electricity Act, 2003 harmoniously. The CERC has proceeded to assert and extend its own jurisdiction without proper and lawful justification and this Commission is not bound by the CERC order.
- (vi) The jurisdiction of the CERC to adjudicate disputes u/s 79(1)(f) of the EA, 2003 arises only where the CERC has determined or regulated the tariff u/s 79(1)(b). The adjudicatory power of the CERC is narrow and restricted and must be construed strictly. The adjudicatory power of the SERCs is wide and must be construed liberally.
- (vii) The power of the CERC to regulate or determine the tariff of generating companies is only where there is, *ab initio*, a scheme for the generation and sale of electricity in more than one state, and the generating station is conceived and set up on that basis. It must be akin to the manner in which a Central generating station is established with specific purpose of supply to more than one state. It is not applicable where the generating station was set up for supply of electricity within one state and subsequently supply is to more than one state for any reason.
- (viii) The approach of the CERC that the jurisdiction for application of disputes is of a dynamic nature and can keep varying according to the changes in time to time in the supply to one or more states by a generating station cannot

be countenanced because it would lead to an absurd and unacceptable situation and gave an example as to how it leads to an absurd situation.

- (ix) The approach of the CERC shall render the non-obstante provisions of section 64(5) of the EA, 2003 meaningless and otiose. The CERC cannot encroach upon and trample and assert the jurisdiction of the SERCs.
- (x) Shri Choudary, Advocate has made very elaborate submissions on the A.P.Reorganisation Act, 2014 and briefly they are as under:
 - a) Clause C (3) of the Twelfth Schedule to the Reorganisation Act provides that the then APERC shall function as a Joint Regulatory body for a period not exceeding six months within which time separate SERCs will be formed in Telangana and residual Andhra Pradesh. It follows that erstwhile APERC functioning in the interim as a joint Commission shall stand dissolved upon the expiry of six months from 02.06.2014 or upon the separate SERCs being constituted for the two States, whichever is earlier.
 - b) The A.P.Reorganisation Act nowhere makes any specific provision for the transfer of cases to the separate SERCs pending before the erstwhile APERC functioning in the interim as joint Commission upon its dissolution. The omission of such a provision cannot be construed to mean that the said pending cases will remain stranded and without any authority at all for the subsequently established SERCs to decide those cases.
 - c) Section 105 of the Reorganisation Act provides for the transfer of all proceedings pending before any authority in the undivided A.P, the question arises is to whether this applies only to proceedings pending before the various authorities as on 02.06.2014 or also to the proceedings pending upon dissolution of the erstwhile APERC as a joint commission on 01.08.2014. In his view, there is no clear and explicit provision in the Reorganisation Act with regard to transfer of cases pending before the interim joint Commission to the new SERCs, the jurisdiction of the AP /TS ERCs must be discerned and construed by interpretation of the Reorganisation Act and the Legislative policy manifest therein.

- d) Under section 105 of the A.P. Reorganisation Act all pending matters that pertain exclusively to Telangana are to be continued and proceeded with by the authority constituted for the State of Telangana. This has been specifically provided.
- e) There is no mention in the section 105 of the Reorganisation Act with regard to matters which do not pertain exclusively to Telangana, it must necessarily followed by necessary implication that the rest and residue of the pending matters are to be continued and proceeded with the authority in the residual State of Andhra Pradesh. Thus, all pending matters that pertain to Telangana stand transferred and to be continued by the TSERC and the rest and the residue of the pending matters are to be continued by the APERC.
- f) Law does not contemplate or permit such a situation where a pending dispute is left stranded without adjudication or without a remedy. The provisions of the statutes have to be interpreted in such a manner that the pending disputes are adjudicated upon by the authorities having the same power.
- g) Law abhors multiple adjudication of the same dispute and inconsistent decisions on the same issues of fact and law between the same parties. This general principle of law of wide import and principles of *Res sub judice* and *Res judicata* are universally applicable. Sections 10 & 11 of Civil Procedure Code give codified effect to the principle in civil disputes before the Civil Courts.
- h) There cannot be more than one adjudication of the very same dispute, if the cause of action (meaning that bundle of facts material and germane to the arising out of the dispute) and the issues (factual and legal are not severable distinctly and the parties to the dispute are necessary to be joined together, only one adjudication is permissible. There can be one adjudication by only one SERC and not both simultaneously.
- i) All matters pertaining exclusively to Telangana be transferred to the TSERC and in case of a doubt in a particular case as to whether the matter pertains exclusively to Telangana or not a reference can be made to the High Court as provided under section 105.

The sum and substance of submissions of Shri Choudary is that the pending 34 petitions not disposed of by the Joint Regulatory Commission under the provisions of Section 105 of the Reorganisation Act shall vest with the APERC for adjudication of the disputes in such petitions.

23. Sri P.Shiva Rao, Advocate appearing for APTRANSCO and APDISCOMS made the following submissions:

- (a) O.P.Nos.16 of 2005 to 24 of 2005 are the appeals filed by the APTRANSCO and APDISCOMS which were admitted by the Supreme Court and same need to be kept in abeyance till the pronouncement of decision by the Supreme Court. Further, he submitted that in cases where no stay by the Supreme court is granted, each Commission can proceed independently.
- (b) All petitions filed after 02.06.2014 have to be adjudicated by the respective SERC.
- (c) All pending petitions before the APERC and the Joint Regulatory Commission on or before 01.08.2014 and not disposed of cannot be decided by the CERC.
- (d) The CERC does not have jurisdiction u/s 79 of the EA 2003 and the object of Reorganisation Act is not to allow any gap in the smooth functioning of adjudication or regulatory functions by the Commissions though, two separate ERCs are required to be formed by the respective successor states. Shri Rao, drew our attention to Section 79 of the EA, 2003, which reads that Central Commission shall discharge the following functions viz.,
 - a) To regulate tariff of generating companies owned or controlled by the Central Government.
 - b) To regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in Clause (a) if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one state.
 - c)
 - d)
 - e)

- f) To adjudicate upon disputes involving generating companies or transmission licensees in regard to the matter connected with clause – ('a') to ('d') above and refer any disputes for arbitration.
- (e) Some of the generators whose petitions are pending before this Commission are under the impression that after 02.06.2014 the generating companies have been supplying power to two successor states of united AP, and therefore *per se* Section – 79 of the EA, 2003 attracts. But, as seen from the terminology employed in Section 79 of the EA,2003, more particularly clause ('b'), which is to determine the tariff of a generating company, which enters into or otherwise have a composite scheme for generation and sale of electricity in more than one State. Therefore, the same does not apply in the instant matter. Once clause ('b') of Sub-section (1) of Section 79 of the EA,2003 does not apply to the instant case, *ipso facto* clause ('f') also does not apply.
- (f) The order passed by the CERC in GMR Vemagiri case has been stayed by the Hon'ble Jurisdictional High Court and the issue has not reached a finality.
- (g) Shri Rao, dwelling on the A.P.Reorganisation Act, 2014 drew our attention to the following sections.
- (a) Sections 101, 102, 103, 104, 105, 107 and 108
 - (b) the liability of the Discoms is joint and several
 - (c) The provisions of the Reorganisation Act, 2014 shall prevail over the provisions of Section 174 of the EA, 2003 and relied on the decision of Maruti Udyog Limited vs Ramlal 2005(2)SCC 68 and also on Maya Mathew vs. State of Kerala 2010(4)SCC498.
- (h) He drew our attention to Twelfth Schedule of the Reorganisation Act, 2014 and submitted that a purposive construction of the provisions of law should be followed. The ouster of jurisdiction of APERC shall not be inferred or arrived at unless it is manifestly stated in the provisions of the law. He relied on decisions of the Hon'ble Supreme Court in the case of *Surjit Singh vs Mahanagar Telephone Nigam Ltd* (ii) *Gujarat Urja Vikas Nigam Ltd vs. Essar Power Ltd* (iii) *Uday Shankar Singh vs. Branch Manager, Allahabad High Court*.

- (i) One of the methods by which the present issue about the status of a generating company which supplied the power to all four DISCOMs even after the bifurcation of State, needs to be analysed with the principle laid down in the Judgment of Hon'ble Supreme Court in a case between *C.C.T Ranchi vs M/s Swarn Rekha Cokes and Coals Private Limited* report at 2004 (6) S.C. 689. Paras 27 and 28 of this decision are about the effect of Reorganization of State on the existing policy after the Reorganization of State took place. It is held that the industrial policy of the erstwhile Bihar State made in 1995 was not applicable to interstate supplies as State is divided into two States, unless contrary appears in the Reorganization Act, the earlier policy applies dehor's the division of states and the supply cannot be treated as an inter-state supply, and it applies to the suppliers of state now carved into Jharkand, even after Jharkand State declared its industrial policy.
- (j) Since PPAs are required to be continued as per schedule 12 Clause (C) (2) of the Reorganization Act, the supply of electricity cannot be treated as an inter-state supply at all. Consequently, parties are not entitled to invoke the jurisdiction of CERC.
- (k) By the effect of Schedule Twelve, Clause (C) (3) of the A.P. Reorganization Act, the erstwhile APERC has been converted as a Joint Regulatory Body conferring jurisdiction over both the successor states. The expression 'Joint Regulatory Body' is not there in the Electricity Act, 2003. The Joint Regulatory Commission as contemplated in Section 83 of Electricity Act, 2003, contains the expression of Joint Regulatory Commission which may come into being duly following certain procedure. Therefore, dehors to Section 83 of Electricity Act, 2003, under the A.P. Reorganization Act, the Joint Regulatory Body Status is given to the erstwhile APERC. Further, as per the mandate of said clause C of Schedule 12 (3), two separate Regulatory Commissions have been constituted by the two successor states of united A.P. It is clear that Parliament consciously incorporated a suitable clause, so that there should not be any gap since such eventuality may hamper the right to have redressal of grievances of parties concerned. After constitution of separate ERCs, since the division of assets and staff is not contemplated in any specific provisions of the Reorganization Act,

both the governments of successor states invoked residuary provision i.e. section 64 and with mutual agreement passed orders viz., G.O.Ms. No. 43 & 44 of AP State dated 07.11.2014, and on the part of Telangana State G.O.Ms. No. 14 dated 01.11.2014 for division of assets, liabilities and division of staff, and the same are acted upon, by the present two Regulatory Commissions. Therefore, from the above it is clear, the joint regulatory body is a successor body of the erstwhile APERC and that the present two ERC's are successor bodies of the said Joint Regulatory Body.

- (l) He drew our attention to Section 17 and 18 of the General Clauses Act, 1897 for the proposition that the APERC is the successor body.
- (m) As per section 105 (1) of the Reorganization Act, the cases which relate to the exclusive successor Telangana State stand transferred and in fact were transferred also. But in respect of balance pending cases are concerned, now both commissions have issued notices to all the four DISCOMs and private parties.
 - i) As per the said provision, though it is not expressly stated about the balance pending cases, by necessary implication it should be understood that other than Telangana Commission, the Successor A.P. Electricity Regulatory Commission may have to adjudicate the balance petitions.
 - ii) Since it is not expressly stated in Section 105(1) of the Reorganisation Act, 2014, the present problem arose as to which authority has to deal with the said balance pending cases or both have to deal with restricting to the respective DISCOMs. On this aspect of dealing with the same dispute by the two Commissions limiting to the respective State DISCOMs is concerned, the same may not be permissible under law for following reasons (i) The dispute arose under the one and the same agreement under one common cause of action, and that same is not severable. (ii) Before each Commission, even to decide the dispute limiting to their respective DISCOMs, the presence of other

DISCOMs would be necessary, as those are necessary parties. (iii) As to the balance pending matters, as per Section 105, the parties have no liberty to seek for deletion of two DISCOMs and file it before other ERC. When such liberty is not given, there cannot be two cases for one pending case. Then in such an event only one authority, but not two authorities that can deal. Doctrine of res-sub-judice and doctrine of res-judicata would also come in to apply when both the authorities decide to deal the same dispute.

- (n) Another point is whether any of the Commissions can adjudicate the dispute where DISCOMs are involved. On this point, there is no difficulty. Infact by necessary implication of Section 105 of Reorganization Act. It is clear that balance pending cases shall be adjudicated by the successor APERC. Another angle is even under the old scenario traders / licensees of other state are parties and erstwhile commission adjudicated the dispute on the ground that of cause of action that confers jurisdiction de hors to residence of parties. Even Section 86 (1) (b) also states that place of dispute shall be in the state, but not the residence of parties.
- (o) As to the interpretation of Section 105, about the balance pending cases is concerned, the precedents passed by the Hon'ble Supreme Court would help in deciding the matter. The judgment of Hon'ble Supreme Court in a case between *the State of Jharkand vs Govind Singh reported in 2005 (10) SCC 437 at paras 17 to 21* held that when literal meaning is driving to unreasonable result, do some violence to words so as to achieve that obvious intention of legislature and produce rational construction. Further held that where, however, a casus omissus does really occur, either through the inadvertence of legislature, or on the principle *quod semel aut bis existit* must be disposed of according to law as it exists. Therefore, on the basis of principle of interpretation of purposive construction, and the rule of text and context of interpretation, the present APERC may be correct authority to entertain those cases. However, if still the Hon'ble Authority entertains any doubt as to the balance pending cases,

as per Section 105 of Reorganization Act, to the extent of such limited issue, the same may be referred to the Hon'ble High Court under Section 105 (2) of the AP Reorganization Act for resolution of dispute.

- (p) Shri Rao, further argued that the power allocation ratio specified by the erstwhile GoAP is for the internal consumption and PPAs continue after bifurcation of the State and such PPAs cannot be split into two parts for convenience.

The sum and substance of submissions of Shri Shiva Rao, is that the pending petitions not disposed by the Joint Regulatory Commission shall vest with the present APERC for adjudication being the successor of erstwhile APERC and subsequently Joint Regulatory body.

24. On behalf of M/s. Spectrum Power Generation Ltd, Sri Ch.Pushyam Kiran, Advocate made the following submissions:

- (a) The main submission of the learned counsel is that the Central Electricity Regulatory Commission (CERC) has the jurisdiction to decide the pending petitions on the appointed date.
- (b) He also made two alternate submissions which are; (i) U/s 105 of the Reorganisation Act, the present APERC has the jurisdiction to adjudicate the pending petitions and alternatively refer the issue of jurisdiction to the jurisdictional High Court u/s 105 (2) of the A.P.Reorgansiation Act, 2014.
- (c) Elaborating his submissions, Shri Kiran submitted that the petitioner has a single PPA for supply of power to the four Discoms located in the states of Andhra Pradesh and Telangana at a common tariff. The PPA has not been split up and as such the petitioner will be supplying power to the Discoms situated in the two states. The Discoms that are presently operational in two states are APEPDCL, APSPDCL, TSSPDCL and TSNPDCL. As the petitioner is supplying power to Discoms in more than one State therefore, the petitioner is an inter-state generating station in terms of section 79(1)(b) of the EA 2003. In terms of Section 79(1)(b) and Section 79(1)(f) of the EA, 2003, the CERC has been given the power to regulate the tariff of generating companies which enter into or otherwise have a composite

scheme for generation and sale of electricity in more than one state. The petitioner has a composite scheme and the petitions have to be adjudicated by the CERC. The learned counsel relied on the following decisions (i) Adani Power Ltd vs Uttar Haryana Bijli Vidyut Nigam Ltd (petition No. 155/MP/2012) (ii) Udipi Powergen Corporation Limited vs Power Company of Karnataka Ltd and others (Petition No. 160/GT/2012). (iii) BSES Rajdhani Power Ltd vs Delhi Electricity Regulatory Commission and another.

- (d) Without prejudice to the above argument, it is submitted by him that under the Reorganisation Act, 2014 neither the APERC nor the TSERC has the jurisdiction and it is the CERC which has the jurisdiction u/s 79 of the EA, 2003. He relied on the decision of *CERC dt.27.04.2005 in MP No.463/2014 filed by GMR Vemagiri Power Corporation Ltd*. In this decision, the CERC held that generating company has acquired that character of an inter-state generating station in view of the A.P.Reorganisation Act, 2014. However, the writ petitions filed by the Discoms of the Telangana and Andhra Pradesh before the jurisdictional High Court and the matter is pending.
- (e) A literal interpretation of Section 105(1) would lead to the conclusion that TSERC has jurisdiction only in relation to proceedings which relate exclusively to territories which fall within the State of Telangana. Therefore, TSERC would not have jurisdiction over any of the subject matters which do not pertain exclusively to territories which fall within the State of Telangana.
- (f) If the Hon'ble Commission is of the view that there is no clarity in the provisions of the Reorganisation Act with regard to exercise of jurisdiction over matters that arise out of the PPA which involve the Distribution Companies of both Andhra Pradesh and Telangana, the Hon'ble Commission may make a reference to the Hon'ble High Court regarding the same in terms of Section 105(2) of the Reorganisation Act.

The sum and substance of the submissions of Shri Ch.Pushyam Kiran, is that the CERC has the jurisdiction to adjudicate the pending petitions before the erstwhile APERC. Alternatively, the present APERC has to adjudicate the pending petitions.

25. On behalf of GVK Industries Ltd & GVK Gautami Power Ltd, Sri M.Sodekar, AGM (Law) made the following submissions:

- (a) Proper body to adjudicate the disputes involving the DISCOMs of both the newly formed States is the CERC.
- (b) The proceedings before the TSERC are affected and covered by the procedure law and doctrine of *res sub judice*. The parties, issues and the claims thereto are the same before the APERC and the TSERC.
- (c) A plain reading of the provisions of Section 86 of the EA, 2003 make it clear that the functions of a State Commission are to be rendered only within that State and the same will not involve or extend to any other State other than the State to which a particular State Commission belongs to. As the disputes involved Discoms of state of Andhra Pradesh and Telangana, therefore, TSERC cannot entertain a petition u/s 86 of the EA, 2003. The petitioner has a single PPA for supply of power to four Discoms located in the state of AP and Telangana at a common tariff. The PPA has not been split up and as such the petitioner will be supplying power to the four Discoms situated in the two States. The petitioner is supplying power to Discoms in more than one State and therefore is a inter-state generating station in terms of Section 79(1)(b) of the EA, 2003. It is the CERC which is the right forum for adjudicating the dispute.
- (d) The petitioner has a composite scheme for generation and sale of power in more than one state.
- (e) In support of the submission that CERC has the jurisdiction, the learned counsel relied on the following decisions (i) Adani Power Ltd vs Uttar Haryana Bijli Vidyut Nigam Ltd (petition No. 155/MP/2012) (ii) Udupi Powergen Corporation Limited vs Power Company of Karnataka Ltd and others (Petition No. 160/GT/2012). (iii) BSES Rajdhani Power Ltd vs Delhi Electricity Regulatory Commission and another.
- (f) The parallel adjudication of the present petitions by the two state commissions will lead to multiplicity of proceedings inasmuch as the issues and claims before both the commissions are identical it may lead to conflict in judgments by similarly placed commissions which would be contrary to public policy and the principle of judicial committee

(g) The claims in the present petition will have to be apportioned against each of the Discom. It will lead to a situation where the respective state commissions will have to pass orders in relation to the Discoms that are not within their regulatory jurisdiction.

