

# Appendix

## Analysis of Public Participation in the Regulatory Process

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Participatory governance is one defining characteristic of independent regulation that sets it apart from Government. In India, consumers' capacity to understand and participate in the complex power sector is questioned by stakeholders. This potentially undermines the efficacy of the regulatory institution, since accountability and transparency hinge on public participation.

### Study Methodology

We conducted a study of public objections to utility Expected Recovery of Costs (ERC) filings between FY 2002 and FY 2006. The purpose of this study was to determine -

- (a) The total number;
- (b) Composition; and
- (c) Substance

of public objections, and their evolution over time. The first two reflect the extent of participation, while the third reflects capacity.

We obtained data on the number and composition of objections from the tariff orders. To assess the substantive content of objections, we reviewed the content of the objections (as discussed in tariff orders) in two years (FY 2002 and FY 2005) to extract two aspects:

- (a) total number of issues raised in an objection.
- (b) separation of these issues into substantive and grievance issues. The latter refer to issues raised out of their specific interest without a critique of substantive aspects of the filing. The former reflects some analysis of the substance of utilities' filings, which, we assume, is one indication of an attention to the larger good.

The number of issues by customer category provides more insight into the contribution brought to the regulatory process than just the number of objections. Second, the characterisation as substantive and grievance and its trend over time allow us to assess capacity, as well as the objectives of the participants in filing objections. We had intended to do a quantitative comparison across two periods, for tariff orders issued in FY 2002 and FY 2005 in each state (or the closest period to them). However, we were able to do only a qualitative assessment of FY 2002 orders, because the regulators at that stage discussed objections in summary form, without attribution to specific objections.

Due to scope constraints, we assessed the content of public objections 'second-hand', as reflected in the Commissions' discussions in the Tariff Orders.<sup>1</sup> In the case of AP, we were also unable to translate objections in APSPDCL (Southern Power Distribution Company). We expect that due to this limitation we reviewed - 70-80 per cent of objections for APERC. Based on interviews, we feel our analysis accurately represents the number and composition of participation. We buttressed our quantitative analysis with our judgment based on interviews, specifically with regard to farmer objections.

## Total Number of Objections

Table 1 shows a trend of generally reducing or constant number of objections after a steep increase in the 2001-02 timeframe. In KA and AP, participation in the first year or two of the Commission is minimal, after which participation rises steeply, then steadies or drops. The increase follows sharp tariff increases in the first tariff orders in both states. In Delhi the first tariff order itself saw the highest ever participation, after which the number of objections is virtually constant thereafter.

Participants, specifically farmer groups, mostly in KA but in one year in AP (2002) relied on a strategy of inundating the Commission with duplicate objections on behalf of independent farmers and groups across the state. After filtering duplicates, in KA in FY 2005, we estimate based on the Commission's account of objections that 109 of the 5,170 objections were 'unique'. In AP, the Commission

**Table 1: Number of Objections Filed**

	2000	2001	2002	2003	2004	2005
KERC	110		8455	6133		5170
APERC	78	89	585	119	424	302
DERC		521		78	70	81

- Notes: (1) For KERC, non-duplicate objections number in the range of 100-400. Farmer groups arranged for representatives statewide to send in duplicate objections
- (2) KERC also had an amendment Order related to power purchase, for which 162 objections were filed. KERC also had 122 objections in 2000 rejected for lacking affidavits.
- (3) For APERC, the 2002 nonduplicate objections number 135 - rest were submitted in duplicate, similar to KERC Objections in 2003, 2004, 2005 include 45, 329, 117 respectively directed to TransCO.
- (4) For DERC, all companies receive the same number of objections, as indicated, from the same parties.

estimates that 135 out of the 585 were 'unique. This indicates that outside of this strategic intervention by farmer groups, participation in KA has been steady at around 100-200 every tariff order, while in AP there is an increase in participation, but this increase consists almost entirely of objections directed at Transco. This most likely represents interventions related to generation projects.

Thus, two key insights emerge from total trends: non-farmer objections have been relatively steady over time, and in the range of a hundred in Delhi and Karnataka, and a few hundred in AP; second, farmer groups have resorted to a strategy of inundation to gain attention. Both consumer groups and the Commission indicate that this did get the Commissions' attention.

