



For perusal	
Secretary	
Member/F	
Member/T	
Chairman	

Date: 20-October-2011

To,-

Mr. P. Solomon Herme,  
Secretary  
AP Electricity Regulatory Commission  
Singereni Bhavan, Red Hills,  
HYDERABAD



Dear Sir

**Press Release dated 01/10/2011.**

We have noticed with shock and dismay that a public hearing on the proposals submitted by 4 DISCOMs in respect of determination of Fuel Surcharge Adjustment ("FSA" for brevity) for the Financial Years 2008-09 and 2009-10 will be resumed on 31/10/2011 from 11.00 AM at the APERC Court Hall, 4<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Lakdi-Ka-Pool, Hyderabad – 500 004 and that the DISCOMs have been directed to place any relevant material and background calculation sheets relating to their FSA proposals in their Websites as already directed vide Letter dated 13/09/2011. Additionally, DISCOMs have also been directed to place in their Websites the explanatory notice to facilitate the public to appreciate and understand the FSA proposals.

It has further been stated that the last date of submission of comments/objections has been extended to **25/10/2011** and the DISCOMs to place their response on the views/comments submitted by various stakeholders for their Websites by 29/10/2011 positively.

At the outset, we are advised to submit that the certified copy of the Judgment of the AP High Court which is being relied upon for initiating the above process is not yet made available to us to enable us to challenge the



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same insofar as the DISCOMs have been authorized/permited to file fresh applications claiming FSA and when such applications are filed, APERC is obliged to consider and decide the same in accordance with law and in the light of the observations made in the aforesaid Judgment.

It has been our contention that the time period prescribed under Condition No. 4 of Regulation 45(B) of the Regulations cannot be extended nor condoned, especially when the Regulations do not empower the APERC in that regard nor can APERC invoke any inherent powers which is clearly absent under the regulations.

It is also clear that the right of the Licensees to claim FSA beyond such prescribed period do get forfeited as held by the Supreme Court in the Judgments reported in **2008(221) ELT 163** and **2010 (257) ELT 3**.

Further, it is so obvious that the DISCOMs had not and could not place any material on record to show the reasons as to why such applications had not been filed for FSA within the time prescribed under the Regulations, the present exercise undertaken / being permitted by APERC is wholly without jurisdiction, arbitrary and illegal.

While reserving our right to question the Order of the Learned Single Judge in a Writ Appeal, we reiterate that the present exercise sought to be done and the personal hearing fixed on 31/10/2011 is wholly without jurisdiction and therefore, we would not be bound by any decision taken in such proceedings.

Besides the above legal contentions which go the root of the jurisdiction, as the proceedings obviously seeks to revise/raise the FSA for the back period i.e., for the Financial Years 2008-09 and 2009-10, the fact remains that our accounts have been closed and duly audited and relevant Income Tax Assessments and other statutory tax and other Assessments are in progress. In other words, we would be burdened on account of any revision pursuant to





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the present proceedings very hugely over 3 years backwards. If any demands are raised pursuant to such proceedings, it would throw our business out of gear as our products, costs thereof, have been computed and billed to our Customers based upon the Fuel cost already incurred and we will not be in a position to even think of passing on such unreasonable and unlawful burden of such astronomical figures by virtually putting the clock back. Therefore, it would be totally unreasonable to seek to impose such extremely unreasonable burden on us which is obvious from the proceedings and moreover, the DISCOMs having failed to produce any materials earlier have come out with many imaginary and fantastic demands at this belated stage and consequently, we are put to serious disadvantage to question the authenticity of such figures quoted by the DISCOMs.

Besides the above, if appropriate steps have not been taken by the DISCOMs in raising the demands within the prescribed time or within the reasonable time, it would be wholly unreasonable for them to be permitted to raise such demands and we are also not to be blamed or held responsible for such failure on the part of the DISCOMs to substantiate their claims/demands earlier.

We reserve our right to add, substitute, or amend the aforesaid objections which are only without prejudice to our basic contention that the entire proceedings are without jurisdiction.

Yours faithfully,  
For **GRINDWELL NORTON LIMITED**

  
B. Shankariah  
General Manager  
Silicon Carbide Business



Copy to:-

a) Chairman & Managing Director – APSPDCL, Corporate office, Tirupati