26. On behalf of M/s.Lanco Kondapalli power private Ltd, Sri Challa Gunaranjan, Advocate made the following submissions:

- (a) The provisions of Section 105 of the Reorganisation Act shall apply to the proceedings pending before the then APERC. Section 105(1) stipulates that only if a proceeding relates exclusively to the territory of state of Telangana, the pending proceedings stand transferred to the TSERC. The pending disputes in the petitions before the Commission do not relate exclusively to the territory within the state of Telangana. The Distribution licensees are within the states of A.P and Telangana. The dispute arises out of a single PPA between the petitioner generating company and the distribution licensees in both A.P and Telangana. The requirement of 'exclusivity' in Section 105(1) is not satisfied and the TSERC has no jurisdiction.
- (b) There is no explicit provision in the Reorganisation Act as to which of the pending cases are to be transferred to the authority within the residual state of Andhra Pradesh. It cannot be construed as the intention of Parliament that even the cases exclusively relating to the Andhra Pradesh do not stand transferred to the authority within Andhra Pradesh or that cases relating to both the states are bound by any authority. A provision is made for transfer of particular class of pending cases in the state of Telangana it would necessarily follow by necessary implication that the rest of the cases continue with or stand transferred to the authority in the residual state of Andhra Pradesh. Thus, the present APERC shall have the jurisdiction to decide the petitions.
- (c) The CERC order in GMR's case holding that the generating station has acquired the status of an inter-state generating station by reason of the operation of the Reorganisation Act and that the CERC has the jurisdiction to determine the issues relating to the implementation of tariff is erroneous and not in accordance with the provisions of the Act. Moreover, order was passed without following the principles of natural justice.

(d) The approach of CERC that jurisdiction is of a dynamic nature and can keep varying according to the changes in time to time in the supply to one or more states by a generating station cannot be countenanced and it can lead to an absurd and unacceptable situation. Further, provisions of Section 64(5) of EA, 2003 will be rendered meaningless and otiose. Alternatively, he submitted that a reference may be made to High Court under Section 105(2) of the Reorganisation Act.

27. On behalf of M/s.KSK Mahanadi Power Ltd, Sri Anand Ganesan, Advocate made the following submissions:

- (a) TSERC has the jurisdiction over his petition and jurisdiction aspect does not apply to his case. He submitted that the power purchase allocation to Discoms is clearly specified in the PPA and in accordance with the PPA, regular payments are being made. He also submitted that Section 10 & 11 of the CPC are not applicable as the parties in dispute are not the same.
- (b) The liability of each discom is separately mentioned in the PPA
- (c) One agreement by the four Discoms will not alter the basic character of the PPA
- (d) The jurisdiction vests with TSERC and the general issues as argued by other counsel are not applicable to the KSK Mahandi Power Ltd
- (e) Ousting of jurisdiction is not possible as the party is not the same and the provisions of CPC are not applicable to the facts of the case.

28. On behalf of Reliance Infrastructure Ltd, Sri P.Vikram, Advocate appeared and filed a Memo on 21.10.2016, which is reproduced as under:

“It is submitted that the above matters are listed on the preliminary issues of jurisdiction of the Hon’ble Commission. It is submitted that on 28.09.2016 the Hon’ble APERC has passed orders on the issue of jurisdiction in relation to the pending cases prior to bifurcation. The petitioner is legally advised to accept the same. In view of the above, the Hon’ble Commission may pass appropriate order as deem fit and proper in the interest of justice.”

29. Sri Y.Rama Rao, Advocate, appeared on behalf of the TSDISCOMS and TSTRANSCO and the following submissions were made:

- (i) The CERC does not have jurisdiction over the pending petitions which have been transferred to TSERC as the transactions at the relevant time were confined to one State. To invoke Section 79(1)(b), the generation and sale of power should be to more than one state. In the pending petitions, the power was supplied intra-state and the PPAs were not entered into with the two States.
- (ii) There is no composite scheme as envisaged in Section 79 of the EA, 2003. There is only one PPA with each generator and such PPAs were confined to one state only. He submitted that the concept of cause of action contains bundle of facts. In the present petition, the PPAs were executed and signed in Hyderabad and this Commission shall have jurisdiction over the 34 petitions.
- (iii) The jurisdiction of TSERC cannot be taken away by any authority without there being a specific provision of Law. He further submitted that the latest decision of Hon'ble APTEL in Adani Group is not a binding ratio because this decision has been challenged before the Hon'ble Supreme Court and the same is pending for disposal.
- (iv) TSERC has been constituted u/s 82 of the EA, 2003 and the functions of a State Commission should be confined to the territory of the State in which it is located. He drew the attention of the Commission to provisions of Section 86(1)(a), 86(1)(b) and 86(1)(d) of the EA, 2003 to drive home that a State Commission has to discharge its duties in respect of Discoms or licensees located within the territory of the State.
- (v) He made very elaborate submissions on the provisions of the A.P.Reorganisation Act, 2014 and also the A.P.Reform Act, 1998. He drew the attention of this Commission to Section 23 of the Reform Act, 1998 and submitted that as a part of the reform process the then Government had notified three transfer schemes u/s 23 of the Reform Act and Section 131 of the Electricity Act, 2003. The third transfer scheme allocates the power sharing ratio among the four Discoms and all the PPAs were allocated among the four Discoms. Thus, he submitted that PPAs are severable or separable and he quoted the ratios of power sharing among the four Discoms. He submitted that these

three transfer schemes resolve the issue in dispute and submitted that each Discom is a successor-in-interest.

- (vi) Coming to the A.P.Reorganisation Act, he drew our attention to Sections 92 and 105, Schedules 9 and 12. He submitted that under sections 3 & 4 of the Reorganisation Act, Telangana and Andhra Pradesh are the two successor states and also drew our attention to Section 2 (j) of the Reorganisation Act. Both are new states and no state is a successor to the other.
- (vii) As per Schedule Twelve, Clause 3, the erstwhile APERC acted as a Joint Regulatory Commission for a period not exceeding six months. TSERC was constituted on 26.07.2014 and the APERC was constituted on 01.08.2014. The erstwhile APERC and the Joint Regulatory Commission had ceased to exist by operation of Law on or before 01.08.2014. Thus, he submitted that the erstwhile APERC does not exist and it is a *functus officio* and new Commissions come into existence simultaneously.
- (viii) He drew the attention of the Commission to the provisions of Section 105 and contended that the word 'exclusively' should be read with the provisions of sub-section 3 of Section 105. After the appointed date, the petitions by any generator against the two Discoms would have been filed before the TSERC for claiming any compensation or any other claim. In the same way, the pending petitions shall also vest with the TSERC as if they had been instituted after the appointed day u/s 105 (3)(b). In this context, he drew our attention to the decision of the Hon'ble Supreme Court in Fodder Scam Case of Bihar and submitted that the ratio laid down therein is equally applicable to the facts of the case.
- (ix) He vehemently submitted that the three transfer schemes lay down the ratio of sharing of power and the last G.O. dated 08.05.2014 issued by the Government of Andhra Pradesh before the bifurcation of the state allocates the power of 53.89% to the state of Telangana. Earlier the power sharing was approximately 60% which was reduced on account of reassignment of two districts viz., Kurnool and Ananthapur to another Discom located in Andhra Pradesh. The provisions of section 23 of the Reform Act are binding and such provisions have been saved in the

Electricity Act u/s 185(3) as the provisions contained in Section 23 of the Reform Act are not inconsistent with the provisions of EA, 2003. He further contended that as per the third transfer scheme and also subsequent amendments to the third transfer scheme, the Telangana state has got major share in its operational access i.e., more than 50% as such, the allocation of power as well as operation is majority and the seat of office as well as sign of office of the PPAs are at the place of Hyderabad which falls in the exclusive territorial jurisdiction of Telangana as such the Telangana State Electricity Regulatory commission has got jurisdiction to adjudicate the issues pertaining to the PPAs and he also stressed the 'exclusivity' as mentioned in Section 105 (1) of A.P.Reorganisation Act, 2014 in support of his contention and also relied upon the judgment of the Hon'ble Supreme court held in the case of CBI, AHD, Patna vs. Brij Bhushan Prasad.

- (x) Sri Y. Rama Rao has also relied upon the judgment of the Hon'ble Supreme Court in the case of State of Jharkand and another vs Govind Singh. In respect of the interpretation of the statute i.e., "*Casus Omissus*".
- (xi) General Clauses Act comes into play when clarity is lacking. The three transfer schemes notified under the Reform Act are very clear and the provisions of General Clauses Act are redundant in the facts of the case.
- (xii) For review and amendment of the Tariff orders of the earlier years, the erstwhile APERC does not exist by operation of Law. Therefore, the TSERC is entitled to review and make any amendment to the tariff order. He also submitted that Order 2 and Rule 2 of CPC can be interpreted both ways and it cannot resolve the issue in dispute. Thus, he submitted that TSERC is the right forum for adjudication of all the 34 petitions and he submitted that the findings given by the Hon'ble APERC order stating that the PPAs were entered jointly by the four Discoms is factually incorrect.

30. The Commission has considered the submissions of all the learned counsel for the petitioners and respondents very carefully on the jurisdiction aspects. On merits, the petitions may be heard separately and the Commission is not expressing any views on the rights and liabilities of the petitioners and the respondents which have been claimed or presented in the thirty-four petitions and counters which were pending before the Joint Regulatory Commission on 01.08.2014.

31. Consequent to the enactment of the A.P.Reorganisation Act, 2014, two successor States viz., Telangana and Andhra Pradesh were formed under sections 3 and 4 of this Act. Section 92 of the Reorganisation Act, 2014 r/w Clause 3 of Twelfth Schedule stipulates that the existing Andhra Pradesh Electricity Regulatory Commission shall function as a Joint Regulatory Body for a period not exceeding six months within such time two separate SERCs will be formed in the successor States.

32. In pursuance of the powers conferred by Clause 3 of the Twelfth Schedule, the Government of Telangana has issued a notification dated 26.07.2014 constituting the Telangana State Electricity Regulatory Commission under Section 82 of the Electricity Act, 2003 r/w Section 92 of the A.P.Reorganisation Act, 2014. The Government of Telangana State also issued a notification on 22.10.2014 appointing the Chairman and the Members and they assumed the office by taking oath on 03.11.2014. Similarly, the Government of Andhra Pradesh also issued a notification dated 01.08.2014 constituting the Andhra Pradesh State Electricity Regulatory Commission. The Hon'ble Chairman, APERC has assumed the office by taking oath on 11.10.2014 and the Hon'ble Members assumed the office by taking oath on 11.02.2015. By operation of Law, the Joint Regulatory Commission constituted under the provisions of the Reorganisation Act ceased to exist on the constitution of the TSERC and the APERC on or before 01.08.2014. As a matter of fact, the services of the then Chairman and the Members of the erstwhile APERC who continued and managed the Joint Regulatory Commission, their services were dispensed with after two new Commissions were constituted. Thus, by operation of Law, the erstwhile APERC and the Joint Regulatory Commission ceased to exist in the eyes of law and the two new SERCs viz., APERC and TSERC were constituted by the Government of Andhra Pradesh and the Government of Telangana respectively.

33. There were various petitions pending which were filed by the Discoms, generators, IPPs, etc., before the erstwhile APERC and the Joint Regulatory Commission. In response to a letter by this Commission, the present APERC has transferred 131 petitions relating to the jurisdiction of the TSERC. The jurisdiction of the TSERC for discharging the functions entrusted to it u/s 86 of the EA, 2003 is coterminous with the territory of the State of Telangana, so also the jurisdiction of new APERC is coterminous with the territory of the State of Andhra Pradesh. Out of the pending petitions which were transferred to TSERC for the purpose of adjudication of disputes contained 34 petitions wherein, the issue of jurisdiction of this Commission has been raised because in the petitions four Discoms of two new states are involved. On analysis of the 34 petitions, it is noticed that 32 petitions emanate from the Power Purchase Agreements (PPAs) entered into by the erstwhile Andhra Pradesh State Electricity Board (APSEB) and Transmission Corporation of Andhra Pradesh Limited (APTRANSCO) and two petitions related to review of the Tariff Order. Out of 32 petitions emanating from PPAs, 30 petitions are from the long term PPAs and 2 petitions are with the Traders of electricity emanating from the short term PPAs. Thus, the 34 petitions arose from the PPAs only.

34. There are three statutory authorities viz., Telangana State Electricity Regulatory Commission (TSERC), Andhra Pradesh State Electricity Regulatory Commission (APERC) both constituted under Section 82 of the Electricity Act, 2003 r/w Section 92 of A.P.Reorganisation Act, 2014 and the Central Electricity Regulatory Commission (CERC) constituted under Section 76 of EA, 2003 by the Central Government. Thus, the issue involved is which of these three authorities viz., TSERC, APERC and CERC has the jurisdiction to adjudicate the disputes in 34 petitions which were pending on the cessation of the Joint Regulatory Commission and the erstwhile APERC by operation of Law and four Discoms from both the States are involved. In some petitions, APTRANSCO and APPCC are involved.

35. As observed earlier, the 32 petitions pending for adjudication of disputes emanate from the Power Purchase Agreements (PPAs) entered into by the Independent Power Producers and details thereto shall be discussed in subsequent paras. Thus, the issue of jurisdiction of three authorities stated above need to be examined from the PPAs entered into by the generators from time to time.

36. Before we deal with the jurisdiction issue, various entities that have emanated from the A.P.Reorganisation Act,2014 and the Electricity Act, 2003 and their role in the present petitions pending before this Commission is briefly explained as under:

37. The Andhra Pradesh State Electricity Board (APSEB) had its origin to the State Electricity Department of the erstwhile Madras State and the erstwhile State of Hyderabad. The State of Andhra Pradesh was formed in October 1953 and the State Electricity Department was constituted in April 1959 under the provisions of the Electricity (Supply) Act, 1948 for the purpose of generation, transmission and distribution of power in the erstwhile State of Andhra Pradesh.

38. The undivided State of Andhra Pradesh had initiated the reforms in the electricity sector and as a sequel to it a new Act known as the Andhra Pradesh Electricity Reform Act, 1998 (Reform Act) was passed. The erstwhile APSEB was unbundled into Andhra Pradesh power generation Corporation Ltd (APGENCO) and Transmission Corporation of Andhra Pradesh Ltd (APTRANSCO) on 01.02.1999.

39. The APTRANSCO was further unbundled with effect from 01.04.2000 into Four Power Distribution Companies, also known as DISCOMS. Thus, Four Distribution Companies have been constituted u/s 23(6) of the Reform Act and under the Companies Act, 1956 by a Gazette notification No.37 issued on 31st March 2000.

40. The details of four Distribution Companies (DISCOMS) are as under:
(a) Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL) was formed on 31.03.2000 and started its business operations w.e.f 01.04.2000 for distributing of power in six districts of Andhra Pradesh State viz., Krishna, Guntur, Prakasam, Nellore, Chittoor and Cuddapah. The corporate office and headquarters of APSPDCL is at Tirupati. After bifurcation of the Andhra Pradesh State into new States of Andhra Pradesh and Telangana on 02.06.2014 two more districts viz., Kurnool and Ananthapur were added to its jurisdiction for distribution of power. Thus, this Company caters to the eight districts of Andhra Pradesh State.

(b) Eastern Power Distribution Company of Andhra Pradesh Limited (APEPDCL) was formed on 31.03.2000 and started the business operations from 01.04.2000 for distribution of power in five districts of Andhra Pradesh State viz., Srikakulam, Visakhapatnam, Vizianagaram, East Godavari and West Godavari. The corporate office and headquarters of APEPDCL is at Visakhapatnam.

(c) Northern Power Distribution Company of Andhra Pradesh Limited (APNPDCL) was formed on 31.03.2000 and started its business operations from 01.04.2000 with headquarters at Warangal to carry out the electricity distribution business in the five districts of Telangana State viz., Warangal, Karimnagar, Khammam, Nizamabad and Adilabad. After bifurcation of State of Andhra Pradesh, the name of this company has been changed to Northern Power Distribution Company of Telangana State Limited (TSNPDCL). However, there is no change in the area of operation of distribution of power of this company.

(d) Central Power Distribution Company of Andhra Pradesh Limited (APCPDCL) was formed on 31.03.2000 and started its business operations w.e.f 01.04.2000 with headquarters at Hyderabad and caters to the seven districts of Telangana State viz., Mahaboobnagar, Nalgonda, Medak, Ranga Reddy, Hyderabad, Kurnool and Ananthapur. After bifurcation of State of Andhra Pradesh, the name of this company has been changed to Southern Power Distribution Company of Telangana State Limited (TSSPDCL) and two districts viz., Kurnool and Ananthapur have been transferred from its jurisdiction of supply of power to APSPDCL. Thus, the present jurisdiction of supply of power is for five districts of state of Telangana.

41. Under Section 68 of the Reorganisation Act, 2014, the Companies and Corporations specified in the Ninth Schedule shall continue to function from 02.06.2014 in the areas in respect of which they were functioning immediately before 02.06.2014. The Four DISCOMS are listed in the Ninth Schedule at Sl.No. 30 to 33. In the bifurcation of the State of Andhra Pradesh, two distribution companies of power fell in the territory of State of Andhra Pradesh and two distribution companies of power fell in the territory of state of Telangana and the details are as under:

(a) the state of Telangana

- a. Southern Power Distribution Company of Telangana State Limited (TSSPDCL) and
- b. Northern Power distribution company of Telangana State Limited (TSNPDCL)

(b) the state of Andhra Pradesh

- a. Southern Power Distribution company of Andhra Pradesh Limited (APSPDCL)
- b. Northern power distribution company of Andhra Pradesh limited (APNPDCL)

42. Coming to the Transmission business in the undivided State, Transmission Corporation of Andhra Pradesh Limited (APTRANSCO) came into existence on 01.02.1999 under the Companies Act, 1956. It appears from February 1999 to June, 2005, APTRANSCO was a single buyer of the electricity from various generators including from independent power producers (IPPs) and sold the same to four Discoms in accordance with the terms and conditions of the individual PPAs and the transfer scheme framed under the Reform Act, 1998 by the GoAP at Bulk Supply Tariff rate. Later on, in accordance with the third transfer scheme notified u/s 23 of the Reform Act, 1998, APTRANSCO ceases to do power trading and retained the powers of controlling the system of power transmission. Presently, this company transmits the electricity in the territory of Andhra Pradesh.

43. Transmission Corporation of Telangana State Limited (TSTRANSCO): As per the A.P.Reorganisation Act, 2014, APTRANSCO was divided into TSTRANSCO and APTRANSCO. TSTRANSCO was established as a company under the provisions of the Companies Act, 2013 w.e.f 02.06.2014 catering to the State of Telangana.

44. Coming to the generation of electricity business which has been delicensed, Andhra Pradesh Power Generation Company Limited (APGENCO) was incorporated under the Companies Act, 1956 on 29.12.1998 and commenced its business operations w.e.f 01.02.1999 and its Memorandum of Association briefly reveals to acquire, establish, construct and operate power generating stations. After the

Reorgansiation Act, 2014 the assets, liabilities, personnel, etc., were apportioned between the two successor States and Telangana State has formed a new company known as TSGENCO.

