



CIN U85300AP2019NPL112312

# Federation of Andhra Pradesh Chambers of Commerce and Industry (FAPCCI)

Empowering Industry, Commerce & Trade

Registered under the Companies Act, 2013

REGD OFFICE : O/o 54-16-1/2 -A, Central Excise Colony 3rd floor, Road No-1, Gunadala,

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FAPCCI/APERC/59/2019-20

March 9, 2020


The Secretary, (FAC)  
APERC  
4<sup>th</sup> Floor, Singareni Bhavan  
Red Hills, Hyderabad

Dear Sir,

**Sub: STATEMENT OF OBJECTIONS/ COMMENTS / SUGGESTIONS ON THE DRAFT REGULATION PROPOSED BY APERC TO AMEND THE ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION (TERMS AND CONDITIONS OF OPEN ACCESS) REGULATION, 2005**

Referring to the Public Notice issued by APERC inviting comments/objections on the Amendment to APERC (Terms and Conditions of Open Access) Regulation, 2005 Regulation No. 2 of 2005, the Federation of Andhar Pradesh Chambers of Commerce and Industry is hereby submitting its objections for your consideration.

Regards,

  
P. Vydehi  
Secretary (I/c)  
FAPCCI







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### **BEFORE THE ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**

**O.P.NO.3 OF 2020**

#### **STATEMENT OF OBJECTIONS/ COMMENTS / SUGGESTIONS**

**ON**

**THE DRAFT REGULATION PROPOSED BY APERC TO  
AMEND THE ANDHRA PRADESH ELECTRICITY  
REGULATORY COMMISSION (TERMS AND CONDITIONS  
OF OPEN ACCESS) REGULATION, 2005**

**SUBMITTED  
BY  
FEDERATION OF ANDHRA PRADESH CHAMBERS OF  
COMMERCE AND INDUSTRY TO**



## **STATEMENT OF OBJECTIONS**

**THE Andhra Pradesh Electricity Regulatory Commission has proposed to amend the Andhra Pradesh Electricity Regulatory Commission (Terms and Conditions of Open Access) Regulation, 2005 seeking to Amend the following:**

Amendments to para 17.1 of Principal Regulation

- (a) The second proviso to para 17.1 (i) (b) The third proviso to para 17.1 (i)
- (c) The Second proviso to para 17.1 (iii)

The Statement of Objections is herein being filed on behalf of 'Federation of Andhra Pradesh Chambers of Commerce and Industry (FAPCCI)', an Association which was started in 1917 as a Chamber of Commerce and currently has around 3000 members having its office at 54-16-1/2-A, Central Excise Colony, 3<sup>rd</sup> Floor, Gunadala, Vijayawada, A.P. represented by its Secretary (hereinafter called the 'Objector').

The main function of the FAPCCI is to promote and protect the interests of trade, commerce and industry.

The Objector strongly objects to the Amendments as it is detrimental to growth of Renewable Energy Sector and jeopardizing the interests of investors who invested hundreds of crores of Rupees attracted by encouragement and incentives offered by the Government's Renewable Energy Policy.



On basis of the definite commitments and firm promises made by the State Government and the Andhra Pradesh Electricity Regulatory Commission, for grant of the aforesaid incentives / benefits, investors have invested huge amounts to construct and commission solar power plants and captive wind power generation plants and facilities.

Having incentivised the investors to set up and establish captive power plants in pursuance of the incentives / benefits promised under the aforesaid policies, the APERC has now issued Public Notice dated 17.02.2020 in O.P.No.3 of 2020 proposing to amend Para 17.1 of the 2005 Regulations by withdrawing all the said incentives / benefits extended in a retroactive manner. If the proposed amendment is given effect to, the investors who acted upon the aforesaid promises would suffer huge financial loss. Details relating thereto are set out infra.