## Compositions of Objections by Consumer Category

### *Individuals/Consumer Groups*

We reviewed objections by consumer category for two years, 2001-2 and 2004-5, to determine the composition of objectors and their participation over time (Table 2). The most striking observation is the number of consumers who file

**Table 2:** Composition of Objections Filed

2001-2	KERC	APERC	DERC
Category			
Industry	117	24 (41%)	153 (29%)
Consumer Groups		9 (15%)	51 (10%)
Individuals	247	11 (19%)	274 (53%)
Public Utilities		3	
Farmer Representatives	8,037	3	2
Political Parties/Politicians		2	3
Others	54	7	38
Total	8,455	59	521
2004-5	KERC	APERC	DERC 2004
Industry	47 (43%)	15 (10%)	12 (17%)
Consumer Groups	11 (10%)	16 (11%)	21 (30%)
Individuals	19 (17%)	35 (24%)	23 (33%)
Public Utilities	18 (17%)	19 (13%)	3
Farmer Representatives	7*	36 (25%)	0
Political Parties/Politicians	7	5	7
Others	0	18 (13%)	4
Total Reviewed	109	144	70
Actual Total	5,170	302	70

Notes: (1) APERC totals discrepancy in 2004-5 reflects 45 not discussed in tariff order and 117 directed to Transco

\*(2) KERC total in 2005 reflects those discussed in the tariff order Rest mostly duplicates from farmers

objections individually, without affiliation to specific consumer groups or organisations. Not counting farmer representatives, individuals contributed anywhere from 17 per cent to 33 per cent of total objections in all three states, in both years. In addition, thousands of farmers in Karnataka (and hundreds in AP in 2002) filed objections, albeit mostly duplicates and in orchestrated fashion. Consumer groups file about 10-15 per cent of objections. In Delhi, their share is higher, mainly because of the involvement of Resident Welfare Associations (RWAs), who we included in this category. Further, many consumer organisations, particularly farmer groups, when probed, are in effect represented by single individuals, particular with regard to electricity matters. Thus, the data show that among consumer/farmer organisations, more than half operate individually, without institutional support.

The numbers belie the contribution of these consumer groups. In Karnataka and AP, regulatory staff indicate that a few (2-4) consumer groups and individuals tend to be the most consistent participants in, and with the most substantive contribution to, regulatory proceedings.

### *Industry Participation*

Industry participation is highest in Karnataka, at over 40 per cent of objections, but far less (10-17 per cent) in Delhi and Andhra Pradesh. Objectors include industry associations, Chamber of Commerce (CoC), and contractors representatives. However, participation is not widespread across industry. In Karnataka, FKCCI<sup>2</sup> publishes and circulates information booklets to raise awareness of the power sector issues. An FKCCI representative in KA indicated that out of over 3,000 members, only 25 or so attend their energy summits, of which only a few small-scale industry representatives actively contribute to tariff filings. Large industries do not participate at all. Similarly, in Andhra Pradesh, only 4-5 out of approximately 2,500 members of FAPCCI participate actively in regulatory affairs. The head of the Energy Committee stated that their issues are narrow, and therefore their involvement limited. Their main issue is power quality, and market development.<sup>3</sup>

### *Regional Variation*

The demographic breakdown of consumer/farmer representatives in KERC shows stark regional disparities. Gulbarga has only two consumer representatives. Most objections here are filed by industry. MESCOM, which includes densely developed areas along the Karnataka coast (for e.g. Udupi), has the widest breadth and largest number of consumer representative objectors (>40 out of the 109). In interviews, consumer groups indicate that even in MESCOM objections come primarily from rural and semi-urban coastal areas. Consumers contributed over half of the issues raised in MESCOM, but only a quarter in BESCOM. Hubli, not surprisingly – being a predominantly rural region – has the largest number of farmer representatives, but closely followed by Mangalore.

In Andhra Pradesh, among objections filed to the distribution companies, the Southern region (APSPDCL)<sup>4</sup> contributes the highest number of objections, comprising mostly farmer representatives. Their share of objections was over 30 per

cent in 2002, and increased to over 60 per cent by 2006. The Central region, comprising mostly Hyderabad and surrounding areas, contributes most of the remaining non-farmer objections, including consumer groups, industry and public utilities.