45. Telangana State Power Generation Corporation Limited (TSGENCO). As per the A.P.Reorganisation Act, 2014, APGENCO was divided into TSGENCO and APGENCO. TSGENCO was established as a company under the provisions of the companies Act, 2013, on 19thMay 2014 and commenced its operations from 02.06.2014.

46. Andhra Pradesh Power Coordination Committee (APPCC): It is a non-statutory body notified by the Government of Andhra Pradesh to carry out various functions like review of energy accounting, billing for inter-utility trading of power and shall examine all commercial issues related to bulk supply.

47. Telangana State Power Coordination Committee (TSPCC): In view of the bifurcation of the State of Andhra Pradesh in accordance with the A.P.ReorganisationAct, 2014, CPDCL & NPDCL have become integral part of Telangana State whereas, SPDCL & EPDCL are with the residuary state of Andhra Pradesh. On similar lines of the then Apex committee of APPCC, TSPCC was formed vide G.O.Ms.No.21 dated 12.05.2014 for examining all commercial issues related to bulk supply and all legal issues related to IPPs and to review the energy accounting and billing for inter-utility trading of power and imbalance settlement.

48. After the bifurcation of the State, the entities in the power sector state-wise are as under:

Telangana State	Andhra Pradesh State
<u>Distribution:</u> (a) Southern Power Distribution Company of Telangana Limited (TSSPDCL) (b) Northern Power Distribution Company of Telangana Limited (TSPDCL)	<u>Distribution:</u> (a) Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL) (b) Northern Power Distribution Company of Andhra Pradesh Limited (APNPDCL)
<u>Transmission:</u> Transmission Corporation of Telangana State Limited (TSTRANSCO)	<u>Transmission:</u> Transmission Corporation of Andhra Pradesh Limited (APTRANSCO)
<u>Generation:</u> Telangana State Power Generation Company Limited (TSGENCO)	<u>Generation:</u> Andhra Pradesh Power Generation Company Limited (APGENCO)

Power Coordination Committee Telangana State Power Coordination Committee	Power Coordination Committee Andhra Pradesh Power Coordination Committee
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49. As observed earlier, out of 34 petitions, 32 petitions arise from the 8 long term PPAs and 2 petitions from the short term PPAs entered into by the petitioners and all 8 PPAs were entered into by the erstwhile APSEB and APTRANSCO and the details of the PPA such as the date of PPA, generator name, plant location, entered with whom and original petition numbers assigned by this office are summarised as under for the sake of convenience and to appreciate the facts in issue:

(A) Long term Power Purchase Agreements (PPAs) with Independent Power Producers (IPPs)

Sl.	Name of the Developer and Plant Location	Plant Details	PPA DATE	PPA Entered	Petitions filed
1	GVK Industries, Jugurupadu, Kadiyam(m), East Godavari District	216 MW at site reference conditions (235 MW at ISO reference conditions) Combined Cycle Gas based Power Plant (Duel Fuel)	Original 17.06.1993, amended on 04.07.1994 and on 19.04.1996	Final amended and restated PPA signed on 19.04.1996 by: 1. Chairman, APSEB 2. C&MD, GVK Industries.	1. OP No. 25 of 2015 (12 of 2008 of APERC) 2. 26 of 2015 (19 of 2009 of APERC) 3. OP No. 54 of 2015 (24 of 2013 of APERC) 4. OP No. 55 of 2015 (23 of 2013 of APERC) 5. OP No. 63 of 2015 (34 of 2014 of APERC)
2	GVK Industries, Jugurupadu, Kadiyam(m), East Godavari District	220 MW Short Gestation Gas Based Power Project	18.06.2003	Between APTRANSCO and M/s. GVK Industries Ltd. and signed by: 1. Director GVK Industries Ltd. 2. Director, APTRANSCO	1. OP No. 41 of 2015 (9 of 2013 of APERC) 2. OP No.48 of 2015 (2 of 2014 of APERC)
3	Gautami Power Pvt. Ltd., Peddapuram, East Godavari Dist	464 MW Gas Based Power Project	Original on 31.03.1997 amended on 17.07.1999 and on 18.06.2003	On 31.03.1997 between APSEB and Guatami Pvt. Ltd. and signed by: 1. Director, Gautami Power 2. Chairman, APSEB On 17.07.1999 and on 18.06.2003 between APTRANSCO and Guatami Pvt. Ltd. and signed by: 1. Director GVK Industries Ltd. 2. Director, APTRANSCO	1. OP No.40 of 2015 2. OP No.47 of 2015
4	Reliance Infrastructure Ltd, Vemagiri, East Godavari Dist	220 MW Gas based power projects	Original on 31.03.1997 and modified, amended on 25.11.1997, 25.06.2003 and 07.08.2004	Date of PPA: 31.03.1997 between (i) APSEB and Snehaltha Power Ltd. (ii) APSEB and Snehaltha Generation Ltd., for 100 MW each, later PPA modified & clubbed to one under the name of M/s. Snehaltha Power Ltd., (communicated on 25.11.1997) and signed by: 1. Chairman, APSEB 2. Director, Snehaltha	1.OP. No.39 of 2015 (79 of 2012 of APERC) 2.OP. No. 44 of 2015 (60 of 2013 of APERC) 3.OP. No. 58 of 2015 (12 of 2014 of APERC)

Sl.	Name of the Developer and Plant Location	Plant Details	PPA DATE	PPA Entered	Petitions filed
				renamed as M/s. BSES Andhra Power Ltd. (M/s. BAPL) approved by GoAP on 01.03.1999, amended on 25.06.2003 by enhancing the capacity to 220 MW and signed by: 1. Director, APTRANSCO 2. Director, BAPL renamed as M/s. Reliance Energy Ltd., and amended on 07.08.2004 and signed by: 1. Director, APTRANSCO 2. Director, Reliance Energy Ltd. renamed as M/s. Reliance Infrastructure Ltd., on 28-04-2008	
5	Spectrum Power Generation Ltd., Kakinada	400 MW Combined Cycle Gas based Power Plant	Original on 20.06.1993, amended on 13.07.1994 and final restated PPA on 23.01.1997	Final restated PPA entered between APSEB and Spectrum Power Generation Ltd., and signed by 1. Chairman, APSEB 2. VC&MD, Spectrum Power	1. O.P.No. 33 of 2015 (57 of 2011 of APERC) 2. O.P. (SR).No. 07 of 2015 3. O.P.No. 57 of 2015 4. O.P.No. 65 of 2015 (37 of 2014 of APERC) 5. O.P.No. 66 of 2015 6. O.P.No. 69 of 2015 (52 of 2014 of APERC) 7. O.P.No. 70 of 2015 (53 of 2014 of APERC) 8. O.P.No. 71 of 2015 (61 of 2014 of APERC) 9. O.P.No. 72 of 2015 (62 of 2014 of APERC) 10. O.P.No. 73 of 2015 (63 of 2014 of APERC) 11. R.P.No. 6 of 2015 (1 of 2014 of APERC)
6	Lanco KondaPalli Power Pvt. Ltd., Kondapalli, Krishna Dist	355 MW Short gestation liquid fuel based power plant	Original on 31.03.1997 and amended on 21.05.1997	Between APSEB and Lanco Power Ltd., on 31.03.1997 and signed by: 1. Chairman, APSEB 2. Director, Lanco Power Amended on 21.05.1997 renaming to M/s. Kondapalli Power Corporation Ltd.	1. O.P.No. 27 of 2015 (33 of 2013 of APERC) 2. O.P.No. 28 of 2015 (42 of 2009 of APERC) 3. O.P.No. 52 of 2015 (85 of 2012 of APERC)
*7	GMR Vemagiri Power Generation Ltd., Vemagiri, East Godavari Dist	370 MW gas based power project	PPA dt.18.06.2003	Between APTRANSCO and Vemagiri and signed by 1. Director, APTRANSCO 2. Vice Chairman, Vemagiri	1. O.P.No.37 of 2015 2. O.P.No.38 of 2015 3. O.P.No.53 of 2015
8	EID Parry India Limited, Sankili (V), Regidi Amadalavalasa (M), Srikakulam Dist	16 MW Cogeneration plant based on Bagassee	PPA dated 14.08.2001	APTRANSCO and GMR Technologies & Industries Ltd signed by 1. CE / APTRANSCO 2. MD, GMR Technologies Subsequently renamed as EID parry (India) Ltd	O.P.No.56 of 2015 (15 of 2014 of APERC)

* The Hon'ble High Court has granted stay.

(B) Short term Power Purchase Agreements (PPA) with Traders

Sl.	Name of the Developer and Plant Location	Plant Details	PPA dated / LOI period	PPA Entered	Petitions filed
1	RVK Energy (P) Ltd	6MW RTC power	01.04.2010 to 31.03.2011	MD, APPCC and CE, APPCC	O.P.No.45 of 2015 (SR No.25 of 2013)
2	Bharat Aluminium company Ltd	200 MW RTC Power	PPA dated 23.08.2011	PTC India Ltd and Bharat Aluminium company Ltd	O.P.No.67 of 2015 (O.P. No. 40 of 2014)

50. With the above factual matrix, this Commission examines the issue of jurisdiction in 34 petitions out of which, 32 relate to the disputes arising from the PPAs. The issue of jurisdiction is cropping up because the respondents / petitioners are located in the State of Andhra Pradesh and the State of Telangana. Consequently, an issue of jurisdiction arises as to which Commission viz., TSERC, APERC or CERC is entitled to adjudicate upon the petitions pending on the date of cessation of the Joint Regulatory Commission and the erstwhile APERC. After analysing the petitions, this Commission intends to examine the issue of jurisdiction under the following broad heads:

- (i) Jurisdiction vis-à-vis the A.P.Reform Act, 1998
- (ii) Jurisdiction under the Electricity Act, 2003
 - (a) Whether the CERC has the jurisdiction?
 - (b) The jurisdiction of a State Regulatory Commission
- (iii) Jurisdiction vis-à-vis the provisions of the Reorganisation Act, 2014
- (iv) Provisions of Civil Procedure Code and the jurisdiction

51. **Jurisdiction vis-à-vis the A.P.Reform Act, 1998:**

To reform the electricity sector, the then Government of Andhra Pradesh promulgated the Andhra Pradesh Electricity Reforms Act, 1998 (“Reform Act”). This Act received the assent of the Governor on 19.05.1998 and the assent of the President of India on 21.10.1998 as the ‘electricity’ is placed in the concurrent list of Indian Constitution (Sl.No. 38 of the Concurrent list). The Reform Act was enacted, briefly, with the following objectives:

- (i) To restructure the Electricity industry
- (ii) Rationalisation of generation, transmission & distribution business of electricity
- (iii) Avenues for participation of private sector in the electricity industry
- (iv) Development and management of electricity industry in an efficient, economic and competitive manner.

52. **Reorganisation of the Electricity Industry**

Part -VII of the Reform Act, 1998 deals with the Reorganisation of the electricity industry. Part-VII comprises of sections 23 to 25. Section 23 deals with the Reorganisation of the State Electricity Board and the same is reproduced as under the for the sake of convenience and ready reference.

S.23

(1) With effect from the date on which a transfer scheme prepared by the State Government to give effect to the objects and purposes of this Act is published or such further date as may be prescribed by the State Government, (hereinafter referred to as the effective date), any property, interest in property, rights and liabilities which immediately before the effective date belong to the Board shall vest in the State Government on such terms as may be agreed between the State Government and the Board.

(2) Any property, interest in property, rights and liabilities vested in the State Government under sub-section (1) shall be re-vested by the State Government in the APTRANSCO and generating company or companies, in accordance with the transfer scheme so published along with such other property, interest in property, rights and liabilities of State Government as may be specified in such scheme, on such terms and conditions as may be agreed between the State Government and the APTRANSCO or generating company or companies, as the case may be.

Explanation:- For the purposes of this Part generating company or companies, shall mean the company or companies to be incorporated to implement the reorganisation of the Electricity Industry in the State.

(3) Such of the rights and powers exercisable by the Board under the Electricity (Supply) Act, 1948 as the State Government may, by notification specify, shall be exercisable by the APTRANSCO or generating company or companies, as the case may be, for the purpose of discharging the functions and duties with which it is charged.

(4) Notwithstanding anything in this section, where,-

(a) the transfer scheme involves the transfer of any property or rights to any person or undertaking not wholly owned by the State Government, the scheme shall give effect to the transfer only for fair value to be paid by the transferee to the State Government.

(b) a transaction of any description is effected in pursuance of a transfer scheme, it shall be binding on all persons including third parties and even if such persons, third parties have not consented to it.

(5) The State Government may, after consulting the APTRANSCO (the "transferor licensee"), or generating company or companies, as the case may be, require them to draw up a transfer scheme to vest in a further licensee (the "transferee licensee") or any generating companies, any of the functions including distribution function, property, interest in property, rights and liabilities which have been vested in the transferor licensee or generating companies, as the case may be under this section and publish the same as Statutory Transfer Scheme under this Act. The Transfer Scheme to be notified under this sub-section shall have the same effect as the Transfer Scheme under sub-section(2).

(6) A transfer scheme may,-

(a) provide for the formation of subsidiaries, joint venture companies or other schemes of division, amalgamation, merger, reconstruction or arrangements;

(b) define the property, interest in property, rights and liabilities to be allocated:-

(i) by specifying or describing the property, rights and liabilities in question;

(ii) by referring to all the property, interest in property, rights and liabilities comprised in a specified part of the transferor's undertaking; or

(iii) partly in the one way and partly in the other;

(c) provide that any rights or liabilities specified or described in the scheme shall be enforceable by or against the transferor or the transferee;

(d) impose on the licensee an obligation to enter into such written agreements with or execute such other instruments in favour of, any other subsequent licensee as may be specified in the scheme;

(e) make such supplemental, incidental and consequential provisions as the transferor licensee considers appropriate including provision specifying the order in which any transfer or transaction is to be regarded as taking effect; and

(f) provide that the transfer shall be provisional for a specified period.

(7) All debts and obligations incurred, all contracts entered into and all matters and things engaged to be done by the Board, with the Board or for the Board, or the APTRANSCO or generating company or companies before a transfer scheme becomes effective shall, to the extent specified in the relevant transfer scheme, be deemed to have been incurred, entered into or done by the Board, with the Board or for the State Government or the transferee and all suits or other legal proceedings instituted by or against the Board or transferor, as the case may be, may be continued or instituted by or against the State Government or concerned transferee, as the case may be.

(8) In the event that a licensee is required to vest any part of its undertaking in another licensee pursuant to sub-section (5), the Commission shall amend the transferee's license in accordance with section 19 or revoke its licence in accordance with section 18.

(9) The Board shall cease to be charged with, and shall not perform, the functions and duties specified in sub-section (3) with regard to transfers made on and after the effective date.

(10) The exercise by a licensee of any of the Board's rights and powers may be made on such conditions as may be specified in the transfer scheme including a condition that they shall be exercised by the licensee only with the approval of the Commission.

53. A brief analysis of Section 23 is as under for appreciating the issue in dispute:

- (i) A "Transfer Scheme" shall be prepared by the State Government for transferring of any property, interest in property, rights and liabilities belonging to the APSEB to the state government on agreed terms. Thus, at the first level all the assets and liabilities including PPAs were transferred from the APSEB to the Government of Andhra Pradesh (First Transfer Scheme).
- (ii) The GoAP shall retransfer any property, interest in property, rights and liabilities including PPAs to APTRANSCO and generating company or companies which are going to be incorporated to implement the reorganisation of the electricity industry in the erstwhile State (Second Transfer Scheme) which were acquired

from the APSEB on agreed terms in a transfer scheme along with other property, rights and liabilities stated therein.

- (iii) The rights and powers of the APSEB under the provisions of the Electricity (Supply) Act, 1948 shall be notified to the APTRANSCO and generating company(ies) for the purpose of discharging the functions and duties.
- (iv) **The transfer scheme framed shall be binding on all persons including third parties, even if they have not consented to.**
- (v) The state government after consulting APTRANSCO and generating company/companies shall draw a transfer scheme to vest in a “transferee licensee” property, interest in property, rights and liabilities which have been vested in APTRANSCO and generating company(ies).
- (vi) The provisions have stipulated the contents of a “transfer scheme” in particular definition of the property, interest in property, rights and liabilities to be allocated. The transfer scheme has to allocate the assets and liabilities which are enforceable by or against the ‘transferee’.
- (vii) All the debts and obligations incurred and all contracts including PPAs entered into by the APSEB, APTRANSCO, a generating company/companies, shall be deemed to have been entered into or incurred by the “Transferee” to the extent specified in the transfer scheme.
- (viii) The word employed in section 23(7) is “Transferee” and not “Transferees”. All the contracts entered into by the APSEB or APTRANSCO or APGENCO shall devolve on a DISCOM and not on the DISCOMS jointly.
- (ix) The provisions of Section 23 of the Reform Act are *Pari metria* to the provisions of Section 131 of the Electricity Act, 2003.

54. U/s 23 and 24 of the Reform Act, the GoAP had framed three transfer schemes. The salient features of each transfer scheme are as under:

55. **FIRST TRANSFER SCHEME: (G.O.Ms.No.9, Energy (Power-III) 29th January, 1999: -**

This transfer scheme was notified by GoAP in exercise of the powers conferred by Sections 23,24 and 55 of the Reform Act, 1998 and salient features of this scheme are as under:

- (i) All assets including contracts, liabilities and proceedings of the APSEB shall stand transferred to and vest in the state government.
- (ii) Classification of assets into generation undertaking and transmission and distribution undertaking. Thus, the business of APSEB was split into two parts, viz., generation business and transmission & distribution business.
- (iii) Retention of certain liabilities by the state government.

- (iv) Transfer of all assets, liabilities and proceedings of generation undertaking by the state government to a company known as Andhra Pradesh power generation corporation limited (APGENCO) a company established by the GoAP with the principal object of engaging in the business of generation of electricity.
- (v) Transfer of all assets, liabilities and proceedings forming part of transmission and distribution undertaking by the state government to Transmission corporation of Andhra Pradesh Limited (APTRANSCO) established by the GoAP u/s 13 of the Reform Act, 1998 with the principal object of engaging in the business of procurement, transmission, distribution and supply of electricity.
- (vi) On transfer of all assets and liabilities by the state government to APTRANSCO and APGENCO, they are responsible for all the contracts, rights, deeds, etc., and the relevant portion from the transfer scheme which is material for the issue before the Commission is reproduced as under: Clause 5(3) of the transfer scheme:

*“On such transfer and vesting of the assets, liabilities and proceedings in terms of sub-rule (1) to APGENCO or sub-rule(2) to APTRANSCO, as the case may be, the APGENCO or the APTRANSCO, the Transferee, shall be responsible for all contracts, rights, deeds, schemes, bonds, agreements and other instruments of whatever nature to which the Board was initially a Party, subsisting or having effect on the effective date of transfer, in the same manner as the Board was liable immediately before the effective date, and the same shall be in force and effect against or in favour of the Transferee and may be enforced effectively as if the **Transferee had been a party thereto instead of the Board.**”*

- (vii) Transfer of generation business from APGENCO to one or more generating companies in a transfer scheme proposed to be framed.
- (viii) Transfer of distribution business to distribution companies by APTRANSCO in a transfer scheme proposed to be framed by the state government for transfer of distribution business to the distribution companies which are proposed to be incorporated.
- (ix) Rights and obligations of third parties shall be restricted to APGENCO or APTRANSCO or DISCOMS proposed to be incorporated and the relevant portion from the transfer scheme is as under:

“Under the transfer being effected in accordance with the provisions of the Act and these rules, the rights and obligations of all persons shall be restricted to the Transferee to whom they are assigned to and notwithstanding anything to the contrary contained in any deed, documents, instruments, agreements or arrangements which such person has with the Board, he shall not claim any right or interest against the Board or any other Transferee.”