Needless to mention that the representations and promises made by the State Government and APERC to provide incentives / benefits to the investors attracted the power generators to invest huge amounts of money on the legitimate expectation that the said incentives / benefits could be availed by them for the prescribed time period. At this juncture, the APDISCOMs and the APERC are estopped from the said promises/representations and withdraw the incentives/benefits before expiry of the prescribed time period. In addition, there is no overriding public interest that necessitated amendment of Regulation 17.1 with retroactive effect. Suffice it to state that the proposed amendments are arbitrary, unreasonable, violative of the principles of natural justice, without any authority / jurisdiction, violative of the principles of legitimate expectation and promissory estoppel, and contrary to the provisions of Electricity Act



Apart from the above, it is seen from the 'Introduction' of the said Draft Regulation that APERC proposes to amend Para 17.1 in pursuance of GO Ms.No.35, Energy (Power.II) Department, dated 18.11.2019, hereinafter referred to as G.O.Ms.No.35, issued by the Government of Andhra Pradesh and the representations submitted by APEPDCL and APSPDCL. Apart from stating that GO Ms.No.35 dated 18.11.2019 has been issued by the Government of Andhra Pradesh and that representations have been submitted by APEPDCL and APSPDCL regarding the un-viability of promoting renewable energy in the present scenario, no reasons for the said un-viability have been set forth in the Draft Regulation for proposing amendments to Para 17.1. As already stated supra, the proposed amendments have adverse impact on the business operations as well as the finances of investors who have set up units on basis of the un-amended Regulation.

Further the Draft Regulation does not provide for any information, documents/records/statistics relied on by the State Government for issuing GO Ms.No.35, Energy (Power. II) Department, dated 18.11.2019, and the circumstances leading to the proposed Amendments in order to submit detailed objections / comments / suggestions to the Draft Regulation.

Under these circumstances, we request the Hon'ble Commission to direct the DISCOMs to give us the detailed reasons leading to the sudden reported un-viability. Till such time, the Association reserves its right to file additional objections / comments / suggestions after receipt of the information solicited under the aforesaid letters / applications.



In order to promote Wind Power Projects, the State Government issued **G.O.Ms. No. 9, Energy, Infrastructure & Investment (Pr.II) Department, dated 13.02.2015**, hereinafter referred to GO Ms.No.9, formulating **Andhra Pradesh Wind Power Policy, 2015**. It is stated in GO Ms.No.9 that the same has been issued after detailed discussions with Wind Power Developers, Associations and other interested persons, and that the State Government is keen to promote wind power generation in a big way.

Para 1 of GO Ms.No.9 stipulates that wind power projects that are commissioned during the operative period shall be eligible for the incentives declared under the said policy, for a period of ten years from the date of commissioning, unless the period is specifically varied for any incentive. Para 8 of GO Ms.No.9 confers certain incentives to developers to set up wind power projects in relation to Power Evacuation, Transmission and Distribution charges for wheeling of power, Energy Banking, etc. It is clearly stipulated in G.O.Ms.No.9 that supervision charges towards evacuation infrastructure, and transmission and distribution charges for wheeling will not be collected from Wind power projects. Though Para 14 of G.O.Ms.No.9 states that the State Government may undertake mid-term review of the said policy after a period of two years or as and when need arises in view of any technological breakthrough, the Association understands and believes the same to be true that no such review took place until issuance of the Andhra Pradesh Wind Power Policy, 2018. A copy of G.O.Ms.No.9 is filed herewith marked as Annexure-6.

Thereafter, the APERC issued and notified the **Andhra Pradesh Electricity Regulatory Commission (Terms and Conditions of Open Access) (First Amendment) Regulation, 2016** after considering the requests and views



of renewable energy developers and interested persons. It is stated in the said Regulation that the State Government formulated policies for promoting and encouraging captive wind and solar power generating plants. By the said Regulation, APERC amended Para 17.1 of the 2005 Regulations. Relevant portion of the said Regulation is extracted hereunder:

**“Para 17.1 of Principal Regulation**

- a) The following proviso shall be added as second proviso to Para 17.1(i)  
*“Provided further that the Transmission and Wheeling charges shall be exempted for wheeling of power generated from such Solar and Wind Power Projects and for such operative periods as mentioned in G.O.Ms.No.8, Dated 12-02-2015 and G.O.Ms.No.9, Dated 13-02-2015 respectively for only captive use / third party sale within the State.”*
- b) The following proviso shall be added as third proviso after the above proviso to Para 17.1 (i)  
*“Provided also that the Distribution losses shall be exempted for such Solar Power Projects and for such operative period as mentioned in G.O.Ms.No.8, Dated 12-02- 2015 injecting at 33 kV or below irrespective of voltage-level of the delivery point within the Discom for such projects.”*
- c) The following proviso shall be added as the second proviso to Para 17.1 (iii)  
*“Provided further that the Cross Subsidy Surcharge and additional surcharge shall be exempted for third party sale if the source of power is from such Solar Power Projects set up within the State as mentioned in G.O.Ms.No.8, Dated 12-02-2015 for a period of five (5) years from the date of commissioning of such projects.””*

By the aforesaid Regulation, Para 17.1 conferred various incentives / benefits to captive wind and solar power generating plants and exempted them paying transmission and distribution charges, etc.

