

Recommendations & Suggestions of Secretary,
Forum of Regulators (FOR)

The various aspects of effective functioning of the system required to ensure and secure compliance with the requirements of the Electricity Act, 2003 to protect interest of the consumers have been analysed.

The functions of FOR are as follows:

- Analysis of the tariff orders and other orders of Central Commission and State Commissions and compilation of data arising out of the said orders, highlighting, especially the efficiency improvements of the utilities;
- Harmonization of regulation in power sector;
- Laying of standards of performance of licensees as required under the Act.
- Sharing of information among the members of the Forum on various issues of common interest and also of common approach.
- Undertaking research work in-house or through outsourcing on issues relevant to power sector regulation;
- Evolving measures for protection of interest of consumers and promotion of efficiency, economy and competition in power sector; and
- Such other functions as the Central Government may assign to it, from time to time.

Thus, the substantive statutory powers are vested with the SERCs who can actually enforce and ensure the implementation of the provisions of law. Taking into account the above factual position and with regard to the directions given in the Order dated 11.02.2010 of the Hon'ble APTEL, the following suggestions are being made:

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a) **Online quarterly compliance status updation**

In order to compile the status of compliance of the provisions on Consumer Protection as specified in the EA, 2003, an online mechanism may be devised in the FOR website, wherein the status of the implementation of the provisions related to Consumer Grievance Redressal Forum (CGRF), Ombudsman, information with respect to their functioning, etc. could be updated. Every State Electricity Regulatory Commission (SERC) could be assigned a separate login ID & password by which they may be able to access the online system and update the information pertaining to their State.

Section - 59 of EA, 2003 requires that the distribution licensees should submit the information pertaining to the levels of performance achieved with respect to the Standard of Performance specified under Section - 57. It also requires that the information furnished by the licensees is published by the SERC. The online mechanism could also capture the compliance of the provisions of this Section.

The suggested formats for the online system are placed at Annexure - I.

It is expected that availability of the status in public domain would facilitate compliance of the provisions of the law.

b) **Evolving the best practice norms and guidelines**

FOR has been deliberating on issues specific to the protection of consumers interests. FOR felt the need to review the steps taken in various states and to address the issues which required clarification so as to evolve consensus and uniformity of approach in handling consumer related issues. The Forum thus constituted a Working Group (in June, 2008) consisting of chairpersons of a few State Commissions with the mandate to examine all such issues in detail and submit report before the Forum. The report of the working group was considered

by the FOR. The best practice norms and guidelines which could be followed have been recommended by the FOR through its report on "Protection of Consumer Interest". The report suggests various steps to make the functioning of the CGRF and ombudsman effective. The report specifically recommends measures to ensure financial and operational autonomy to these institutions and suggests a framework for monitoring the performance of these institutions, implementation of their orders, and remedial steps for non-compliance of their orders. A summary of these recommendations is placed at Annexure-II. Implementation of these recommendations by SERCs will lead to adoption of the best practices. FOR Secretariat may compile a status of implementation of these recommendations and place the same on its website. The status could be updated annually.

c) Dissemination of best practices

It is proposed that the best practices in the area of Consumer Protection can be disseminated through Annual conferences under the aegis of FOR which would be attended by the Ombudsmen, officers from the CGRFs and consumer organisations.

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Suggested Formats for Online updation

Details of CGRF & Ombudsman				
S.No.	State/ SERC	CGRF		Ombudsman
		No. of CGRFs	Details of the concerned officials for each CGRF	Details of the Ombudsman

Vacancies				
S.No.	State/ SERC	CGRF		Ombudsman
		Vacant Position	Period since when vacancy has arisen	Period since when vacancy has arisen

Disposal of Grievances by CGRF		
1	Name of CGRF	
2	No. of Grievances outstanding at the close of previous quarter	
3	No. of Grievances received during the quarter	
4	No. of Grievances disposed during the quarter	
5	No. of Grievances pending at the close of the quarter	
6	No. of Grievances pending which are older than two months	
7	No. of sittings of CGRFs in the quarter	

Disposal of Grievances by Ombudsman		
1	Name of Ombudsman	
2	No. of Grievances outstanding at the close of previous quarter	
3	No. of Grievances received during the quarter	
4	No. of Grievances disposed during the quarter	
5	No. of Grievances pending at the close of the quarter	
6	No. of Grievances pending which are older than two months	
7	No. of sittings of Ombudsman in the quarter	