56. **SECOND TRANSFER SCHEME: (G.O.Ms.No.35, Energy (Power-III), 31.03.2000**

In exercise of the powers conferred by Sections 23 & 24 of the Reform Act, 1998 and the rules made thereunder, the GoAP issued a notification dated G.O.Ms.No.35, Energy (Power-III), 31st March, 2000 to give effect to the transfer of

assets, liabilities, etc., of APTRANSCO to the Four distribution companies constituted in terms of Section 23 (6) of the Reform Act. This transfer scheme transfers the distribution business of electricity from APTRANSCO to four distribution companies viz., (i) Eastern Power Distribution Company of Andhra Pradesh Ltd., (referred to as “**APDISTCO-I**” in transfer scheme), (ii) Southern Power Distribution Company of Andhra Pradesh Ltd., (referred to as “**APDISTCO-II**” in transfer scheme), (iii) Central Power Distribution Company of Andhra Pradesh Ltd., (referred to as “**APDISTCO-III**” in transfer scheme), (iv) Northern Power Distribution Company of Andhra Pradesh Ltd., (referred to as “**APDISTCO-IV**” in transfer scheme). The salient features of the second transfer scheme are as under:

- (i) The electricity distribution functions in the state of Andhra Pradesh be divided into area-I, area-II, area-III and area-IV and transfer of electricity distribution business of these areas to four distribution companies.
- (ii) Four distribution companies were incorporated under the Companies Act, 1956 on 31st March, 2000 and they have obtained their respective commencement business certificates from the Registrar of Companies dated 31.03.2000.
- (iii) The definition of ‘Assets’ in the transfer scheme includes contract deeds and agreements such as Power Purchase Agreements and the scheme is effective from 1st April, 2000.
- (iv) Transfer of distribution and retail supply business of electricity along with all assets, liabilities and personnel on the basis of the area among the four distribution companies. Each distribution company (DISCOM) has been assigned a particular territory of the State and DISCOM wise:
 - (i) Eastern Power Distribution company of Andhra Pradesh limited consists of the following districts of the state of Andhra Pradesh.
 - a. Srikakulam, b.Vizianagaram, c.Visakhapatnam, d.East Godavari, e. West Godavari
 - (ii) Southern Power Distribution Company of Andhra Pradesh limited consists of the following districts of the state of Andhra Pradesh.
 - a. Krishna, b.Guntur, c.Nellore, d.Prakasam, e.Chittoor, f.Cuddapah
 - (iii) Central Power Distribution Company of Andhra Pradesh limited consists of the following districts of the state of Andhra Pradesh.
 - a. Kurnool, b.Ananthapur, c.Hyderabad, d.Rangareddy, e.Nalgonda, f.Medak, g. Mahaboobnagar
 - (iv) Northern Power Distribution Company of Andhra Pradesh limited consists of the following districts of the state of Andhra Pradesh.
 - a. Adilabad, b.Nizamabad, c.Warangal, d.Karimnagar, e.Khammam
- (v) Devolvement of contracts such as PPAs on each distribution company independently and not jointly. The relevant portion from the transfer scheme is reproduced as under:

5. Substitution of APTRANSCO by APDISTCOs

On the transfer and vesting of the Distribution undertaking to the APDISTCOs in terms of clause 3 of the Second Transfer Scheme, the Transferee shall be responsible for all contracts, rights, deeds, schemes, bonds, agreements and other instruments of whatever nature to which the APTRANSCO was initially a party, subsisting or having effect on the effective date in the same manner as the APTRANSCO was liable immediately before the effective date, and the same shall be in force and effect against or in favour of the Transferee and may be enforced effectively as if the Transferee had been a party thereto instead of the APTRANSCO.

Further, it is clarified in the schedules of the scheme that all the contracts and agreements relating to the respective areas shall belong to a distribution company to which a particular area is assigned.

- (vi) There were two amendments vide G.O.Ms.No.31, Energy (Power-III), 30th March 2001 and G.O.Ms.No.109, Energy (Power-III), 29th September 2001 to second transfer scheme and these amendments have no impact on the issue in dispute before the Commission.

57. THIRD TRANSFER SCHEME (G.O.Ms.No.58, Energy (Power-III) dated 07.06.2005)

This is an important transfer scheme to resolve the issue of jurisdiction of Electricity Regulatory Commissions. This transfer scheme was notified by the GoAP under sections 23 & 24 of the Reform Act, 1998 and u/s 131 of EA 2003. In this transfer scheme, APTRANSCO transfers the procurement and bulk supply of electricity and trading of electricity and **allocation of Power purchase agreements to four distribution companies** viz., APCPDCL, APEPDCL, APNPDCL and APSPDCL vide G.O.Ms.No.58, Energy (Power-III) dated 07-06-2005. In this notification, the rights, obligations and agreements and contracts relating to the business of procurement and bulk supply of electricity or trading of electricity to which APTRANSCO was originally a party or devolved on it shall stand transferred and vested in the APCPDCL, APEPDCL, APSPDCL and APNPDCL respectively in the specified ratios stated therein with effect from 09-06-2005. In this notification, it is clearly stated that the rights and obligations of all persons in respect of bulk supply undertaking business shall be restricted to the "concerned transferee" notwithstanding anything to the contrary contained in any deed, agreement, document, etc., which

such persons may have entered into with APTRANSCO. The scheme also stipulates that all proceedings pending against or by APTRANSCO from the effective date shall be continued by or against the “concerned transferee”. Thus, the third transfer scheme makes it very clear that the successor-in-interest to all the PPAs entered into either by the APSEB or APTRANSCO shall be the “concerned DISCOM” or “concerned transferee”. Therefore, the PPAs have not devolved on all the four Discoms jointly but by operation of law they devolved on each Discom in a specified ratio as stipulated in the third transfer scheme. The salient features of the scheme are as under:

- (i) With effect from 09-06-2005 assets, liabilities and proceedings constituting bulk supply business of APTRANSCO shall stand allocated and transferred to the four APDISCOMS as fully described in Schedules B,C,D & E. In clause 2 (i), the definition of “Assets” is given which includes a contract, deeds and agreements entered by the APSEB and APTRANSCO. Thus, all the PPAs existing on 09-06-2005 including new capacities to be added have been allocated DISCOM wise in Schedules B to E of the third transfer scheme.
- (ii) The generation capacities of thermal and hydro energy generating stations that were existing on 09-06-2005 were allocated or vested within APTRANSCO under any PPA or otherwise including the generation capacities of the APGENCO stations, the Independent Power Producers (PPAs), Andhra Pradesh Gas Power Corporation Ltd (APGPCL) stations and the firm allocations of the Central Generating Stations along with any allocations from the unallocated quota therein shall stand entirely allocated and transferred to the APDISCOMS in the following ratios.

APEDPCL -	16.89%	} Present APERC jurisdiction
APSPDCL -	22.83%	
Total -	<u>39.72%</u>	
APCPDCL -	43.42%	} Present TSERC jurisdiction
APNPDCL -	16.86%	
Total -	<u>60.28%</u>	

To set at rest any controversy it is clarified in this transfer scheme that any addition or increase in the existing capacities of the generating companies shall be allocated and transferred in the above ratios to four APDISCOMS and the relevant portion is reproduced as under:

“It is clarified that any addition or increase in the existing capacities of the generating companies / stations which are presently allocated to or

vested with APTRANSCO in terms of any PPA or otherwise, shall also be allocated and transferred to the APDISCOMS in terms of the ratios provided herein above.”

- (iii) The short term PPAs executed by APTRANSCO with any person including with any trading company shall also be allocated and transferred to the four DISCOMS in the ratios prescribed in para (ii) above.
- (iv) The sharing of electricity among the four DISCOMS from the PPAs and other sources in the above ratio has been stipulated in the third transfer scheme and any inter-transfer among the four DISCOMS is also provided in the transfer scheme subject to the condition that a DISCOM does not exceed its share (ratio) of power allocation. In other words, adjustments of power inter-se among four DISCOMS is provided without disturbing the overall ratio as stated above and the relevant portion from the third transfer scheme is stated as under:

“(VI) Post this transfer, certain imbalances may arise amongst DISCOMS and power may have to be traded inter-se. Necessary rules will be framed by DISCOMS for such inter-se power procurement, trading and imbalance settlement and DISCOMS would obtain necessary approvals for the same. The guiding principle for such rules will be to ensure that the power is shared amongst DISCOMS in the most equitable manner and no DISCOM is unduly prejudiced on account of allocation per se.”

- (v) The transfer scheme provides that upon transfer of the power purchase agreements from APTRANSCO to APDISCOMS the respective transferee DISCOM shall replace the APTRANSCO for supply of electricity. Thus, successor-in-interest of a PPA is the each DISCOM in the ratio specified above at para (ii).
- (vi) Rights and obligations of a person who entered into a PPA is restricted to the transferee DISCOM individually and not jointly and the relevant portion is reproduced as under:

“8. Except to the extent specifically provided for in the Order and/or the Third Transfer Scheme, upon the transfer of the Bulk Supply Undertaking being effect in accordance with the A.P.Act, EA,2003, the Order and the Third Transfer Scheme, the rights and obligations of all persons in respect of Bulk Supply Undertaking shall be restricted to the concerned Transferee APDISCOM notwithstanding anything to the contrary contained in any deed, document, instrument, agreement or arrangement which such persons may have entered into with APTRANSCO, and such persons shall not claim any right or interest against APTRANSCO in connection therewith.”

- (vii) Schedules B, C, D and E of the third transfer scheme deal with the electricity allocations from various generating stations including the power supply from

independent power producers with whom the APSEB or APTRANSCO had entered into a power purchase agreement. Schedules from B to D of the transfer scheme contain the allocation of the capacities of the power from all the sources and from all the generators including independent power producers who had entered into PPAs either with the APSEB or APTRANSCO. The schedules give a complete power allocation from all the sources such as thermal, hydro, renewable and the central generating stations. The allocation of power in the schedules is PPA wise and DISCOM wise. Thus, the schedules provide for the total power allocation to each DISCOM from all the sources at the relevant point of time. The new generating plants of power which were under construction were also allocated among the four DISCOMS in the ratios specified as above at para (ii). Therefore, the schedules in the third transfer scheme give the complete allocation of assets and liabilities DISCOM wise. At the cost of repetition, it is made very clear that no contract or agreement entered into by APSEB or APTRANSCO with any Independent Power Producer including the petitioners have devolved jointly on the four DISCOMs. The devolvement of the PPAs was “DISCOM wise” in a specified ratio and the power allocation to each DISCOM was clearly specified in the Schedules and there is no ambiguity in the allocation of the power. The allocation of power capacities DISCOM wise viz., APCPDCL, APEPDCL, APSPDCL and APNPDCL from all the generators is summarised DISCOM wise as under from the third transfer scheme:-

Table:

Sl.	Plant Name	Plant capacity in MW	Allocation to TSDiscoms in MW			Allocation to APDiscoms in MW			TOTAL
			CPDCL	NPDCL	Sub-total	EPDCL	SPDCL	Sub-total	
1	APGENCO Thermal	2963	1286	500	1786	500	676	1176	2962
2	APGENCO Hydel	3588	1558	605	2163	606	819	1425	3588
3	APGENCO Total	6551	2844	1105	3949	1106	1495	2601	6550
4	Central Generating Stations	2594	1126	438	1564	438	592	1030	2594
5	APGPCL (Joint Sector)	59	26	10	36	10	13	23	59
	NCEs	363	117	53	170	67	127	194	364
	IPPs								
6	GVK Industries, Jugurupadu, Kadiyam(m), East Godavari District (216 MW Combined Cycle Gas based Power Plant (Duel Fuel))	217	94	37	131	37	50	87	218
7	Spectrum Power Generation Ltd., Kakinada (400 MW Combined Cycle Gas based Power Plant)	208	90	35	125	35	48	83	208
8	Lanco KondaPalli Power Pvt. Ltd., Kondapalli, Krishna Dist (355 MW Short gestation liquid fuel based power plant)	368	160	62	222	62	84	146	368
9	Reliance Infrastructure Ltd, Vemagiri, East Godavari Dist (220 MW Gas based power projects)	220	96	37	133	37	50	87	220
10	LVS Power, Gurrampalem, Vishakhapatnam (36.8 MW gas/liquid fuel based thermal project)	36.8	16	6	22	6	8	14	36
11	RVK Energy Pvt. Ltd., Machilipatnam, Krishna Dist	0	0	0	0	0	0	0	0
12	SVS	17.2	7.5	3	10.5	3	3.9	6.9	17.4
13	Total	1067	463.5	180	643.5	180	243.9	423.9	1067.4
	SUB-TOTAL	10634	4576.5	1786	6362.5	1801	2470.9	4271.9	10634.4
	New Capacities								
14	Konaseem EPS Oakwell Power Ltd., Devarapalli, Near Ravulapalem, East Godavari Dist (445 MW Gas Based Power Project)	445	193	75	268	75	102	177	445
15	Gautami Power Pvt. Ltd., Peddapuram, East Godavari Dist (464 MW Gas Based Power Project)	470	204	79	283	79	107	186	469
16	VEMAGIRI - GMR Vemagiri Power Generation Ltd., Rajahmundry (Gas based Power Plant)	370	161	62	223	62	84	146	369
17	GVK-Extn. - GVK Industries, Jugurupadu, Kadiyam(m), East Godavari District (220 MW Short Gestation Gas Based Power Project)	220	96	37	133	37	50	87	220
18	RTPP - Rayalaseema Thermal Power Plant, Kadapa	420	182	71	253	71	96	167	420
19	VTPS (Dr. Narla Tatarao Thermal Power Station), Vijayawada	660	287	111	398	111	151	262	660
20	Future NCEs (with PAs, PWPAs)	292	104	26	130	64	98	162	292
21	Jurala (Hydel)	117	51	20	71	20	27	47	118
		2994	1278	481	1759	519	715	1234	2993
	GRAND TOTAL	13628	5854.5	2267	8121.5	2320	3185.9	5505.9	13627.4

58. There were three amendments to the third transfer scheme G.O.Ms.No.58 dated 07-06-2005 which came into operation from 09-06-2005.

(A) The first amendment was made vide G.O.Ms.No.24 Energy (Power-III), dated 8th March 2006 wherein, the power allocation and transfer ratio to the four APDISCOMS was changed to the following ratios:

APEPDCL	-	16.70%] Present territorial jurisdiction of Andhra Pradesh
APSPDCL	-	22.90%	
		<u>39.60%</u>	
APCPDCL	-	43.48%] Present territorial jurisdiction of Telangana
APNPDCL	-	16.92%	
		<u>60.40%</u>	

(B) The second amendment was made vide G.O.Ms.No.53 Energy (Power-III), dated 28th April 2008, wherein the power allocation ratio from all the generating sources was allocated to the four APDISCOMS was changed to the following ratios:

APEPDCL	-	15.80%] Present territorial jurisdiction of Andhra Pradesh
APSPDCL	-	22.27%	
		<u>38.07%</u>	
APCPDCL	-	46.06%] Present territorial jurisdiction of Telangana
APNPDCL	-	15.87%	
		<u>61.93%</u>	

(C) The GoAP has further issued G.O.Ms.No.20 Energy (Power-III) Department, dated 8th May 2014 amending the earlier G.O.Ms.No.53, dated 28-04-2008, wherein the power allocation was amended from all the generators and sources in view of the transfer of two districts viz., Ananthapur and Kurnool from APCPDCL to APSPDCL and such amended ratio of power allocation among the four DISCOMS w.e.f 02-06-2014 (Date of Bifurcation of the State) is as under:

APEPDCL	-	15.80%] Territorial jurisdiction of Andhra Pradesh
APSPDCL	-	30.31%	
		<u>46.11%</u>	
APCPDCL	-	38.02%] Territorial jurisdiction of Telangana
APNPDCL	-	15.87%	
		<u>53.89%</u>	

The above ratio will also be applicable for all the existing PPAs in respect of all the ongoing and under construction generating stations for which PPAs have been signed after 28.04.2008.

59. The views of this Commission after perusing the three transfer schemes are summarised as under:

- (i) The three transfer schemes notified under Sections 23 & 24 of the Reform Act, 1998 and U/s 131 of the EA, 2003 are binding and they are enforceable in law even after the enactment of the EA, 2003. Sub-section 3 of Section 185 stipulates that the provisions of the enactments specified in the schedule, not inconsistent with the provisions of this Act, shall apply to the states in which such enactments are applicable. In the schedule to the Electricity Act, 2003, the Andhra Pradesh Electricity Reform Act, 1998 is one of the enactments that has been specified. Thus, the provisions of Section 23 and the three transfer schemes notified thereunder are legally enforceable.
- (ii) The transfer schemes were notified under the provisions of the enactments which are binding on all the entities engaged in power generation, transmission and distribution of electricity in the state of Telangana and the state of Andhra Pradesh and they are enforceable in law. The transfer schemes are a part of the electricity reforms and reorganisation of the erstwhile Board. These transfer schemes are binding on this Commission also.
- (iii) The Power Purchase Agreements entered into by the petitioners with the APSEB devolved on the Government of Andhra Pradesh which in turn on the APTRANSCO.
- (iv) The PPAs devolved or entered into by the APTRANSCO had devolved or transferred to the four DISCOMS individually and the power capacities from each PPA was allocated among the four DISCOMS in a specified ratio from time to time.
- (v) All assets, liabilities, obligations, rights, contracts or agreements, disputes or proceedings were transferred from APTRANSCO to each DISCOM individually. Thus, no PPA has devolved or transferred to any DISCOM jointly or together.
- (vi) Hon'ble APERC in the order dt.28.09.2016 noted the following facts either from the submissions or in its findings:
 - a. 12.1 (ii) – *In the present case there is an agreement entered into between the generation company and the four DISCOMs of the undivided State of Andhra Pradesh of which two each now belong to the newly constituted states of Telangana & residuary State of Andhra Pradesh (with some minor changes).*
 - b. At para 12.1.6, “(vi) *For the above reasons it can clearly concluded that CERC doesn't have the jurisdiction in present case where the dispute relates to a single PPA between four DISCOMS and the generating companies entered into before bifurcation in the undivided state of Andhra Pradesh.*”
 - c. At para 12.3 (i) “*The issue / controversy is only regarding the proceedings where DISCOMS of both the new States (corresponding to the four DISCOMS of the undivided State) are parties to the dispute consequent to a single Power Purchase Agreement signed by them together with the generation /*

transmission entity before bifurcation and which are pending with the Joint Regulatory Body after bifurcation”.

