



SERCs are changing their quorums, but what about timely appointments?

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Efficient regulatory functioning is of utmost importance, especially so, for timely performance review and revision of utility tariffs. It ideally involves State Electricity Regulatory Commissions (SERCs) having a full quorum³ while issuing tariff orders. The multi-faceted experiences that a full SERC has is crucial to regulate a multi-disciplinary sector such as electricity. However, SERCs have often faced challenges in functioning because of delayed appointments and vacancies.⁴

The stipulated regular capacity of SERCs is three members, inclusive of a chairperson. But there have been significant periods of vacancy in SERCs, which have affected their functioning in terms of issuing tariff orders or formulating regulations.⁵ The Conduct of Business Regulations (CBRs) in each state capture the manner in which SERCs are supposed to hold meetings and proceedings. These regulations vary across states – some states specify quorum to be the full strength of the SERC, while others require two-thirds, or even one-thirds, and sometimes none at all⁶.

The Appellate Tribunal for Electricity (APTEL), in 2013, [directed](#) (based on Section 93 of the Electricity Act, 2003⁷) that all proceedings before State Electricity Regulatory Commissions (SERCs) could be conducted even in the presence of a single member of the Commission. Following this, eight SERCs amended their regulations to allow for single member quorums. Out of these SERCs, Andhra Pradesh, Uttar Pradesh, and Himachal Pradesh SERCs amended their CBRs more recently in 2019. This update traces the amendments made, and the present status of quorum in each SERC's CBRs in the country. Further, the article discusses some insights regarding implications of such measures on SERC appointments.

1. Why did the APTEL direct SERCs to change quorum?

The APTEL had initially issued an [order in November 2011](#), to give directions to SERCs *"for securing long term viability of the electricity sector by timely and appropriate revision of tariff in accordance with the letter and spirit of the Electricity Act"*, subsequent to Ministry of Power, Government of India's request. To this end, the APTEL recognized that among other measures, there was a need for SERCs to systematically revise tariffs and conduct true-up of audited accounts annually. To assess the situation, the Forum of Regulators (FoR) was directed to compile a compliance report on the same. One of the key challenges that FoR highlighted⁸ was the fact that SERCs were ridden with vacancies, and given the issue of lack of quorum, SERCs were rendered *"non-functional"*. Some examples include the following:

The APTEL order of December 2013 noted that the Uttar Pradesh SERC was unable to frame its Multi Year Tariff regulations and initiate true-up processes till a full Commission was constituted (there was vacancy for the post of Chairperson and a member). In the same order, it was noted that Andhra Pradesh SERC could not issue orders as the required quorum was two members. Similar was the case for Jharkhand⁹ and Tamil Nadu SERCs, with the same quorum conditions, and both had had long vacancies for the post of a member and Chairperson. In Tripura, tariffs could not be revised between FY16 and FY19 as the post of Chairperson had remained vacant over 2.5 years since January 2017, and the regulations require the Chairperson's presence to pass an order.

2. How have SERCs changed quorum since then?

Many SERCs have amended their CBRs since the APTEL advisory in 2013. Details are captured in Table 1. While most SERCs have still kept the quorum to 2 members out of 3, and added clauses to allow for single member Commissions in case of long duration of vacancies, Andhra Pradesh SERC has amended quorum to a single member's presence. On the other hand, it is interesting to note that Chhattisgarh SERC has explicitly mentioned that single member Commissions cannot pass tariff orders when there is more than one sitting member and one of them happens to be on leave. But [the regulations](#) do allow single members to issue orders when two seats are vacant.

Table 1: Details of amendments in quorum condition in various SERCs' CBRs

| SERC | Year of amendment | Previous quorum condition | Amended quorum condition |
|-------------------------------|--------------------|---------------------------|---|
| Andhra Pradesh | 2019 | no quorum clause | 1 member |
| Bihar | 2014 | 2 out of 3 members | 2 out of 3 members; can be 1 member during long vacancies |
| Chhattisgarh | 2014 | 2 out of 3 members | 2 out of 3 members; can be 1 member during long vacancies |
| Himachal Pradesh | 2019 | 2 out of 3 members | 2 out of 3 members; can be 1 member during long vacancies |
| JERC: Goa & Union Territories | 2014 | 2 out of 3 members | 2 out of 3 members; can be 1 member during long vacancies |
| Jharkhand | 2017 | 2 out of 3 members | 2 out of 3 members; can be 1 member during long vacancies |
| Kerala | 2014 ¹⁰ | 2 out of 3 members | 1 member |
| Telangana | 2015 | no quorum clause | 2 out of 3 members; can be 1 member during long vacancies |
| Uttar Pradesh | 2019 | no quorum clause | 2 out of 3 members; can be 1 member during long vacancies |

Source: Prayas (Energy Group) compilation based on various regulations by SERCs

In 2013, Tamil Nadu SERC reported that it too had [initiated the process of amending](#) its CBR to allow for 1-member quorum due to vacancies. The draft regulations received public criticism. Objections were raised, citing that "...vesting powers on a Single Member may not be desirable".¹¹ There were no public comments that supported the move, and thus, the SERC had to withdraw the draft amendment.

Some SERCs, in their principal regulations for Conduct of Business, had already provided for two members to form quorum with allowance for one member quorums in case of long vacancies or contingency situations. These are Assam, Gujarat, and Odisha SERCs.

While it can be seen that most states have been amending their CBRs to allow for 1 member quorums, there are states that have different quorum conditions. This has been captured in Table 2.