### *Urban vs Rural*

It appears, therefore, that most objections (particularly individuals) are filed from semi-urban and rural areas. Conspicuously, urban consumer participation is minimal in Karnataka and Andhra Pradesh. The few objections from urban areas come from consumer groups, industry and public utilities. Interviews with consumer groups in Karnataka reveal that urban residents, in general, either find the burden of electricity bills insufficient to bother with reforms, or have little faith in the regulatory system or in reform.<sup>5</sup>

In Delhi, a predominantly urban area, residents, both individually and as part of RWAs, contribute significantly to the regulatory process.

## Public Capacity and Its Evolution

As explained earlier, we identified and counted issues raised in objections, as discussed by the regulators in their tariff orders (Table 3), and categorised them into substantive and grievance-related issues (Table 4).

Table 3 above shows the issues raised by each consumer category (in total) against the number of objections filed in FY 2005. Clearly in all cases objectors raised multiple issues, on average 2-3 per objection. For the most part, in only a few cases did groups raise issues disproportionate to the number of their filed objections. In Delhi, individuals raised few, typically grievance-related, issues, even though they contributed 33 per cent of objections. On the other hand, industry representatives

**Table 3:** Comparison of Share of Objections and Issues Raised

2004-05	KERC		APERC		DERC	
	Objections	Issues Raised	Objections	Issues Raised	Objections	Issues Raised
Industry	43%	42%	10%	11%	17%	39%
Consumer Groups	10%	19%	11%	13%	30%	37%
Individuals	17%	13%	24%	32%	33%	5%
Public Utilities	17%	11%	13%	9%	4%	9%
Farmers/Farmer Groups	6%	9%	25%	NA	0%	0
Political Parties/Politicians	6%	2%	3%	13%	10%	5%
Others	0%	0%	13%	NA	6%	5%
Total (In number)	109	294	144	328	70	232

*Note:* AP analysis excludes objections filed for one DISCOM (APSPDCL) and for <10 per cent of objections in the other states due to translation difficulties (mostly from farmer groups).

in Delhi appeared more sophisticated than in Karnataka and Delhi, judged by the number of issues raised.

Looking at the evolution of substantive and grievance objections (Table 4), we found that the share and absolute number of grievances was larger in FY 2002 in Andhra Pradesh and Karnataka than in FY 2005, even though the number of participants did not change. The Commission presented data in summary form in Karnataka, and data on DERC were not available for FY 2002, so we make this observation based on qualitative judgment of the Commission's summaries and interviews with consumer groups and utility staff in AP and KA.

**Table 4:** Share of Substantive and Grievance-related Issues Raised in Objections

<i>2004-05</i>			
<i>Type of Issues</i>	<i>KERC</i>	<i>APERC</i>	<i>DERC</i>
Substantive	250	302	177
Grievance	44	28	55
Total	294	328	232
<i>2001-02</i>			
<i>Type of Issues</i>	<i>KERC</i>	<i>APERC</i>	<i>DERC</i>
Substantive	<60%	232	NA
Grievance	>40%	42	NA
Total	NA	274	NA

*Note:* APERC data exclude APSPDCL, and <10 per cent of farmer objections due to translation difficulties. From other farmer objections, we expect a large share of these were grievance-related.

KERC objections available only in summary form – percentages reflect authors' judgment.

The large number of grievances, particularly from farmer groups in FY 2002, is likely explained by the fact that rates increased far more in AP and KA in FY 2002 than in FY 2005.

The grievances in both periods revolved around tariff levels and categories. A large share of objections, particularly in Karnataka, focused on the injustice of high tariffs to farmers, and burdening consumers with utilities' inefficiencies. In FY 2005 in contrast, over 75 per cent of issues raised were substantive in all states, with Delhi having the least at 75 per cent, and AP having the most at 92 per cent. The range of issues to which substantive objections have been made in FY 2005 also appear to have increased, some delving into depths of cash flows statements, quality of service, inconsistencies in filings, excess expenditures, T&D losses, and others. This has been observed of comments from industry, utilities and consumer groups.