- d. At para 13.4 *“the above principles are relevant in the present context to examine the scope of jurisdiction of CERC to disputes where there is a single power purchase agreement between the four DISCOMS of the undivided State of Andhra Pradesh and the petition on the dispute arising from is pending on the date of bifurcation of state.*
 - e. At para 15 *“Thus, to conclude, while TSERC has no jurisdiction as per the provisions of Section 105 (1) of the A.P.Reorganisation Act, 2014 and as CERC cannot have jurisdiction under section 79(f) read with section 86(1)(b) as discussed above, in the matter of adjudication / determination of the disputes relating to / arising out of a single PPA / agreement between the four DISCOMS (now within the two States).”*
- (vii) This Commission has a great respect for the views of the Hon’ble APERC and a statutory body is legally entitled to have its views and conclusions on the submissions made before them. However, with great respect this Commission does not agree with the above finding of facts in the order as they do not emanate from the three transfer schemes notified by the GoAP and the PPAs entered into by the erstwhile APSEB or APTRANSCO. As a matter of fact, no initial long term PPA was signed by any of the four DISCOMS. All the long term PPAs from which 30 petitions emanate were signed either by the APSEB or by the APTRANSCO. It is a fact that all the PPAs devolved on each DISCOM under the transfer schemes and this fact was noted also by Hon’ble APERC at para 9.1 of order dated 28.09.2016, which is reproduced as under:

“The petitioner entered into the Power Purchase Agreement with Transmission Corporation of Andhra Pradesh – pursuant to the third transfer scheme dated 09-06-2005 issued by the then Govt. of Andhra Pradesh, the rights and obligations and all contracts for purchase and procurement of power were transferred from the Transmission Corporation of Andhra Pradesh (TRANSCO) to four Distribution Companies (DISCOMS) of erstwhile state of Andhra Pradesh, now located in the states of Telangana and residuary Andhra Pradesh. The Distribution Companies are successors-in-interest to the Transmission Corporation of Andhra Pradesh. They are APCPDCL, APNPDCL, APEPDCL and APSPDCL.”

After having given the above finding in the order by the Hon’ble APERC that four DISCOMS are successors-in-interest and without appreciating the contents of third transfer scheme thereafter observed that the PPAs were entered into by the four DISCOMS together. With great respect this Commission is not inclined to agree with their finding of the facts in the order dated 28.09.2016. The facts in this order emanate from the three transfer schemes notified under the Reform Act and the PPAs entered into by the APSEB or APTRANSCO.

- (viii) All rights and obligations of all persons who entered into PPAs shall be restricted to the transferee DISCOM individually despite anything contrary contained in the PPA.
- (ix) The territory of erstwhile state of Andhra Pradesh was divided into four areas. Each DISCOM was assigned a particular territory wherein it was

empowered to distribute and retail supply of power. At the time of bifurcation of the state of Andhra Pradesh into two states, two districts viz., Kurnool and Ananthapur were within the jurisdiction of APCPDCL which were transferred to APSPDCL. On account of transfer of two districts the power sharing ratio from all the sources to Telangana Discoms (two Discoms) was reduced from 61.93% to 53.89%.

- (x) As noted earlier, the two Discoms come under the jurisdiction of this Commission i.e., TSERC and the two Discoms come under the jurisdiction of the present APERC. After bifurcation, names of Telangana Discoms have been changed. In the third transfer scheme, the generating capacities from all the generating stations and sources were allocated among the four Discoms and in respect of all the PPAs, the allocation was in respect of each Discom. Thus, the rights and obligations emanating from a PPA entered into by the erstwhile APSEB or APTRANSCO shall be restricted to the ratio of allocation of power in the third transfer scheme or any amendment made thereto from time to time by the GoAP before the bifurcation of the State. The petitioners in 32 petitions are bound by the ratio of power allocated among the four Discoms and their rights or claims shall be to the extent of ratio against each Discom. In the third transfer scheme initially the ratio of power capacities allocated to the two Discoms of Telangana state was as under:

APCPDCL (presently TSSPDCL)-	43.42%	} Present TSERC jurisdiction
APNPDCL (presently TSNPDCL)-	16.86%	
Total - 60.28%		

The power capacities allocated to two Discoms of APERC was 39.72%. The purchase of power in the combined state of Andhra Pradesh was monitored and coordinated by the Andhra Pradesh Power Coordination Committee. The power purchased by the four Discoms from all the sources including from the present 32 petitioners was shared in the ratio specified in the third transfer scheme and amendments made thereto. There were inter-se adjustments among the four Discoms subject to the ceiling prescribed in the transfer schemes from time to time and the relevant entries were passed in the books of account of Discom from whose share of power adjustment was made. As observed earlier in this order, the ratio of power allocation among the four Discoms was changed from time to time but such change is marginal and finally before the bifurcation of the state the ratio of Telangana Discom was reduced to 53.89% on account of transfer of two districts from Telangana Discom to Andhra Discom. Thus, this Commission is of the view that rights and obligations emanating from the PPAs with the 32 petitioners have devolved on the two Discoms located in the territory of state of Telangana in the ratios specified in the transfer schemes and amendments made thereto from time to time. All the four Discoms located in both the states are the public limited companies incorporated under the companies act, 1956 and it is mandatory for them to prepare their financial statements under the companies act and as a matter of

fact they did prepare and such financial statements were also audited by the controller and auditor general. Thus, the details of purchase of power from the petitioners are available with each Discom allocated to both the states. It is not correct to say that the claims of the petitioners are not ascertainable and definite and this Commission is of the view that the rights and obligations of the petitioners are ascertainable and definite in the ratio specified in the third transfer scheme and amendments made thereto from time to time. Any inter-se adjustment of power among the four Discoms of the erstwhile state was a transaction between or among the four Discoms with which the petitioners are not concerned as the power was shared by the four Discoms in the ratio specified therein.

To establish that electricity was shared in the ratio stipulated in the third transfer scheme two examples are given as under:

(a) A PPA with Reliance Infrastructure Limited (formerly BSES) was entered on 31.03.1997 by the erstwhile APSEB for supply of 220MW of power. In the third transfer scheme the ratio of power supply from Reliance was allocated to the four Discoms (para 3. (III)) in the following ratio to the four Discoms located in both the states as under:

APEDPCL	-	16.89%	} Present APERC jurisdiction
APSPDCL	-	22.83%	
APCPDCL (presently TSSPDCL)-		43.42%	} Present TSERC jurisdiction
APNPDCL (presently TSNPDCL)-		16.86%	

The ratio of power supply allocated to the four Discoms is in accordance with the third transfer scheme relating to M/s. Reliance Infrastructure Limited is as under:

Plant Name	Plant capacity in MW	Allocation to TSDiscoms in MW			Allocation to APDiscoms in MW			TOTAL
		CPDCL	NPDCL	Sub-total	EPDCL	SPDCL	Sub-total	
Reliance Infrastructure Ltd, Vemagiri, East Godavari Dist	220	96	37	133	37	50	87	220

(b) Similarly, GVK-Industries Ltd entered into PPA on 19.04.1996 with the erstwhile APSEB for supply of power of 217MW. This was allocated among the four Discoms in accordance with the third transfer scheme as under:

Plant Name	Plant capacity in MW	Allocation to TSDiscoms in MW			Allocation to APDiscoms in MW			TOTAL
		CPDCL	NPDCL	Sub-total	EPDCL	SPDCL	Sub-total	
GVK Industries, Jugurupadu, Kadiyam(m), East Godavari District	218	94	37	131	37	50	87	218

These two examples support the conclusion by this Commission that the power was allocated to each Discom independently and it was not allocated jointly.

- (xi) The sharing of power among the four Discoms in accordance with the third transfer scheme is equally applicable to the short term PPAs executed by APTRANSCO. The third transfer scheme also makes it very clear that the ratio of power sharing as stipulated therein is equally applicable to a petitioner who traded in the power with the Discom.
- (xii) The third transfer scheme makes it abundantly clear that all rights and obligations of all persons in respect of bulk supply of power shall be restricted to the concerned transferee or concerned Discom. Thus, this Commission is of the view that the transfer scheme devolved on each transferee Discom because each transferee is a legal entity and having its own area of business in the states of Telangana and Andhra Pradesh. The schedules of third transfer scheme allocate all the assets, liabilities, proceedings, obligations, agreements, contracts, etc., to each Discom. It is clarified here that APPCC is a committee constituted by the GoAP for the purpose of coordination of power procurement in the state of Andhra Pradesh and after bifurcation a new committee has been constituted in the state of Telangana by name TSPCC. This committee is not a statutory body and ultimately rights and liabilities of power purchase vest with the four Discoms.
- (xiii) This Commission is of the view that rights and obligations relating to the two Discoms located in the territory of state of the Telangana relating to the PPAs or any other dispute or issue including tariff related shall be adjudicated by this Commission only, as this Commission has the jurisdiction u/s 86 of the EA, 2003 on the territory of state of Telangana. Thus, all the pending petitions (34) shall be adjudicated by this Commission relating to the two Discoms viz., TSSPDCL and TSNPDCL located in the territory of state of Telangana as the PPAs devolved on each Discom individually and certainly not jointly in accordance with the provisions of the third transfer scheme and amendments made thereto from time to time. Further, in view of the allocation of all the PPAs among the four Discoms in terms of the quantity (MW) resolves the rights and obligations emanating from the PPAs or any type of other dispute. Our views are fortified by the decision of the High Court of Andhra Pradesh in the case of **Venkatarya Fibres Pvt. Ltd vs State of Andhra Pradesh dated 26.06.2007 in 2008 (3) ALT 48**, wherein it was held that APCPDCL (presently TSSPDCL) is the successor-in-interest and the relevant portion from this judgement is reproduced as under.

“37. Qua the third transfer scheme (G.O. Ms. No. 58) the 2nd respondent is one of the transferee of the rights and obligations and agreements and contracts with the APTRANSCO. Clause (3) of the transfer scheme reiterates the rights and obligations of the four distribution companies in relation to the obligations and entitlement of the APTRANSCO, as successors in interest. Clause (6) of G.O. Ms. No. 58 (3rd transfer scheme) is relevant and reads as under:

Subject to the AP Act, EA, 2003, the Order and the Third Transfer Scheme, upon the transfer of contracts deeds, schemes, bonds, agreements and other instruments of whatever nature to the APDISCOMs, the respective Transferee APDISCOM shall replace APTRANSCO in all respects with regard to such Bulk Supply Undertakings. All parties to such contracts, deeds, schemes, bond, agreements and other instruments shall execute such other or further document or documents and/or take such steps, as may be necessary and/or incidental thereto, in order to give full and complete effect to such transfer of contracts, deeds, schemes, bonds, agreements and other instruments of whatever nature to the APDISCOMs.

38. Under G.O.Ms.No. 58, the petitioner is one of the undertakings allotted to the APCPDCL and described as a NCE yet to be commissioned.

39. *The APCPDCL is clearly therefore the ordained successor-in-interest of the APTRANSCO in so far as the rights and obligations under the PPA dated 22.9.2003 between APTRANSCO and the petitioner is concerned. The contention to the contrary urged on behalf of the respondents is wholly misconceived, without a legal basis and is rejected.*”

- (xiii) (a) Shri Shiva Rao, learned counsel appearing for the APDISCOMS and APTRANSCO submitted that the allocation of capacities of power from the PPAs in a specified ratio is meant for the internal consumption of the DISCOMS.

This Commission is not able to appreciate the contention of Shri Shiva Rao. The ratios of power allocation as stipulated in the third transfer scheme and amendments thereto by the GoAP were notified as rules under the provisions of Sections 23 & 24 of the Reform Act, 1998 and S.131 of the EA 2003. The power allocation ratios from the PPAs among the four DISCOMS of the erstwhile AP is enforceable in law and acted upon and implemented as such ratios are not meant for internal consumption as contended by Shri Shiva Rao. As observed earlier, the three transfer schemes contain the complete details of transfer of assets and liabilities to the four DISCOMS and also the allocation of capacities of power from each PPA among the four DISCOMS of undivided state. Thus, rights and liabilities of each Discom are clearly demarcated and each Discom is successor-in-interest of each PPA entered into either by the erstwhile APSEB or APTRANSCO.

(b) Sri Shiva Rao, Advocate has raised another issue stating that the disputes or issues arose under one and the same PPA under one common cause of action and the dispute is not severable and presence of all four Discoms is necessary to adjudicate or resolve the petitions pending before both the Commissions. Further, there is no liberty to each Discom in the PPAs. All PPAs entered into were single PPAs and they cannot be split as tariff is common.

This Commission does not agree with his contention because it is contrary to the provisions contained in the three transfer schemes notified by the GoAP u/s 23 of the Reform Act, 1998. To answer the argument of Sri Rao, the relevant portions from the transfer schemes are reproduced as under at the cost of repetition.

(i) First Transfer Scheme (GOMs.No.9, Energy (Power-III), dated 29.01.1999)

“2.(e) Asset” includes dams, tunnels, in take and outlet structures of water conductor systems, generating stations with associated plant, machinery equipment, transmission and distribution systems, land, building offices, stores, furniture, fixtures, vehicles, residential quarter and guesthouses and amenities and installations pertaining thereto and other movable and immovable assets, cash in hand, cash at bank, investments, book debits, corporeal or incorporeal, tangible and intangible assets, benefits, licences, consents, authorities, registrations, liberties, patents, trade marks and powers of every kind, nature and description whatsoever, privileges, liberties, easements, advantages, benefits and approvals, contracts, deeds, schemes, bonds, agreements and other instruments and interest of whatever nature and wherever situate;

5 (3) On such transfer and vesting of the assets, liabilities and proceedings in terms of sub-rule (1) to APGENCO or sub-rule(2) to APTRANSCO, as the case may be, the APGENCO or the APTRANSCO, the Transferee, shall be responsible for all contracts, rights, deeds, schemes, bonds, agreements and other instruments of whatever nature to which the Board was initially a Party, subsisting or having effect on the effective date

of transfer, in the same manner as the Board was liable immediately before the effective date, and the same shall be in force and effect against or in favour of the Transferee and may be enforced effectively as if the Transferee had been a party thereto instead of the Board.

8. Upon the transfer being effected in accordance with the provisions of the Act and these rules, the rights and obligations of all persons shall be restricted to the Transferee to whom they are assigned and notwithstanding anything to the contrary contained in any deed, documents, instruments, agreements or arrangements which such person has with the Board, he shall not claim any right or interest against the Board or any other Transferee.”

The above paragraphs from the transfer scheme make it abundantly clear that each Discom steps into shoe of the erstwhile APSEB or APTRANSCO in respect of rights and liabilities arising from each PPA. The words “as if the Transferee had been a party thereto instead of the Board” make it clear that each PPA was entered into by each Discom.

The transfer scheme has modified the provisions of a PPA by restricting the rights and obligations of third parties including PPAs to the Transferee Discom to whom the rights and obligations were assigned to.

(ii) Second Transfer Scheme (GOMs.No.35, Energy (Power-III), dated 31.03.2000)

5. Substitution of APTRANSCO by APDISTCOs

On the transfer and vesting of the Distribution undertaking to the APDISTCOs in terms of clause 3 of the Second Transfer Scheme, the Transferee shall be responsible for all contracts, rights, deeds, schemes, bonds, agreements and other instruments of whatever nature to which the APTRANSCO was initially a party, subsisting or having effect on the effective date in the same manner as the APTRANSCO was liable immediately before the effective date, and the same shall be in force and effect against or in favour of the Transferee and may be enforced effectively as if the Transferee had been a party thereto instead of the APTRANSCO.

The above para also makes it very clear that a PPA shall be enforced “as if the Transferee had been a party thereto instead of the APTRANSCO.”

(iii) Third Transfer Scheme (GOMs.No.58, Energy (Power-III), dated 07.06.2005)

6. Substitution of APTRANSCO by APDISCOMS

Subject to the AP Act, EA, 2003, the Order and the Third Transfer Scheme, upon the transfer of contracts, deeds, schemes, bonds, agreements and other instruments of whatever nature to the APDISCOMs, the respective Transferee APDISCOM shall replace APTRANSCO in all respects with regard to such Bulk Supply Undertaking. All parties to such contracts, deeds, schemes, bonds, agreements and other instruments shall execute such other or further document or documents and / or take such steps, as may be necessary and / or incidental thereto, in order to give full and complete effect to such transfer of contracts, deeds, schemes, bonds, agreements and other instruments of whatever nature to the APDISCOMs.

“8. Rights and obligations of persons, including third parties, restricted:

Except to the extent specifically provided for in the Order and/or the Third Transfer Scheme, upon the transfer of the Bulk Supply Undertaking being effect in accordance with the A.P.Act, EA,2003, the Order and the Third Transfer Scheme, the rights and obligations of all persons in respect of Bulk Supply Undertaking shall be restricted to the concerned Transferee APDISCOM notwithstanding anything to the contrary contained in any deed, document, instrument, agreement or arrangement which such persons may have entered into with APTRANSCO, and such persons shall not claim any right or interest against APTRANSCO in connection therewith.”

Thus, the above provisions of three transfer schemes answer the argument of Sri Shiva Rao and this Commission does not find any merit in the contention.

- (xiv) Shri Pushyam Kiran, Advocate on behalf of M/s. SPGL contended that the petitioner has a single PPA for supply of power to the four Discoms located in the AP and Telangana at a common tariff. The PPA has not been split up and the petitioner will be supplying power to the four Discoms situated in the two states.

The submission of learned counsel is not acceptable and this argument is similar to the above argument of Sri Shiva Rao. The PPA was entered by the SPGL 23.01.1997 with erstwhile APSEB. In the third transfer scheme dated 07.06.2005, the power capacity of SPGL of 208MW was split up among the four DISCOMS as indicated below:

Sl.	Plant Name	Plant capacity in MW	Allocation to TSDiscoms in MW			Allocation to APDiscoms in MW			TOTAL
			CPDCL	NPDCL	Sub-total	EPDCL	SPDCL	Sub-total	
1	Spectrum Power Generation Ltd., Kakinada (400 MW Combined Cycle Gas based Power Plant)	208	90	35	125	35	48	83	208

Thus, the submission of Shri Kiran is not in tune with the third transfer scheme which has been notified by GoAP u/s 23 of the Reform Act, 1998.

- (xv) Shri M.Sodekar, AGM (Law) on behalf of M/s. GVK Industries Ltd and GVK Gautami Power Ltd contended that the petitioner has a single PPA for supply of power to the four Discoms located in the AP and Telangana at a common tariff. The PPA has not been split up and the petitioner will be supplying power to the four Discoms situated in the two states.