By way of the said Regulation, APERC in furtherance of the aforesaid policies of the State Government, amended Para 17.1 in a manner so as to encourage the investors to invest huge amounts to set up and operate captive power generating



plants by borrowing funds from Banks and financial institutions. It is pertinent to point out that the Banks extended credit facilities to the members of the Association solely on basis of the aforesaid benefits /incentives.

Further, the State Government issued **G.O.MS.No.3, Energy, Infrastructure & Investment (PR.II) Department, dated 03.01.2019** stating that it is keen to harness the huge solar and wind potential of the State, that several initiatives such as investor friendly solar and wind power policies, green corridor investment for power evacuation and power procurement through PPA's with APDISCOMs have been undertaken to promote Renewable Energy (RE) capacity addition, that the State Government set a target to achieve 18,000 MW of renewable energy capacity by the year 2021-22, which is 10 % of the national target, and that the State Government is also keen to encourage wind solar hybrid projects in line with National Wind Solar Hybrid Power Policy notified by the MNRE, Government of India. Various incentives were provided to wind-solar hybrid systems including exemption from payment of transmission and distribution charges, etc.

- a) The Draft Regulation impairs vested rights accrued retroactively and is violative of the principles of legitimate expectation and promissory estoppel. As is evident from the above, both the State Government and the APERC have formulated policies / regulations attracting investors to set up and operate captive solar and wind generating plants on basis of the incentives / benefits extended. The covenants / promises / representations contained in the aforesaid policies / regulations conferred vested rights on the generators to avail the said incentives / benefits for the prescribed time period. Having acted on the said promises and representations by investing huge amounts of money legitimately expected that the same



would not be withdrawn during the prescribed time period. At this juncture, the APDISCOMs and the APERC are precluded from giving effect to the proposed amendment on basis of the doctrine of promissory estoppel evolved on the principles of equity to avoid injustice. It may be noted here that the incentives/benefits conferred are not a mere privilege or expectation, but are accrued and vested rights, having the sanction of law.

The proposed amendment not only impairs vested rights acquired under existing laws but also creates new obligations and imposes new financial burden and obligation on the generators in respect of past transactions/considerations already past. As such, the proposed amendments by necessary implication have the effect of retroactive operation of taking away or impairing vested rights of. The proposed amendment has 'retroactive' effect inasmuch as the generators who established and set up captive wind and solar generating plants in pursuance of the incentives/benefits under Regulation 17.1 will now not be entitled to avail the said incentives/benefits. Retroactive intention cannot be attributed to the proposed amendment in-as-much-as it prejudicially affects vested rights and past transactions.

Whatever alleged circumstances prompted the authorities to bring about the proposed amendments, the same could not be made applicable with retroactive effect so as to prejudice the generators and deprive them of the benefit which had accrued to them under para 17.1 of 2005 Regulations as amended in 2016. Without the definite promise of the State Government and the APERC to grant various incentives / benefits to



captive solar and wind generating plants, the investors would not have acted on the said promise to make huge investments to set up and operate the said plants. When the aforesaid incentives / benefits are granted for a period of 10 years from the date of commission of the captive generating plants, the members become entitled to do their business and avail the said incentives / benefits during that period. Such a right is not merely a procedural right, but a substantive right.

In view of the above factual matrix, both the State Government and the APERC are bound to continue the incentives/benefits guaranteed and provided by them to captive plants established as discussed above. The generators have a legitimate right to expect that these incentives/benefits will be continued in the same manner.

As pointed out, the legitimacy of the expectation is founded on the sanction of law and the conduct of the State Government and the APERC followed in regular and natural sequence. In addition, the proposed amendment is also arbitrary, discriminatory, unfair, and amounts to gross abuse of power.

**PRAYER:**

The Objector most respectfully prays that this Hon'ble Commission may be pleased to:

1. If the given incentives are withdrawn retroactively, several of the projects would face financial ruination and therefore in the interest of equity and natural justice we pray for continuation of incentives.



2. Further, if in the unfortunate event of discontinuance of the incentives, under a presumption, it should be after a given cut off date and applicable only prospectively