This observation of increased sophistication is preliminary and merits further investigation. The increase in substantive issues raised may reflect increases in substantive contributions by the same objectors, or growing numbers of sophisticated objectors. In order to test this inference, one would have to track the content of

objections of specific groups and individuals over time, a task that was beyond the scope of this study. However, in Karnataka, utility and regulatory staff corroborated this observation. They claim that they have been forced to pay closer attention to their filings, as objectors find mistakes. They also feel the number of competent submissions has increased. They point to a handful of regular objectors, whose objections they now look out for, or pay particular attention to.<sup>6</sup>

### *Mutual Perceptions of the Public and Regulators*

Consumers' and regulators' perceptions of each other are similar: they lack capacity, focus mostly on rate issues, but are critical for reforming the sector in the long run.

The regulators' perception, corroborated by staff, is that public participation is not particularly 'enlightened'.<sup>7</sup> They do not understand the broader context of reform, and therefore cannot appreciate the time and complexity in improving the sector. Consumers' own experiences bear out this perception. Some consumers in Karnataka feel disrespected by regulators, based on their interaction in public hearings and personal meetings. In Delhi, consumer groups feel bitter that the regulator has neglected their grievances with respect to metering, power quality and billing issues.

Nevertheless, regulators encourage and support consumer participation, but contingent on their increasing their awareness and capacity. When questioned as to whose responsibility capacity building should be, no unified position emerged. Key officials in KERC, including the first Secretary, felt strongly that the regulator must represent the consumer, and formally fund consumer capacity building. It is no coincidence that KERC is the only regulator to have set up an office of Consumer Advocacy.

Consumers, particularly those that have elevated themselves above rate issues, feel the regulator is not proactive, and avoids tackling fundamental reforms in the sector. These consumers felt they have brought to the attention of the regulator several substantive irregularities in utility filings, which the regulator has neglected to pursue.<sup>8</sup> Yet, they express faith in the regulatory system (as discussed further below), and feel optimistic of their role therein.

### **Impact of Public Participation**

From a policy perspective, public participation is an instrument of accountability. How effective has it been in this regard? On the one hand, regulators and regulatory staff claim to not gain significantly in their analysis from consumer participation. However, as mentioned earlier, their opinion has grown favorably, with regard to a handful of active interveners, in both AP and KA. On several occasions in tariff orders, regulators cited and agreed with consumer objections in articulating their position on many issues. Often the Commission relies on consumers' objections to explain or defend a position.

Despite the increased sophistication of objections, interviews with regulators and consumer groups reveal that tariffs remain the primary entry point for consumers into the regulatory process. Consumers' growing capacity and regulators' increasing reliance on consumer objections fall primarily in the domain of cost recovery and

reduction, not policy. The glaring lack of public participation in the open access discussions in AP and KA stand as clear evidence of this. Perhaps consumers as yet have insufficient capacity, exposure or the time to understand or comment on tariff filings from this larger policy context (barring few exceptions).

A few 'sophisticated' consumers with a good perspective on reforms indicate that they have learned that *regulators*, and not just consumers, focus more on tariff-related issues and avoid fundamental reforms. They indicate regulators could easily conduct more field visits, estimate IP set consumption, understand consumer grievances and track implementation of their own regulations and directives.

## Notes

1. This raised two issues: first, whether regulators characterised objections appropriately and completely; second, whether regulators discussed all filed objections. Regulators' description of objections evolved over time. In 2001-2 regulators discussed substantive aspects of objections only in summary form. For 2004-5, however, we found that regulators (in all states) detailed objector's issues thoroughly, and in most cases with attribution to objections, or at least the participant category. Based on cursory checks, we expect that the Commissions did not reference 10-20 per cent of objections.
2. Federation of Karnataka Chambers of Commerce and Industry.
3. Interview with the Chair of the Energy Committee, FAPCCI, May 2006.
4. APSPDCL (Andhra Pradesh Southern Power Distribution Company Ltd.).
5. FKCCI representative, KERC Consumer Forum, March 2006.
6. Interview with KPTCL officials, February 2006 and regulatory staff, October 2005.
7. Interviews with former Chairpersons, Karnataka and Delhi, January 2006.
8. Such as the capitalisation of consumer deposits and unjustified increase in A&G expenses, FKCCI and farmer representatives, Consumer Focus Group, March 2006.