The submission of M/s.GVK representative is also not acceptable and it is similar to the arguments of Sri P.Shiva Rao and Sri P.Kiran. There were two PPAs which were entered by the GVK industries and one PPA was with GVK Gautami Power Ltd. The first PPA was entered by GVK Industries with the erstwhile APSEB on 19.04.1996 for supply of 216MW and the second PPA was entered on 18.06.2003 with APTRANSCO for supply of 220MW. A PPA with GVK Gautami Power Ltd was entered into with the erstwhile APSEB on 31.03.1997 for supply of 464MW. In the third transfer scheme dated 07.06.2005, the power capacities of GVK Industries from both the PPAs and one PPA with GVK Gautami Power Ltd were allocated / split among the four DISCOMS as indicated below:

Allocation of power from First PPA dt.19.04.1996

Sl.	Plant Name	Plant capacity in MW	Allocation to TSDiscs in MW			Allocation to APDiscs in MW			TOTAL
			CPDCL	NPDCL	Sub-total	EPDCL	SPDCL	Sub-total	
1	GVK Industries, Jugurupadu, Kadiyam(m), East Godavari District (216 MW Combined Cycle Gas based Power Plant (Duel Fuel))	217	94	37	131	37	50	87	218

Allocation of power from Second PPA dt.18.06.2003

Sl.	Plant Name	Plant capacity in MW	Allocation to TSDiscs in MW			Allocation to APDiscs in MW			TOTAL
			CPDCL	NPDCL	Sub-total	EPDCL	SPDCL	Sub-total	
1	GVK-Extn. - GVK Industries, Jugurupadu, Kadiyam(m), East Godavari District (220 MW Short Gestation Gas Based Power Project)	220	96	37	133	37	50	87	220

Allocation of power from GVK Gautami Power Ltd dt 31.03.1997.

Sl.	Plant Name	Plant capacity in MW	Allocation to TSDiscs in MW			Allocation to APDiscs in MW			TOTAL
			CPDCL	NPDCL	Sub-total	EPDCL	SPDCL	Sub-total	
1	Gautami Power Pvt. Ltd., Peddapuram, East Godavari Dist (464 MW Gas Based Power Project)	470	204	79	283	79	107	186	469

60. Under the Reform Act, 1998, the ratio of power relating to the TSDiscs as per the latest notification dt.08.05.2014 is 53.89% (TSSPDCL – 38.02% and TSNPDCL -15.87%) as against the APDISOCMS share of 46.11% (APEPDCL – 15.80% and APSPDCL – 30.31%). The power sharing ratio is clearly demarcated in the transfer scheme notified u/s 23 of the Reform Act, 1998 and till date the provisions of the Reform Act are applicable as such provisions are not inconsistent with the provisions of the EA, 2003. The rights and liabilities emanating from the PPAs relating to TSDiscs should be restricted to 53.89%. Thus, the PPAs are severable and the rights and obligations can be determined or adjudicated without any complication. Therefore, we are of the view that this Commission shall have jurisdiction in 32 petitions to adjudicate the rights and liabilities of petitioners and respondents emanating from the PPAs to the extent of 53.89% or any other ratio as existed from time to time relating to TSDISCOMS only.

61. **Jurisdiction under the Electricity Act, 2003**

(a) Whether the CERC has the jurisdiction?

The learned counsel appearing for the GVK Industries Ltd, Spectrum Power Generation Ltd, Lanco Kondapalli Power (P) Ltd, etc., contended that the CERC has the jurisdiction over the pending petitions before the erstwhile

APERC and the Joint Commission and forwarded to the TSERC. Whereas, the counsel appearing for APDiscoms, TSDiscoms and Shri K.Gopal Choudary, opposed the jurisdiction of the CERC.

62. To appreciate the issue, Section 79 (relevant portion) of the EA, 2003 is reproduced as under:

S.79.Functions of Central Commission – (1) The Central Commission shall discharge the following functions, namely: -

- (a) to regulate the tariff of generating companies owned or controlled by the Central Government.
- (b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;
- (c).....
- (d).....
- (e).....
- (f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;

63. The provisions of Section 79(1)(a) of the EA, 2003 are not applicable to the facts of the case because all the petitioners and respondents are not controlled by the Central Government.

64. On a plain reading to attract the provisions of Section 79(1)(b) of the EA,2003, the following conditions must be satisfied:

- (i) a generating company should be owned or controlled by the Central government
- (ii) a generating company must enter into or otherwise have a composite scheme and
- (iii) Such generating company must generate and sell electricity in more than one state

65. The facts in the present case are as under:

(i) There are 8 PPAs (relating to pending petitions) which were either entered into by the erstwhile APSEB or APTRANSCO for the supply of power within the undivided State of Andhra Pradesh. The APSEB was unbundled in the first phase into APGENCO and APTRANSCO w.e.f 01.02.1999.

APTRANSCO was further unbundled into four DISCOMS w.e.f 01.02.2000 (Second Transfer scheme). As per the third transfer scheme notified by the erstwhile GoAP, rights, obligations, agreements and contracts relating to procurement and supply of electricity or trading of electricity, to which APTRANSCO was a party or devolved on APTRANSCO, were transferred and vested in the four DISCOMS respectively in the specified ratios under the provisions of Reform Act, 1998 and the EA, 2003 w.e.f 09.06.2005. On application of the conditions as stipulated in Section 79(1)(b), of the EA, 2003 to the facts of the case, no condition is fulfilled. Firstly, all the 8 PPAs were not entered into as a composite scheme. Secondly, it was contended before this Commission that the electricity is being supplied to the states of Telangana and Andhra Pradesh from the existing PPAs, therefore, the power is being generated and sold to more than one state. At the first blush, the argument appears to be correct. However, in the pending petitions electricity was not supplied to more than one state. All the petitions were filed before the appointed day i.e., 02.06.2014. As a matter of fact, the electricity was supplied to one state in all the petitions pending before the Joint Regulatory Commission and the erstwhile APERC. Therefore, this Commission is of the view that the electricity was not supplied to more than one state in the petitions pending before this Commission for resolving the issue of jurisdiction

(ii) This Commission is also not able to appreciate the fact that there was a composite scheme in the PPAs entered into by the generators either with the APSEB or with APTRANSCO which devolved on the four DISCOMS in a specified ratio. The word 'composite scheme' is not defined in the Electricity Act, 2003. The meaning of 'composite scheme' as per oxford

dictionary is 'made up of various parts or elements or there has to be a systematic plan'. This Commission is of the view that the word employed in Section 79 is 'enter into' envisages that a composite scheme can be on account of a combined procurement of power under a common PPA from more than one state. In the present petitions, there was no composite scheme and there was no combined procurement of power under a common PPA from more than one state.

- (iii) If a simple generation and sale of power by a generator to more than one State can attract the provisions of Section 79(1)(b) then it will make the expression "composite scheme" redundant or otiose. It cannot be presumed that the legislature has employed the word "composite scheme" without assigning any meaning to it in section 79(1)(b). Surplusage or superfluousness of the words in a section cannot be ascribed to the legislature. Every word employed in a section requires to be interpreted and in the view of this Commission mere generation and sale of electricity to more than one state will not result in a "composite scheme". In the facts of the case, there is no "composite scheme" and no supply of power was made to more than one state in the pending petitions before this Commission. Therefore, we are not able to agree with the submissions of counsel that on these 34 petitions CERC acquires the jurisdiction to adjudicate the disputes.
- (iv) Now, we come to the latest decision of the APTEL in the case of (Adani Group) dated 07.04.2016 in Appeal No. 100 of 2013 & IA No. 116 of 2013, Appeal No. 98 of 2014 and IA No. 343 & 402 of 2014 Uttara Haryana Bijli Vitran Nigam Ltd & other vs. CERC and 2 others. This decision deals with various issues elaborately and coming to the findings of the APTEL in respect of applicability of provisions of Section 79(1)(b) are briefly summarised as under:
- a. The supply of power to more than one state from the same generating station of a generating company, *ipso facto*, qualifies as 'composite scheme' to attract the jurisdiction of CERC u/s 79 and is a regulator of inter-state and multi state activities. The state commissions are concerned with intra state purchase and procurement process of distribution licensees including the price at

which electricity shall be procured from the generating companies or licensees or from other sources through agreement for purchase of power for distribution or supply within the state.

- b. Rule 8 of the Electricity Rules, 2003 stipulates that the tariff determined by the CERC shall not be redetermined by the state commissions and primacy of CERC is evident.
- c. There are three essential requirements u/s 79(1)(b)
 - i. A generating company must 'enter into' or otherwise have 'a composite scheme'. The generating company should execute a binding contract for sale of electricity
 - ii. The composite scheme must be for generation and sale of electricity
 - iii. Sale of electricity is to more than one state.
- d. The generating company may enter into a composite scheme either at the initial stage of setting up a generating station or later on when it starts supplying power to more than one state or it undertakes actual supply to more than one state under some other binding arrangement.
- e. Once the jurisdiction vests within the CERC, generally, it continues. The jurisdiction over a generating company is required to be considered at the time of filing of petition. It is the date of institution of proceedings which is material when jurisdictional conditions precedents are evaluated.
- f. There is a separate finding regarding the bifurcation of Andhra Pradesh and the same is reproduced as under from the APTEL order

“105. We appreciate the contention of Mr. Nayyar, who appears for the Central Commission that the term “or otherwise” expands the scope and applicability of the provision. A cogent example of this can be seen in the case of generating station belonging to GMR which was situated in erstwhile undivided State of Andhra Pradesh and had been supplying electricity throughout the State. As the State was bifurcated and the new State of Telengana was formed, the generating station of GMR was generating and supplying electricity in two States. Thus, by operation of law, a Composite Scheme for generation and sale of electricity in more than one State came into existence for the purposes of Section 79(1)(b) of the said Act.”

- g. There can always be a change in jurisdiction from one Forum to another due to change in factual position and on termination of a PPA, CERC may cease to have jurisdiction over the generating company. The composite scheme may come into existence at any time, either at the beginning or at a later stage and no limitation can be placed.
- h. The intention of parties at the time of execution of PPA is important. It has to be gathered from the words used in PPA and subsequent conduct of parties has common sense, efficacy and performance of contract becomes impossible and impractical.

66. We have perused the order of Hon'ble APTEL and findings therein in the above case (Adani). This Commission is of the view that findings of Hon'ble APTEL in Adani group (supra), and the ratio laid down therein are not applicable to the petitions pending before us or issues involved therein. This Commission views on the above findings of the APTEL are as under:

- (i) There was no supply of power to more than one state in 32 petitions arising from the 8 PPAs entered into by the erstwhile APSEB or by the APTRANSCO. All the transactions in the pending petitions are intrastate and they were entered into prior to the bifurcation of the state of Andhra Pradesh i.e, 02.06.2014, as they are intrastate transactions at the relevant time the disputes need to be adjudicated by a state commission
- (ii) There is no quarrel about application of Rule 8 of Electricity Rules, 2008. To the facts of case, Rule 8 is not applicable.
- (iii) In all 8 PPAs wherein the disputes are pending, were not entered into as a 'composite scheme' either by the erstwhile APSEB or APTRANSCO. There was no generation and sale of electricity to more than one state.
- (iv) In all 8 PPAs where from the present petitions emanate, there is no composite scheme from the initial stage of setting up and the power is supplied to one state only at the relevant time.
- (v) All the 34 petitions were filed before the erstwhile APERC and pending before the Joint Regulatory Commission which was constituted for a period

not exceeding six months. Never in these petitions the jurisdiction has vested with the CERC.

(vi) At para 105 of the Hon'ble APTEL order, it was observed by the Hon'ble APTEL that after bifurcation of the state, by operation of law generating station of GMR situated in the erstwhile undivided state of Andhra Pradesh is generating and supplying electricity to two states thereby a 'composite scheme' gets constituted and as sale of electricity is to more than one state comes into existence, the provisions of Section 79(1)(b) of EA, 2003 are attracted. With great respect to the findings of the Hon'ble APTEL, this Commission is of the view that the Hon'ble APTEL did not consider the provisions of Section 105 and other provisions of the A.P.Reorganisation Act, 2014. Further, Hon'ble APTEL did not consider the provisions of the Reform Act, 1998. The provisions of the Section 107 of the A.P.Reorganisation Act shall prevail over the provisions of the EA, 2003. Further, it is an enactment passed by Parliament later in time. 34 petitions where from the disputes emanate for adjudication relate to a period prior to the bifurcation of the State involving four Discoms and thereby the findings of Hon'ble APTEL by giving the example of GMR is not based on the facts in the petitions. This Commission is of the view that the findings at para 105 of the Hon'ble APTEL order are not applicable to the facts of the present dispute. During the course of hearing, we have been informed that the Hon'ble Supreme Court has admitted the appeal against the above order of Hon'ble APTEL and a stay has been granted.

67. For the above reasons, this Commission is of the view that the provisions of Section 79(1)(b) of the EA, 2003 are not applicable and the CERC does not have jurisdiction over the 34 petitions pending before the erstwhile APERC and the Joint Regulatory Commission.

We have also perused the other decisions relied upon by the counsel and they are not applicable to the facts of the case. As observed earlier, there was no generation and sale of power to more than one state in the 34 pending petitions wherein the issue of jurisdiction is involved.

68. To conclude, the CERC does not have jurisdiction over the pending 34 petitions which were transferred to this Commission.

69. **Jurisdiction of A State Regulatory Commission under the Electricity Act, 2003**

- a. Now, we deal with the jurisdiction issue under the provisions of the Electricity Act, 2003. Section 82 of the EA, 2003 stipulates that every state government shall by a notification constitute a commission for the State. In pursuance of the provisions of this Section and also the provisions of Section 92 of the A.P.Reorganisation Act, 2014. the Government of Telangana has constituted this Commission on 26.07.2014. Similarly, the GoAP has constituted the present APERC vide notification dated 01.08.2014. Thus, two new Regulatory Commissions were constituted under the provisions of the EA, 2003 and the Reorganisation Act, 2014.
- b. The functions of a State Commission are stipulated in Section 86 of the EA, 2003. A State Regulatory Commission's function as stipulated in Section 86, *inter alia*, are as under:
 - i. To determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be within the State
 - ii. Regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State
 - iii. Issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations with the state
- c. There are other functions which we have not enumerated above. There are two principles which emerge from the functions of a SERC relevant to the present dispute. Generally, a SERC's jurisdiction is coterminous with the jurisdiction of a state. In the present context, the jurisdiction of TSERC for discharging the functions u/s 86 of the EA, 2003 is coterminous with the territory of State of Telangana.

Similarly, the APERC's jurisdiction is coterminous with the territory of state of Andhra Pradesh. Neither Commission can transgress the territory of the other State because the functions of determination of tariff and regulation of electricity purchases of distribution licensees should be confined to the State which has constituted the Commission u/s 82 of the EA, 2003. In other words, jurisdiction of a SERC is confined to a State which has constituted it and one Commission cannot encroach on the jurisdiction of other Commission.

- d. Another principle that emerges from a State Commission's functions u/s 86 is that its functions are "licensee" centric. In other words, where a distribution licensee is in the territory of State of Telangana, the petitions against such a distribution licensee cannot be adjudicated by the A.P. State Regulatory Commission. A licence to a distribution company is issued by a SERC which has jurisdiction over the territory for which the distributor is seeking a licence for the distribution of power. In the present petitions, TSSPDCL and TSNPDCL are the two distribution licensees who are within the territorial jurisdiction of TSERC and only TSERC can adjudicate upon the disputes between the distribution licensees and the generating companies u/s 86(1)(f) of the EA, 2003. Thus, this Commission is of the view that Section 86 makes it very clear that the jurisdiction of the State Commission goes with the jurisdiction of the State which has constituted it u/s 82 of the EA,2003 and such a SERC shall alone has the jurisdiction over the distribution licenses located and carrying on the distribution of power in its territory.
- e. The Hon'ble APERC vide its order dated 28.09.2016 in OP No. 12 of 2008 and others held that it has the jurisdiction to adjudicate the 34 petitions pending before it and the Joint Regulatory Commission as on 01.08.2014. With great respect, this Commission is of the view that the findings of the Hon'ble APERC are contrary to the provisions of Section 86 of the EA,2003 and it will amount to encroachment on the jurisdiction of this Commission in respect of petitions involving the

two TSDISCOMs in particular when PPAs are severable and ratio of power sharing is clearly specified in the third transfer scheme.

- f. This Commission is of the view that u/s 86 of the EA,2003, it has the jurisdiction over all the distribution licensees and transmission licensees located in the state of Telangana viz., TSSPDCL, TSNPDCL and TSTRANSCO. It is the function of TSERC u/s 86(1)(f) of the EA,2003 to adjudicate upon the petitions wherein the disputes are with the generating companies involving TSSPDCL, TSNPDCL, TSTRANSCO and TSPCC. Therefore, this Commission is of the view that under the EA, 2003 the rights and liabilities under the PPAs involving the generators and two Discoms and TSTRANSCO shall be adjudicated by the TSERC to the extent of ratios specified in the third transfer scheme and amendments made thereto from time to time and notified u/s 131 of the EA, 2003 and Section 23 of the Reform Act, 1998.

70. **Jurisdiction vis-à-vis The A.P.Reorganisation Act, 2014**

- (i) The A.P.Reorganisation Act, 2014 received the assent of the President of India on 01.03.2014 and the two successor states were born on 02.06.2014 under Sections 3 & 4 of the said Act.
- (ii) Section 2(j) of the Reorganisation Act gives the definition of 'successor state' in relation to the existing state of Andhra Pradesh, means the state of Andhra Pradesh or the state of Telangana as the case may be. Part X of the Reorganisation Act deals with the infrastructure and Special Economic Measures. For the purpose of the present issue, Section 92 is relevant and the same runs as under:
- “92. **Successor States to follow principles, guidelines, etc., issued by the Central Government:** The principles, guidelines, directions and orders issued by the Central Government, on and from the appointed day, on matters relating to coal, oil and natural gas, and power generation, transmission and distribution as enumerated in the Twelfth Schedule shall be implemented by the successor States.”*
- (iii) Section 92, stipulates that from 02.06.2014, two successor states in respect of matters relating to power generation, transmission and

distribution as enumerated in the Twelfth Schedule shall be implemented by the successor States. Thus, Section 92 of the Reorganisation Act refers to the Twelfth schedule wherein, Clause C deals with Power Sector and for the issue under consideration, two clauses viz., C-2 and C-3 are relevant which are reproduced as under:

“C. Power

2. *Existing Power Purchase Agreements (PPAs) with respective DISCOMS shall continue for both on-going projects and projects under construction.*

3. *The existing Andhra Pradesh Electricity Regulatory Commission (APERC) shall function as a joint regulatory body for a period not exceeding six months within which time separate SERCs will be formed in the successor States.”*

(iv) From the Twelfth Schedule, this Commission draws the following conclusions:

a. The power generating plants are divided between the successor states on the basis of territory of each state. Thus, the division is based on the territory principle.

b. The existing PPAs shall continue with the respective Discoms for both on-going projects and projects under construction. The words employed are “respective Discoms” in the schedule. These words have to be read with the electricity sharing ratio that has been stipulated in the third transfer scheme notified by the Government u/s 23 of the Reform Act vide G.O.Ms.No.58, dated 07.06.2005. The notification dated 08.05.2014 issued before the bifurcation conveys the same meaning which is employed in the Twelfth schedule and for ready reference the same is quoted from the G.O.Ms.No.20 dated 08.05.2014 as under:

“The above ratio will also be applicable for all the existing PPAs in respect of all on-going and under construction generating stations for which PPAs have been signed after 28.04.2008.”

c. The third transfer scheme dated 09.06.2005 notified under Section 23 of the Reform Act, 1998 has transferred the assets and

liabilities including the contracts to each Discom separately. As noted earlier, the capacity of the power relating to each PPA was allocated among the four Discoms in a specified ratio by the third transfer scheme. That is the reason why “respective Discoms” has been used in the Twelfth Schedule.