Status of Achievement of Standards of Performance (SOP)		
1	Name of State	
2	The date and details of notification of SOP by SERC	
3	The date and details on which the licensee has furnished the report to SERC under Section 59 (1) for the last Financial Year	
4	Links to the reports submitted by the licensees	
5	The number of cases in which compensation was made under subsection (2) of section 57	
6	The aggregate amount of the compensation paid	
7	The date and details of the report published by SERC under Section 59 (2)	

Note: The details of Standards of Performance must be furnished for all the licensees.

FOR Recommendations on the "Protection of Consumer Interest"

1. The Regulatory Commissions have been given adequate powers under the Act to effectively enforce the provisions including those relating to the protection of consumers' interests. All such powers including imposition of penalty under section 43, compensation under section 57 and invoking section 142 of the Act should be resorted to wherever required by the Regulatory Commissions.
2. There is a general sentiment against the practice of the licensees engaging lawyers in proceedings before the CGRF and ombudsman. This puts into a disadvantaged position the consumer, who on occasions may not be in a position to engage lawyers. It is recommended that SERCs should specify in the guidelines and regulations framed under section 42(5) and (6) of the Act that in respect of the resolution of the grievances of consumers through the mechanism of CGRF - which is an organ of the licensee and where proceedings may not be adversarial in nature - both parties (i.e. the consumer and the distribution licensee) shall not be represented by lawyers. However, since the proceedings before the ombudsman, being essentially adversarial in nature, the imposition of such a restriction may not be legally tenable in the absence of a specific provision in the Act. It is, therefore, recommended that wherever there is a practice of the licensee being represented by an advocate before the ombudsman, consumer legal assistance cells might be constituted by SERCs, to provide required legal advice, support, and assistance to consumers, wherever necessary. Such a unit could be funded by the SERCs.
3. Some State Commissions have treated the CGRF as a second channel of appeal by creating separate internal grievance redressal machinery as the first channel of appeal. Such a practice does not go with the letter and spirit of the Act. This is clearly evident from the wordings of the provision in section 42(5) of Act and the reiteration of the Standing Committee on Energy while examining the Electricity Bill, 2001. The CGRF should be treated as the internal first-level grievance redressal organ. Some State Commissions had passed orders merging internal grievance redressal mechanisms of discom with CGRF. It is suggested that this practice should be followed by all SERCs across the board. Therefore, it is necessary to ensure that the consumer who has a grievance should have the right to approach the CGRF directly without any precondition of approaching a

particular staff or other committee set up by the licensee. Though the consumer should have a right to directly approach the CGRF, periodic meetings and interactions by the local utility staff with the consumers may also be encouraged as these have proved useful in resolving petty and routine issues.

4. In the context of the provisions of section 42(6) of the Act, there are sentiments that the said provision does not give right to the licensees to appeal before the ombudsman against the orders of the CGRF. It is reiterated that given the fact that the CGRF has been conceived as an internal organ of the licensee, it is assumed that the orders of the CGRF would be acceptable to the licensee and that only the aggrieved consumer could have grievance against the order of such an internal organ of the licensee. Thus, logically the Act did not provide for the right of a licensee to appeal against the orders of the CGRF.
5. According to the Rule 7 (as amended) of the Electricity Rules, 2005, the manner of appointment and the qualification and experience of the persons to be appointed as members of the Forum would be as per the guidelines specified by the State Commission. The qualification and experience required for the appointment of a chairperson of the Forum should be specified in such a manner as to ensure that the person is not serving as a regular employee of the licensee. It is observed that the requirement in Rule 7 of the Electricity Rules, 2005 that the Forum "*shall consist of officers of licensee*" does not imply that the officer had to be a regular officer of the licensee. So long as the salary of the member of the Forum is paid by the licensee, such a member could be treated as an 'officer of licensee' and the requirement of Rule 7 would be met. It is, however, suggested that association of one or two service officers of the licensee with CGRF is necessary as it facilitates timely availability of information and also the acceptability of the decision of the CGRF.
6. Since the idea behind creating the institution of CGRF is redressal of grievances of consumers, it is incumbent that such a Forum should be easily accessible to a consumer. It is therefore suggested that the CGRF should be located at a place which is easily accessible by the consumer under jurisdiction of such a Forum. Ideally, CGRF should hold sittings at different places but there should be predetermined dates for hearing the grievances of consumers.
7. As the CGRF is an internal organ of the licensee, it is recommended that the expenditure of the CGRF be borne by the licensee.

