



**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**  
**Phone Nos.(040)233976381/399/556 Fax No.(040)23397378 website**  
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**From**

The Secretary (I/c),  
#11-4-660, 4<sup>th</sup> Floor, APERC,  
Singareni Bhavan,  
Hyderabad – 500 004

**To**

The Chairman & Managing Director  
APEPDCL, P&T Colony,  
Seethammadhara, Visakhapatnam

The Chairman & Managing Director  
APSPDCL, D.No:19-13-65/A,  
Srinivasapuram, Tiruchanoor Road,  
Tirupati – 517 503

Lr. No. E-229/ DD-Dist / 2015, Dated 04/ 01/2016

Sir,

Sub: Extension of 2/3 Power supply and use of Phase Shifters.

Ref: 1.Aqua farmers Representation dated 14-10-2015 on usage of phase converters.  
2. Lr.No. APERC /JP-PPP/2015 / D.No. 621 dated: 15-10-2015  
3. CMD/EPDPDCL/CGM/O&CS/SE/DPE/VSP/F:GTCS/D.No.1049/15 dt: 17-11-15

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The aqua farmers of Yelamanchili Mandal, West Godavari District submitted a representation to the Commission about paying the determined price of Rs. 5/- per unit for every unit of power utilized by them through their authorized connections given by the Eastern Power Distribution Company of Andhra Pradesh Limited, while they did not admit any utilization of power beyond the three phase supply for seven hours a day.

2. The response of the Eastern Power Distribution Company of Andhra Pradesh Limited alleges that condensers (phase shifters) are being used on LT side of DTRs near starters of the motors during the period of arrangement of 2/3 phase by these aqua farmers. The letter dated 17-11-2015 interpreting such action by the farmers as theft of electricity with reference to clause 5.11.9 of “General Terms and Conditions of Supply” did not allege any use of such condensers dishonestly. It is evident from the letter that the consumers in question were not alleged to have not paid for any quantum of energy utilized by them and the consequences of use of such phase shifters on the infrastructural facilities of the distribution company cannot by themselves bring the use of the condensers within the scope of theft of energy under Section 135 of the Electricity Act, 2003 and obviously, it is only under the deeming clause 5.11.9 of the provisions of General Terms and Conditions of Supply, that such an interpretation is sought to be made. The distribution licensee has to take recourse to any legal and permissible course of action for

controlling the losses and failures of DTRs but cannot launch prosecution through its DPE wing for the alleged theft when no theft exists.

3. Apart from any absence of any allegation of dishonesty on the part of the aqua farmers, any or all the alternatives covered by Section 135 (1) (a) to (e) of the Electricity Act, 2003 do not appear to cover any such situation of use of such condensers, except due to clause 5.11.9 of the General Terms and Conditions of Supply and whether such a clause made in exercise of the power of making subordinate legislation can expand the penal provisions which have to be construed strictly is an open question. Even if everything else is presumed in favour of the distribution licensee, in the absence of the requisite *mensrea*, the offence cannot be considered to be made out and it is not the claim of the distribution licensee that such act becomes an offence under any other provisions of the Electricity Act, 2003 or any other law for the time being in force. The distribution licensee may have to therefore find an appropriate and permissible course of action to remedy any losses caused by the use of the condensers by the aqua farmers, if it is true and it cannot deal with the same by launching prosecutions under Section 135 of the Electricity Act, 2003.

4. Therefore, it is clarified to the distribution licensee that notwithstanding clause 5.11.9 of the General Terms and Conditions of Supply, any action to prosecute any person under Section 135 of the Electricity Act, 2003, should be essentially based on the existence of a dishonest intention on the part of the alleged offender and the act or omission of the alleged offender should specifically fall under any of the clauses (a) to (e) of sub-section (1) of Section 135 of the Electricity Act, 2003. As neither of these two prerequisites appears to be satisfied in the present contingencies, the distribution licensee shall not prosecute the alleged offenders in the so called phase shifter cases booked by DPE wing referred to in its letter dated 17-11-2015. To achieve the objective of avoiding any line losses and failure of DTRs due to any unauthorized use of condensers by any consumers, it is open to the distribution licensee to consider any other appropriate permissible legal remedial action in accordance with the prescribed procedure and duly observing the principles of natural justice.

Yours faithfully,  
Sd/-  
Secretary (i/c)