- d. The districts of Ananthapur and Kurnool were transferred from the jurisdiction of APCPDCL and reassigned to APSPDCL. For this precise reason, the power sharing of TSDISCOMs has been reduced to 53.89%.

71. Section 68 of the Reorganisation Act, 2014 stipulates that Companies and Corporations specified in the Ninth Schedule from 02.06.2014 shall continue to function in those areas in respect of which they were functioning immediately before 02.06.2014. Four Discoms viz., EPDCL (SI.No.30 of Ninth Schedule), SPDCL (SI.No.31), CPDCL (SI.No.32), NPDCL (SI.No.33) shall function in the area in which they were functioning prior to 02.06.2014 i.e., appointed day.

72. As noted earlier, 34 petitions were pending before the erstwhile APERC and the Joint Regulatory Commission on 01.08.2014 involving the entities in both the States. Thus, one has to examine the provisions of Section 105 of the Reorganisation Act, 2014 which is reproduced as under for ready reference:

“105. Transfer of pending proceedings: - (1) Every proceeding pending immediately before the appointed day before a court (other than High Court), tribunal, authority or officer in any area which on that day falls within the State of Andhra Pradesh shall, if it is a proceeding relating exclusively to the territory, which as from that day are the territories of the State of Telangana, stand transferred to the corresponding court, tribunal, authority or officer of that State.

(2) If any question arises as to whether any proceeding should stand transferred under sub-section (1) it shall be referred to the High Court at Hyderabad and the decision of that High Court shall be final.

(3) In this section—

(a) “proceeding” includes any suit, case or appeal; and

(b) “corresponding court, tribunal authority or officer” in the State of Telangana means—

(i) the court, tribunal, authority or officer in which, or before whom, the proceeding would have laid if it had been instituted after the appointed day; or

(ii) *in case of doubt, such court, tribunal, authority, or officer in that State, as may be determined after the appointed day by the Government of that State or the Central Government, as the case may be, or before the appointed day by the Government of the existing State of Andhra Pradesh to be the corresponding court, tribunal, authority or officer.”*

73. Before expressing the views of this Commission on the provisions of Section 105 of the Reorganisation Act, at the cost of repetition we summarise the facts for appreciating the provisions of Section 105.

74. The erstwhile APSEB was unbundled in the first phase into generation and transmission corporations w.e.f 01.02.1999 viz. APGENCO and APTRANSCO. APTRANSCO was unbundled into four Distribution Companies (Discoms) i.e, APEPDCL, APCPDCL, APSPDCL and APNPDCL w.e.f 01.04.2000 in the second transfer scheme dated 31.03.2000. Trading activities were entrusted to the four Discoms under the third transfer scheme u/s 23 & 24 of the Reform Act, 1998 and S.131 of the Electricity Act, 2003 w.e.f 09.06.2005. Under the third transfer scheme notified by the GoAP, rights, obligations, agreements, contracts, etc., relating to the procurement and bulk supply of electricity or trading of electricity to which APTransco was originally a party were transferred and vested in four Discoms respectively in the specified ratios. In the third transfer scheme, the ratio of power allocation from all the sources including from the PPAs was as under:

APEDPCL	-	16.89%	} Present APERC jurisdiction
APSPDCL	-	22.83%	
Total	-	39.72%	
APCPDCL	-	43.42%	} Present TSERC jurisdiction
APNPDCL	-	16.86%	
Total	-	60.28%	

The above ratio was amended twice and finally on 08.05.2014 on account of transfer of two districts viz., Kurnool and Ananthapur, the ratio was changed which is as under:

EPDCL	-	15.80%	} Present APERC jurisdiction
SPDCL	-	30.31%	
		<u>46.11%</u>	
CPDCL	-	38.02%	} Present TSERC jurisdiction
NPDCL	-	15.87%	
		<u>53.89%</u>	

The power capacity in each PPA entered into either by the erstwhile APSEB or by the APTRANSCO was allocated in the specified ratio in the third transfer scheme which is discussed elaborately in this order under the head Reform Act. Thus, each Discom is a successor-in-interest of the PPA and the PPAs devolved on the each Discom by operation of law u/s 23 of the Reform Act, 1998 and Section 131 of the EA, 2003. A consolidated appeal involving the four Discoms, APTRANSCO and APPCC does not mean that all the four Discoms have succeeded to the PPAs jointly. This is a wrong notion and does not emanate from the third transfer scheme notified under the Reform Act and the Electricity Act.

75. With the above facts in background, we come to the submissions of Shri K.Gopal Choudary, who has heavily relied on the expression 'exclusively to the territory' and made the following submissions:

- (i) All pending matters that pertain 'exclusively' to Telangana, are to be continued and proceeded with by the authority constituted for the state of Telangana. This has been specifically provided in Section 105.
- (ii) Though there is no mention in Section 105 with regard to the matters which do not pertain exclusively to Telangana, it must necessarily follow by necessary implication that the rest and the residue of the pending matters are to be continued and proceeded with by the authority in the residual state of Andhra Pradesh.
- (iii) The issue as to Section 105 could apply to proceedings that remained pending with the erstwhile APERC functioning as joint Commission needs to be considered harmoniously with the legislative policy and intention of the Reorganisation Act and on sound legal reasoning. While providing Section 105 for the manner in which the pending proceedings are to be transferred to TSERC and thereby also providing by necessary implication that the rest and the residue of the pending proceedings be continued by the authorities of the residue Andhra Pradesh, the twelfth schedule simultaneously provides an interim arrangement with regard to the continuation of the then APERC as joint commission. This is to be

seen only as an interim arrangement having regard to the need to establish separate SERCs for each state afresh following the procedure of the Electricity Act. Upon the fulfilment of the terms of the interim arrangement it must necessarily be construed that the transfer of the cases that remained pending before the erstwhile APERC as a joint Commission in the interim, be also be transferred such that the principles laid down in S.105 are followed. Thus, he submitted all pending matters that pertain exclusively to Telangana stand transferred to TSERC and rest and the residue of the pending matters are to be continued by the APERC.

76. We have considered the submissions of the counsel who appeared before us and also considered the submissions of TSDiscoms counsel and the views of this Commission are as under:

- (i) The provisions of Section 105 (1) of the A.P.Reorganisation Act, 2014 get attracted automatically to the 34 petitions pending before the Joint Regulatory Commission on 01.08.2014. The rights, obligations and liabilities relating to two DISCOMs viz., TSSPDCL and TSNPDCL situated in the territory of the State of Telangana in 34 petitions are definite and ascertainable to the extent of ratio of power stipulated in the third transfer scheme notified u/s 23 of the Reform Act. Thus, the petitions involving the two Discoms of Telangana State 'exclusively' relate to this Commission as their rights and liabilities are definite and ascertainable. All the PPAs have devolved on each Discom individually under the transfer scheme and the rights and liabilities 'exclusively' relate to two Discoms to the extent of 53.89% and this Commission shall adjudicate the disputes involving the entities located in the State of Telangana.
- (ii) The word employed in Section 105 is 'exclusively' to the territory. In the Black' s Law Dictionary the word 'exclusively' is shown to have multiple nuances or shades of meanings such as only or solely or substantially all or for a greater part. It also means to the exclusion of all others. This Commission is of the view that the

word 'exclusively' must be given a practical construction in the given set of facts. Section 105 of the Reorganisation Act, 2014 stipulates that proceedings pending prior to the appointed day i.e., prior to 02.06.2014 before a court (other than the High Court), Tribunal, Authority or officer shall stand transferred to the corresponding court, tribunal, authority or officer of the state of Telangana. To understand the meaning of 'exclusively', the provisions of sub-section 3 of Section 105 of the Reorganisation Act play a vital role in appreciating the intention of the legislature. Clause (b) of sub-section 3 of Section 105 defines the expression 'corresponding court, tribunal, authority or officer in the state of Telangana means the court, tribunal, authority or officer in which, or before whom the proceeding would have laid it if had been instituted after the appointed day." In simple words, where will the proceedings lie if such proceedings are instituted after 02.06.2014 i.e., appointed day. The answer is obvious. An appeal against the two Discoms of the Telangana State shall lie before this Commission for adjudication if it is instituted after 02.06.2014 and the same shall hold good for the pending petitions also wherein the two Discoms of the Telangana State are involved. Applying the provisions of Sub-section (3)(b) to the facts of the present case, there are 8 PPAs which were entered into by the erstwhile APSEB or APTRANSCO and 32 petitions out of such PPAs were pending before the erstwhile APERC and the Joint Regulatory Commission on 01.08.2014 involving the four Discoms, APTRANSCO and APPCC. Each Discom has a specific share of power supplied under each PPA under the third transfer scheme. If the dispute arises between the two Discoms on one side viz., Northern Power Distribution Company of Telangana State Limited and Southern Power Distribution Company of Telangana State Limited and the generators on the other side under the 8 Power Purchase Agreements, the appeals would have been instituted or laid before this Commission after the bifurcation of the state i.e., 02.06.2014. In other words, after

02.06.2014, the appeals relating to the disputes emanating from the PPAs with the two Discoms would have been laid, after 02.06.2014 because each Discom is a successor-in-interest to the extent of ratio of electricity specified in the third transfer scheme u/s 23 of the Reform Act before this Commission and the same shall be applicable to the pending proceedings in 34 petitions also. Moreover, the share of electricity of two Discoms falling within the jurisdiction of TSERC in the third transfer scheme constitutes 60.28% (TSSPDCL – 43.42 % + TSNPDCL – 16.86%) and this has been reduced to 53.89% on account of transfer of two districts to AP Discom. This Commission is of the view that the appeals involving the two Discoms of Telangana state would have been instituted before this Commission as sixty percent of the power was supplied to the TSDiscoms. One of the meanings of the word 'exclusively' is a 'greater part' Thus, in the view of this Commission a 'greater part' of the capacity of the power contracted with the IPPs in the 8 PPAs was supplied to the TSDISCOMs over which this Commission has the jurisdiction. On a combined reading of the provisions of the sub-section (1) and sub-section (3) of Section 105 of the Act, the jurisdiction over the petitions involving the supply of electricity of more than 60% to two Discoms of Telangana State shall vest with this Commission but we do not intend to encroach in the jurisdiction of another Commission and confine to the jurisdiction of this Commission to two Discoms of Telangana State. In this context, we rely on the ratio laid down by the Hon'ble Supreme Court in *C.B.I., A.H.D., Patna vs Braj Bhushan Prasad & Ors dated 05.10.2001 in Case No. Appeal (crl.) 1009-1010 of 2001 and Appeal (crl.) 1013-1014 of 2001*. The ratio laid down relevant to the word 'exclusively' as under:

"If so, we have to gauge the implication of the words proceeding relating exclusively to the territory from the surrounding context. Section 89 of the Act says that proceeding pending prior to the appointed day before a court (other than the High Court), tribunal, authority or officer shall stand transferred to the corresponding court, tribunal, authority or officer of the Jharkhand State. A very useful index is provided in the section by defining the words corresponding

court, tribunal, authority or officer in the State of Jharkhand as this: The court, tribunal, authority or officer in which or before whom the proceeding would have laid if it had been instituted after the appointed day.

Look at the words would have laid if it had been instituted after the appointed day. In considering the question as to where the proceeding relating to the 36 cases involved in these appeals would have laid, had they been instituted after the appointed day, we have absolutely no doubt that the meaning of the word exclusively should be understood as substantially all or for the greater part or principally.”

We cannot overlook the main object of Section 89 of the Act. It must not be forgotten that transfer of criminal cases is not the only subject covered by the section. The provision seeks to allocate the files or records relating to all proceedings, after the bifurcation if they were to be instituted after the appointed day. Any interpretation should be one which achieves that object and not that which might create confusion or perplexity or even bewilderment to the officers of the respective States. In other words, the interpretation should be made with pragmatism, not pedantically or in a stilted manner.”

Thus, in all the 32 petitions rights and liabilities emanating from the PPAs are involved, the ratio of electricity to be supplied to each Discom has been specified in the third transfer scheme and the rights and liabilities to the extent of the share of each Discom shall be its exclusive share from the Power Purchase Agreement. This Commission shall have the jurisdiction to determine and adjudicate the rights and liabilities arising from the PPAs relating to the two Discoms located in the state of Telangana to the extent of ratio specified in the third transfer scheme or amendment made thereto from time to time.

- (iii) TSERC and APERC shall fall within the word ‘authority’ U/s 105 of the Reorgansiation Act. Clause C - 3 of the Twelfth Schedule of Reorganisaion Act stipulates that the existing APERC shall function as a Joint Regulatory Commission for a period not exceeding six months within which time two separate SERCs have to be formed in the successor states. Thus, the TSERC and APERC are the two separate SERCs created under the provisions of the A.P.Reorganisation Act, 2014 r/w Section 82 of the EA, 2003. By operation of Law, the erstwhile APERC and the Joint Regulatory Commission ceased to operate w.e.f 01.08.2014 and as a matter of fact, the services of the Chairman and the Members of the erstwhile APERC were dispensed with by

operation of Law. Sri K.Gopal Choudary, Advocate contended that petitions not 'exclusively' relating to the State of Telangana shall by necessary implication continue with the present APERC. Thus, legally TSERC and APERC stand on equal footing and both are new Commissions in the two successor states. For the purpose of Section 105 of the Reorganisation Act, the erstwhile APERC does not exist by operation of Law for *Functus officio* and how can the pending 34 petitions can go to a non-existing entity in the eyes of Law. The Joint Regulatory Commission also legally does not exist on creation of two new Commissions in two states. Therefore, the argument of Sri Gopal Choudary is not acceptable.

(iv) As observed in the preceding para, the ratio laid down by Supreme Court in Bihar Fodder scam cases (C.B.I., AHD, Patna vs. Bhushan Prasad) (supra) is applicable to the facts of the case and we rely upon it. The brief facts in Bihar Fodder Scam are as under:

On 15.11.2000, the State of Bihar was bifurcated into two States by an act of Parliament called the Bihar Reorganisation Act, 2000. One region of it became a new State called Jharkhand while the remaining region became the present state of Bihar. In all 64 cases were registered relating to Fodder scam, out of 64 cases, 52 cases involved withdrawal of huge sums of money from the government treasuries situated in the territories falling within the Jharkhand state. Out of 52 cases, charge-sheets were filed by the CBI before the appointed day i.e., 15.11.2000 in 36 cases before the Special court situated at Patna. The dispute of jurisdiction related to these 36 cases and the question before the Supreme Court was whether all or any of 36 cases stood transferred to the courts situated in the state of Jharkhand on 15.11.2000 when the new state was born. The transfer of cases was a sequel to the bifurcation of the erstwhile state of Bihar as a result of the operation of a statutory provision

incorporated in the Bihar Reorganisation Act, 2000. Section 89 of this Act is reproduced as under which is pari materia to Section 105 of the A.P.Reorganisation Act, 2014.

“89(1) Every proceeding pending immediately before the appointed day before a court (other than the High Court), tribunal, authority or officer in any area which on that day falls within the State of Bihar shall, if it is a proceeding relating exclusively to the territory, which as from that day is the territory of Jharkhand State, stand transferred to the corresponding court, tribunal, authority or officer of that State.

(2) If any question arises as to whether any proceeding should stand transferred under sub-section (1), it shall be referred to the High Court at Patna and the decision of that High Court shall be final.

(3) In this section-

(a) proceeding includes any suit, case or appeal; and

(b) corresponding court, tribunal, authority or officer' in the State of Jharkhand means-

(i) the court, tribunal, authority or officer in which, or before whom, the proceeding would have laid if it had been instituted after the appointed day; or

(ii) in case of doubt, such court, tribunal, authority or officer in that State, as may be determined after the appointed day by the Government of that State or the Central Government, as the case may be, or before the appointed day by the Government of the existing State of Bihar to be the corresponding court, tribunal, authority or officer.”

The Apex Court interpreting the word 'exclusively' in the context of Section 89 of the Bihar Reorganisation Act held as under:

“Section 89 of the Act deals with what should have happened on the appointed day i.e. 15.11.2000 in respect of every proceeding relating exclusively to the territory of Jharkhand State. Every such proceedings shall stand transferred to the corresponding court, tribunal, authority or officer of Jharkhand State. Here the words relating exclusively to the territory of Jharkhand State are the decisive words. What is meant by the word exclusively in this context, has now to be determined.

In Blacks Law Dictionary, the word exclusively is shown to have multiple nuances or shades of meanings such as only or solely or substantially all or for the greater part. It also means to the exclusion of all others. Learned counsel who propounded the view in favour of the theory that the cases stood transferred to Jharkhand State submitted that among the above different meanings the word should be understood only as substantially all or for the greater part because that is the most befitting to this context. Learned counsel on the other side submitted that the meaning of the said word cannot be anything other than to the exclusion of all others.

The lexicographer of Blacks Law Dictionary has referred to the phrase exclusively used and quoted from Salvation Army v. Hoehn (Mo., 354, Mo.107, 188 SW 2d 826) as follows:

The phrase in provision exempting from taxation properties exclusively used for religious worship, for schools or for purposes purely charitable, has reference to primary and inherent as over against a mere secondary and incidental use.

Learned Solicitor General invited our attention to the observations made by Devancy, J. of the Minnesota Supreme Court, in Anoka County v. City of St. Paul (1999 American Law Reports 1137). In that case learned Judges were dealing with Article 9 Section 1 of the Minnesota Constitution which exempted public property used exclusively for any public purpose from taxation. It was argued that since the city was in part, at least engaging in a private business, the land upon which the water works were located were not used exclusively for a public purpose and hence the entire water works should be taxed. The said argument was repelled by the following words:

We do not agree. The word exclusively as here used means substantially all or for the greater part. This word must be a given a practical construction.

We may point out that the aforesaid observation has been profitably used by the editors of Corpus Juris Secundum (vide Page 113 of Volume 33). In Words and Phrases an extract from American Management Association vs. Assessors of Town of Madison (406 NYS 583) has been reproduced thus:

Term exclusively, as used in provision of Real Property Tax Law exempting from taxation real property owned by a corporation organized or conducted exclusively for educational purposes and used exclusively for such purpose, means primarily.