8. All SERCs should make provisions in their regulations clearly stipulating that non-compliance of the orders of CGRF would be treated as contravention of the regulations of SERC making the licensee liable for action under section 142 of the Act.
9. Each SERC, while specifying the regulation under section 42(5) and (6), should provide a time limit (say 45 days or 60 days) for disposal of grievances by the CGRF. In the event of the CGRF not disposing off the grievances within the stipulated time period, the consumer should have the right to approach the ombudsman for settlement of non-redressal of his grievance by the CGRF. In addition, the provisions of section 142 of the Act may also be invoked for noncompliance of the regulations of the State Commission.
10. It is recommended that the institution of the ombudsman should be created on a full-time basis so that proper attention is given to the resolution of the grievances of consumers. It is, therefore, suggested that the practice of designating an officer of SERC as ombudsman should be discontinued.
11. Section 91(2) deals with creation of a regular post for the Regulatory Commission and that an ombudsman should not be treated as a regular employee of the Commission. Since the provision for the appointment of an ombudsman has been made in the Act itself in Section 42 (6), there is no need for the creation for a separate post for ombudsman and consequently there is no need for seeking approval of the government under Section 91(2) of the Act.
12. There is a general sentiment that the Act does not provide for a forum of appeal against the orders of the ombudsman. The institution of ombudsman has been conceived as an arbitrator who seeks to settle the grievances through conciliation. This is borne out by the Allahabad High Court judgment in the civil miscellaneous Writ Petition No. 16216 of 2008, dated April 2, 2008. If the grievance is not settled through conciliation, the ombudsman has the power to proceed with the grievance and make orders. In any case, however, a writ petition against the order of the ombudsman could always lie before the High Court under writ jurisdiction.
13. Expenses of the office of the ombudsman should not be met by the distribution licensee, as it might raise a question on the independence of the ombudsman. The office of the Ombudsman should be funded by SERCs and a separate budgetary allocation could be made in the budget of SERC for this purpose. The SERC may recover such expenses from the licensees directly.

14. Several SERCs are yet to put in place a proper mechanism for monitoring the grievance redressal machinery. The provision in the rule issued by GoI stipulating inter alia requirement of submission of the report by the ombudsman should be institutionalized by all SERCs.
15. A six-monthly conference of the CGRF members and ombudsman by SERC would be appropriate for experience sharing and receiving a feedback for improving guidelines and regulations.
16. It is recommended that NGOs should be involved for consumer education and empowerment. Leaflets highlighting the consumers' rights under the standards of performance regulations should be distributed for dissemination of information amongst the consumers. This would be best achieved by printing the 'consumers' rights' on the back of the electricity bill. This would ensure wider access of message and improve awareness amongst the consumers.
17. As regards consumer advocacy, consumers' groups should not be funded from the budget of the SERC as there could be an occasion when consumers' groups could appeal against the order of Regulatory Commissions in other fora. However, if such funding is not on a case to case basis but is given as an annual fixed grant, conflict of interest would not be an issue. In addition, it is suggested that a proposal be formulated for funding of consumers' groups by the Ministry of Consumer Affairs.
18. It is recommended that FOR should financially support identified competent NGOs or eminent persons to take up/contest important consumer related cases in High Courts, APTEL, and the Supreme Court so that consumers' interests are effectively represented.
19. Knowledgeable retired personnel could be appointed by SERCs as consumer advocates for participating in: (a) tariff hearing to represent interests of domestic, agricultural, and SSI-LT category consumers; (b) hearing for load shedding protocols; and (c) hearing for framing standards of performance. However, there is a need for further deliberation for the ways and means for strengthening the consumer advocacy mechanism.
20. SERCs should organize regular orientation courses for capacity building of consumer advocates. Such orientation courses could also be organized by FOR in order to give the consumer advocates wider awareness and opportunity for sharing of experience in other states.
21. Each SERC should notify a consumer charter based on the model charter suggested in this report.