Table 2: Details of unique quorum conditions in various SERCs' CBRs

| SERC | Year CBR was issued | Quorum condition |
|------------------------|---------------------|--|
| Haryana | 2019 | no quorum required for proceedings, but 50% of the Commission for meetings |
| JERC-Manipur & Mizoram | 2010 | quorum is 2 members |

| SERC | Year CBR was issued | Quorum condition |
|-------------|---------------------|---|
| Maharashtra | 2004 | quorum is full strength of SERC; smaller quorum can be formed in special cases but will have to be defined in writing |
| Meghalaya | 2007 | quorum is 2 members including chairperson |
| Nagaland | 2010 | 2 out of 3 members to form quorum, but chairman can form 1-member quorum |
| Punjab | 2005 | quorum is 2 members including chairperson |
| Rajasthan | 2000 | quorum is 2 members |
| Tripura | 2015 | all meetings to be conducted in chairperson's presence |
| West Bengal | 2013 | at least 50% of existing members |

Source: Prayas (Energy Group) compilation based on various regulations by SERCs

As can be seen from the table, Haryana SERC issued new CBRs in 2019, which mention that quorum is not required for proceedings, but meetings of the SERC require 50% presence. Previously, in November 2018, during the annual tariff revision process, the SERC had faced difficulties to form quorum for conducting public hearings. This happened because one seat was vacant, and one incumbent member was unavailable¹². However, relying on the APTEL order of December 2013, the Chairperson went ahead to [sign the tariff order](#) as a single member.

3. But what about timely appointments?

While the APTEL's direction to allow one member Commissions for proceedings has been widely taken up by many SERCs, some are yet to amend their regulations, as mentioned in Table 2. Since lack of clarity regarding quorum can sometimes lead to delay in orders, it is better to clarify such conditions in CBRs across states.

It is indeed important to ensure that SERCs avoid being non-functional for too long due to lack of quorum. While amending quorums can facilitate it, more appropriate action is to ensure prompt appointments by State Governments for timely filling up of vacancies. To enable this, the Electricity Act 2003 could be amended to permit Ministry of Power to appoint members of SERCs in case selection committees and State Governments are unable to decide on an appointment within 6 months of vacancy. In case a vacancy in the SERC is not filled within six months, the selection committee for the Central ERC should recommend two names and the State Government should be bound to appoint one of the recommended candidates. Further, this provision should also apply to vacancies concerning the commission chairperson as well, not just the members. Only such a strong provision may act as a serious deterrent for states to avoid delays in appointing the commission members or chairperson.

Similar proposals have been suggested in draft amendments to the Electricity Act 2003. The [2014 draft amendment](#) proposed that CEA officers could be made ex-officio member till vacancy is filled. More recently, [the proposed amendment of 2020](#) attempts to address the issue of appointments in different ways:

- a standing selection committee appointed by the central government for all SERCs
- references to the selection committee to be provided a year before superannuation of the member (currently this has to be provided six months earlier)
- Central Government in consultation with the state government is to entrust functions of one SERC to another SERC, in case all posts are vacant

The recent proposals may address the issue but they also take away powers from state governments. Therefore, its potential acceptability in the federal structure is a matter of concern and broader implications of such an approach needs to be debated widely.

When SERCs do not have vacancies, it is best to have a quorum of all members. Special benches and smaller quorums should be encouraged only in extraordinary circumstances and only when there have been long vacancies. The APTEL, in the 2013 order, has taken cognizance of this “institutional vacuum”, and directed the Central Government to urge their State counterparts to take more prompt actions. Along with ensuring timely appointments to avoid vacancies, focus on measures to ensure adequate staff capacity and robust processes to maintain institutional memory is crucial.

As mentioned before, SERCs’ processes and orders require multi-disciplinary capacity and approach. While single member Commission may be convenient for timely regulatory functioning, it is quite challenging for only one member to incorporate multi-disciplinary aspects in their decision making. Hence, only timely appointments of Commission members and ensuring staff capacity can strengthen the Commission to tackle the challenges in the sector.

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² This article is part of an ongoing series called Power Perspectives which provides brief commentaries and analysis of important developments in the Indian power sector, in various states and at the national level. The portal with all the articles can be accessed here: <https://prayaspune.org/peg/resources/power-perspective-portal.html>

Comments and suggestions on the series are welcome, and can be addressed to: powerperspectives@prayaspune.org

³It ideally involves SERCs having a full capacity of three members, inclusive of the chairperson present during proceedings.

⁴ More information can be found on the Power Perspectives Portal in each state’s “State Overview”.

⁵ This has been discussed in the [APTEL’s order, OP NO. 1 of 2011 on 02.12.2013](#).

⁶ SERCs in Arunachal Pradesh, Delhi, Karnataka, Madhya Pradesh, Sikkim, and Uttarakhand do mention a quorum clause in their CBRs.

⁷ Section 93 of the Electricity Act 2003, mentions that “*No act or proceedings of the Appropriate Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Appropriate Commission.*”

⁸ This is captured in Section 5 of the APTEL’s order on 02.12.13.

⁹ Post of Chairperson and Member (Finance) had been vacant for a year in Jharkhand, since December 2012.

¹⁰ This is as per a [draft regulation](#), as CBRs notified after this cannot be accessed on KSERC’s website.

¹¹ Details can be [accessed here on pg. 9](#)

¹² Prior to this, Haryana SERC had amended their then CBR to allow quorum of 1 member, but only when both the other seats were vacant. Since an [incumbent member was unavailable for this hearing, the quorum condition could not be met](#).