Yet another extract from Klamath Irrigation Dist. v. Employment Division (534 P.2d 190) has also been quoted like this:

Word exclusively within statutory provision defining agricultural labor exempt from payment of unemployment compensation taxes as including all services performed in connection with operation or maintenance of ditches, canals, reservoirs or waterways not owned or operated for profit used exclusively for supplying and storing water for farming purposes, operates to relieve an irrigation district of its burden of paying tax if none of its water is sold for a profit and if organization is devoted primarily or principally or in large part to delivering water for farm purposes, and if nonfarm purposes to which water is put are not substantial.

We pointed out the above different shades of meanings in order to determine as to which among them has to be chosen for interpreting the said word falling in Section 89 of the Act. The doctrine of Noscitur a sociis (meaning of a word should be known from its accompanying or associating words) has much relevance in understanding the imports of words in a statutory provision. The said doctrine has been resorted to with advantage by this Court in a number of cases vide Bangalore Water Supply & Sewerage Board vs. A Rajappa {1978 (2) SCC 213}, Rohit Pulp and Paper Mills Ltd. vs. CCE {1990 (3) SCC 447}, Oswal Agro Mills Ltd. vs. CCE {1993 Supp.(3) SCC 716, K.

Bhagirathi G. Shenoy & ors. vs. K.P. Ballakuraya & anr. {1999 (4) SCC 135}, Lokmat Newspapers (P) Ltd. vs. Shankarprasad {1999 (6) SCC 275}.

If so, we have to gauge the implication of the words proceeding relating exclusively to the territory from the surrounding context. Section 89 of the Act says that proceeding pending prior to the appointed day before a court (other than the High Court), tribunal, authority or officer shall stand transferred to the corresponding court, tribunal, authority or officer of the Jharkhand State. A very useful index is provided in the section by defining the words corresponding court, tribunal, authority or officer in the State of Jharkhand as this: The court, tribunal, authority or officer in which or before whom the proceeding would have laid if it had been instituted after the appointed day.

Look at the words would have laid if it had been instituted after the appointed day. In considering the question as to where the proceeding relating to the 36 cases involved in these appeals would have laid, had they been instituted after the appointed day, we have absolutely no doubt that the meaning of the word exclusively should be understood as substantially all or for the greater part or principally.

We cannot overlook the main object of Section 89 of the Act. It must not be forgotten that transfer of criminal cases is not the only subject covered by the section. The provision seeks to allocate the files or records relating to all proceedings, after the bifurcation if they were to be instituted after the appointed day. Any interpretation should be one which achieves that object and not that which might create confusion or perplexity or even bewilderment to the officers of the respective States. In other words, the interpretation should be made with pragmatism, not pedantically or in a stilted manner.”

The Hon'ble Supreme Court held that all the 36 cases or appeals involved therein stood transferred to the corresponding court situated in the territories of Jharkhand State on 15.11.2000 by operation of Section 89 of the Bihar Reorganisation Act.

Thus, in view of the ratio laid down by the Hon'ble Supreme Court in the above case, the provisions of Section 105 of A.P.Reorganisation Act seek to allocate the files or records relating to all proceedings, after the bifurcation as if they had been laid or instituted after the appointed day i.e., 02.06.2014 / 01.08.2014. Any interpretation given should be one which achieves that object and not that which might create confusion or perplexity to the generators of power or the DISCOMs of the respective States. The interpretation should be made with pragmatism and not pedantically. While interpreting the word 'exclusively' one cannot ignore the three transfer schemes

notified under the Reform Act. All Assets, rights, obligations, liabilities, claims, contracts, etc., have been 'exclusively' transferred to each Discom in Schedules B to E in the third transfer scheme while unbundling the erstwhile APSEB / APTRANSCO.

- (v) The word 'exclusively' as appearing in Section 105 be given a practical construction with pragmatism and not pedantically, the Hon'ble Supreme Court in the above judgment held that the word 'exclusively' should be understood as substantially one or for a greater part or principally. In the third transfer scheme, the ratio of electricity from the PPAs allocated to TSDISCOMs was quantified at 60.28% and this Commission has jurisdiction over the two Discoms of Telangana who purchased 60.28% of power from all the suppliers of electricity. If one takes the ratio laid down by the Supreme Court to the logical end, in respect of the word 'exclusively' which means 'a greater part' of supply of electricity to the four Discoms of the undivided Andhra Pradesh the ratio of power supplied to the TSDiscoms is a greater part i.e., 60.28%. Therefore, this Commission shall have jurisdiction over all the 34 petitions pending before the erstwhile APERC and Joint Regulatory Commission as on 01.08.2014 involving all the four Discoms. However, this Commission would not like to encroach on the jurisdiction of the two Discoms located in the state of Andhra Pradesh as the functions of a SERC are confined to the jurisdiction of a state in which it is located. The Hon'ble APERC held that it has the jurisdiction over the 34 petitions on the ground that the petitions are not 'exclusively' related to the state of Telangana. Assuming for a while we agree with their findings, what will happen on the adjudication by the APERC if the two Discoms located in the jurisdiction of TSERC do not implement the orders passed by the Hon'ble APERC. Hon'ble APERC will not have any recourse to compel the two Discoms to implement their directions and they cannot invoke the provisions of Section 142 of

the EA, 2003. Therefore, we respectfully disagree with their findings in their order dated 28.09.2016.

(vi) Further, the word 'exclusively' as appearing in Section 105 must be given a practical construction and with pragmatism. The 8 PPAs were entered into by the erstwhile APSEB or the APTRANSCO and they devolved on the four Discoms. Out of the 34 petitions pending, 32 emanate from the PPAs and the Hon'ble APERC in its order dated 28.09.2016 held that *"the remaining proceedings which may not exclusively relate to the territory of the State of Andhra Pradesh and do not exclusively relate to the territory of the new State of Telangana shall also fall within the jurisdiction of this Commission and be adjudicated by this Commission in accordance with law;"* If the order of the Hon'ble APERC is taken to the logical end then that Commission shall have jurisdiction over the 8 PPAs and last of the PPAs expires in the year 2025. In other words, the Hon'ble APERC shall have jurisdiction over the two Discoms of Telangana and the two Discoms of Andhra Pradesh till the expiry of all the PPAs which were entered into by the erstwhile APSEB and APTRANSCO which devolved on the four Discoms. In the humble view of this Commission, it is not the intention of the A.P.Reorganisation Act to confer the jurisdiction on the Hon'ble APERC after bifurcation of the state for a period of one decade over the two Discoms or entities located in the State of Telangana. To establish the above fact, the date of expiry of each PPA is given as under from the PPAs:

IPPs	Capacity in MW	Valid for a period of	valid from	Expiry
GVK	216	18 years from COD	20.06.1997	19.06.2015
SPGCL	208	18 years from COD	19.04.1998	18.04.2016
LANCO	361.92	15 years from COD	02.01.2001	01.01.2016
RELIANCE	220	15 years from COD	24.12.2002	23.12.2017
Gautami Power Limited	464	15 years from COD	05.06.2009	04.06.2024
GVK(Extn)	220	15 years from COD	14.04.2009	13.04.2024
Konaseema Gas Power Ltd	442.13	15 years from COD	30.06.2010	29.06.2025

(vii) The Hon'ble APERC in its order dated 26.09.2016 held that the

remaining proceedings which may not relate to the territory of the state of Andhra Pradesh and do not exclusively relate to the territory of the new state of Telangana shall also fall within the jurisdiction of APERC and be adjudicated by APERC in accordance with law. We humbly submit that our view is different from the view of Hon'ble APERC. The two new Commission's viz., TSERC and APERC were constituted u/s 82 of the EA, 2003 r/w 92 of the Reorganisation Act, 2014 on 26.07.2014 and 01.08.2014 respectively. By operation of law, the erstwhile APERC and Joint Regulatory Commission ceased to exist, thus two new Commissions were constituted in both the states. The new APERC cannot have jurisdiction over the pending petitions involving the two Discoms which fall in the territory of TSERC. In our view, there is no vacuum for enforcing the rights because the third transfer scheme has clearly demarcated the rights and liabilities of all the Discoms and this Commission has the jurisdiction over the two Discoms located in the State of Telangana to the extent of power sharing ratio specified in the transfer schemes to adjudicate the rights and liabilities.

- (viii) Some counsel contended that concept of cause of action should be considered. The Commission is of the view that in the context of Section 105, the concept of cause of action is irrelevant.
- (ix) Thus, after considering the provisions of Section 105 of the Reorganisation Act, this Commission is of the view that this Commission has the jurisdiction over the 34 petitions relating to the two Discoms located in the State of Telangana and it shall adjudicate to the extent of ratio of power as specified in the third transfer scheme notified or amended from time to time u/s 23 of the Reform Act, 1998.

77. **Jurisdiction and Civil Procedure Code:**

- (a) The learned counsel contended that the jurisdiction by two Commissions over 34 petitions shall result in multiple adjudication of the same dispute and contrary or inconsistent decisions on the same issues may result and

principles of *res sub judice* and *res judicata* are applicable and the Commission's attention is drawn to Sections 10 and 11 of the Code of Civil Procedure, 1908.

For ready reference, Section 9 of the CPC reads as under:

“9. Courts to try all civil suits unless barred

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation: [1]: A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation: [II]: For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation [1] or whether or not such office is attached to a particular place.”

The TSERC is a quasi-judicial body constituted under Section 82 of the Electricity Act, 2003 read with Section 92 of Reorganisation Act, 2014 and has to discharge the functions as stipulated in Section 86 of the EA, 2003. Under Section 95 of the EA, 2003 all proceedings before a state commission shall be deemed to be a judicial proceeding within the meaning of Sections 93 and 228 of the Indian Penal Code and it shall be deemed to be a Civil Court for the purposes of Sections 345 and 346 of the Code of Criminal Procedure, 1973. The general rule under Section 9 of the CPC is that an assumption shall be made in favour of existence of a right to sue in a civil court the exclusion of the same being an exception. While considering the jurisdiction of civil courts the concept of *res judicata* comes into play. Sections 10 & 11 of CPC read as under:

10. Stay of Suit

*“ No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in ¹[India] having jurisdiction to grant the relief claimed, or in any Court beyond the limits of ¹[India] established or continued by ²[the Central Government] ³[***] and having like jurisdiction, or before ⁴[the Supreme Court].*

11. Res judicata

“Another aspect to be considered while determining the jurisdiction of the Civil Court is the concept of Res Judicata. Section 11 of the CPC reads “No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised’ and has been heard and finally decided by such Court.”

78. In the view of this Commission the provisions of Sections 10 & 11 of the CPC are not applicable to the facts of the case. In the disputes the parties are different. There are four Discoms which are separate legal entities and the generators have supplied the power in a specified ratio to each Discom. The provisions of Sections 10 & 11 of CPC are not applicable as the parties involved in the 34 petitions are different. The Commission is of the view that provisions of Civil Procedure Code viz., 10 & 11 are not applicable because it is an issue arising from the bifurcation of the state and the transfer of pending proceedings u/s 105 of the Reorganisation Act.

79. We do not agree with the view that the hearing of the petitions relating to the Telangana Discoms by this Commission will result in multiple proceedings. The generator has supplied the electricity in a contract to four customers i.e., who are separate legal entities located in the jurisdiction of two Regulatory Commissions. To pursue the rights and liabilities both generators and the Discoms have to file appeals before the respective Commissions in the normal course. Another issue that was raised is that the adjudication by the two commissions separately may result in different decisions or findings. This argument is also not acceptable. In the existing judicial or quasi-judicial system every authority or court takes its own decision or view on the basis of the material available before it. If the contention of the petitioners is accepted then only one court or appellate forum for the entire state or for the entire country needs to be constituted. Therefore, we reject the contention.

80. We have discussed about the 32 petitions that have emanated from the Power Purchase Agreements, there are two review petitions filed by Guttaseema Wind Energy Company Private Ltd against the Four Discoms, APTRANSCO and APPCC and a separate review petition by the Four Discoms & APTRANSCO against

Guttaseema Wind Energy Company Private Ltd. After perusing the records, we are of the view that the review petition filed by Guttaseema Wind Energy Company Private Ltd needs to be confined to Two Discoms of the Telangana state and so also the two Discoms of Telangana State have to file a revised petition and this commission shall not have any jurisdiction over the two Discoms of Andhra Pradesh State.

81. **O.P.No.67 of 2015:** It is a matter between Bharath Aluminium Company Limited and PTC India Ltd, APCPDCL and APPCC. This petition also emanates from the short term power purchase agreements. The matter therein also covered by the G.O.Ms.No.58 dated 07.06.2005 notified u/s 23 & 24 of the Reform Act, 1998 and u/s 131 of the EA, 2003. The electricity allocation among the four Discoms is similar to the PPAs entered into with the generators i.e., long term PPA. The relevant portion from the third transfer scheme is reproduced as under:

“(iv) The short-term PPAs executed by APTRANSCO with any person or entity, including any agreement with any electricity trading company shall be allocated and transferred to the APDISCOMs in the manner provided in paragraph 3(III) herein above.”

Further, on enquiry with the TSDISCOMS, it is found that the power supplied both in short term and long term PPAs is shared in the ratio specified in the third transfer scheme or amendments made thereto from time to time.

82. To sum up, the findings of this Commission are summarised as under:

- (i) Three transfer schemes notified under section 23 and 24 of the Reform Act, 1998 are binding on the four Discoms located in the erstwhile Andhra Pradesh and the generators who entered into the Power Purchase Agreements. The third transfer scheme notified u/s 23 stipulates the rights, obligations, agreements and contracts relating to the procurement and bulk supply of electricity or trading of electricity to which the erstwhile APSEB or APTRANSCO was originally a party were transferred and vested in the four DISCOMS respectively in specified ratios as per the Reform Act and Electricity Act, 2003 dated 09.06.2005, G.O.Ms.No.58 and amendments made thereto from time to time are still in force. In the third transfer scheme, the generating capacities allocated to the TSSPDCL and TSNPDCL is 60.28% and this has been amended to 53.89% vide G.O.Ms.No.20 dated 08.05.2014 on account of transfer of Kurnool and Ananthapur districts to

Southern Power Distribution Company of Andhra Pradesh Ltd. The rights, obligations, claims, compensations or any other claim in respect of power supply of any generator shall be in accordance with the ratio specified in the third transfer scheme or any amendment thereto from time to time. Similarly, the claims, compensation, rights, obligations, etc., by two Discoms located in Telangana state shall also be restricted to the purchase of power made by them in accordance with the ratio specified in the third transfer scheme or any amendment thereto from time to time. The PPAs have devolved on each Discom individually and not jointly.

- (ii) The Central Electricity Regulatory Commission (CERC) does not have jurisdiction over the 34 petitions which were pending before the erstwhile APERC and the Joint regulatory commission on 01.08.2014. In 34 petitions, the supply of electricity was intra-state and at the relevant time to which the petitions relate to and there were no inter-state transactions to invoke the jurisdiction of CERC.
- (iii) Generally, under Section 86 of the EA, 2003 the jurisdiction of a state Commission is coterminous with the jurisdiction of the state. Thus, the TSERC shall have the jurisdiction to regulate the purchases of TSSPDCL and TSNPDCL located in the state of Telangana and it shall also adjudicate the disputes involving the two Discoms of Telangana State.
- (iv) Under section 105 of the A.P.Reorganisation Act, 2014, the jurisdiction over the pending 34 petitions relating to TSSPDCL, TSNPDCL and any other entity located in the State of Telangana shall vest with the TSERC. In the view of this Commission, sub-section (3) of Section 105 resolves the issue. Sub-section 3 of Section 105, stipulates that the authority before whom the proceedings would have laid if it had been instituted after the appointed day, i.e., 02.06.2014 / 01.08.2014. All appeals involving the two Discoms of the Telangana State shall be filed before this Commission for adjudication after 01.08.2014. Therefore, the pending 34 petitions involving the two Discoms of the Telangana State shall vest with this Commission for adjudication. After bifurcation of the state, i.e., 02.06.2014 all the disputes u/s 86(1)(f) of the EA, 2003 have to be adjudicated by this Commission and similarly, any petition relating to the two Discoms in respect of disputes prior to 02.06.2014 shall also vest within the jurisdiction of TSERC. The word 'exclusively' used

in Section 105 must be given a practical construction and if the actual meaning of the word 'exclusively' is taken as 'substantially' or 'for a greater part' or 'principally' as given in the decision of the Supreme Court in Bihar Fodder scam case, the jurisdiction over 34 petitions shall lie with the TSERC as 32 petitions emanate from the PPAs and the power sharing ratio of TSDISCOMS according to the third transfer scheme is a greater part, i.e., 60.28% but we do not wish to encroach upon the jurisdiction of another Commission and restrict the adjudication functions of this Commission to the two Discoms, TSTRANSCO and TSPCC in accordance with the provisions of the Reform Act and the Electricity Act to the extent of ratio specified in the third transfer scheme.

- (v) The provisions of CPC are not applicable to the interpretation of Section 105 of the A.P.Reorganisation Act. Further, the provisions of Sections 10 & 11 of CPC are also not applicable as the authorities and the parties involved therein are not the same parties.
- (vi) TSERC shall have jurisdiction over the petitions involving TSSPDCL, TSNPDCL, TSPCC, TSTRANSCO which are located in the territorial jurisdiction of Telangana state which is coterminous with the jurisdiction of this Commission and this Commission shall adjudicate rights, liabilities and obligations in accordance with the third transfer scheme dated 07.06.2005 notified under section 23 & 24 of the Reform Act, 1998 and under section 131 of the EA, 2003. To repeat, this Commission shall adjudicate on the rights and liabilities to the extent of ratio notified in the third transfer scheme dated 07.06.2005 and amendments made thereto from time to time relating to the entities located in the State of Telangana.
- (vii) 32 petitions which emanate from the power purchase agreements, the petitioners are at liberty to revise their cause title and claims / liabilities / obligations / compensation or any other matter in the petitions in terms of third transfer scheme dated 07.06.2005 and the amendments made thereto from time to time confining their rights and liabilities to two Discoms of Telangana State, TSTRANSCO and TSPCC in accordance with the ratio specified in the transfer scheme notified under section 23 & 24 of the Reform Act, 1998 and under section 131 of the EA, 2003 within 45 days from the date of placing of this order on the website of this Commission, i.e., TSERC.

This Commission shall adjudicate only the revised petitions which are going to be filed in accordance with the third transfer scheme notified under section 23 & 24 of the Reform Act, 1998 and under section 131 of the EA, 2003.

- (viii) In two review petitions, cause title have to be revised restricting the petitions to the TSDISCOMS, TSTRANSCO and TSPCC.
- (ix) This order shall be subject to the orders or directions that may be issued by the Hon'ble High Court of Andhra Pradesh and Telangana in the pending writ petitions including GMR Vemagiri and Bharath Aluminium Company Ltd
- (x) We wish to place on record our deep appreciation to all the counsel who appeared before this Commission and enlightened us in arriving at the appropriate conclusion to resolve the issue of jurisdiction.

This order is corrected and signed on this 31st day of October 2016.

Sd/-
H.SRINIVASULU
MEMBER

Sd/-
ISMAIL ALI KHAN
CHAIRMAN

CERTIFIED COPY