

MINUTES OF THE THIRTY SECOND MEETING
OF
FORUM OF REGULATORS (FOR) HELD AT NEW DELHI

DATES : 28TH – 29TH AUGUST, 2012

LIST OF PARTICIPANTS : At Annexure-I (enclosed).

Tuesday, 28th August, 2012 -

The meeting was chaired by Dr. Pramod Deo, Chairperson, CERC/FOR.

Shri Rajiv Bansal, Secretary, CERC/FOR extended a warm welcome to all members of the Forum.

The FOR thereafter took agenda items for consideration.

Agenda Item No. 1 : Confirmation of the Minutes of the 31st Meeting of “FOR” held during 27th – 28th July, 2012 at Welcom Hotel Grand Bay, Vishakapatnam (Andhra Pradesh).

The Forum noted and endorsed the minutes of the 31st Meeting of FOR held at Vishakapatnam (Andhra Pradesh) during 27th – 28th July, 2012 as

circulated. The Forum also noted the Action Taken Report as contained in Appendix-II of the Agenda Note. After discussion, the minutes were confirmed

Agenda Item No. 2 : Discussion on the Amendment to the Electricity Act, 2003.

A presentation was made by Deputy Chief, Regulatory Affairs, CERC on amendments to Electricity Act, 2003 proposed by “FOR” Secretariat. The proposed amendments were presented issue-wise and consensus was evolved on the following:

I. *Section 11*

Discussion: Section 11 has been used to restrict export of power in many States. SLDCs have also used the direction issued under section 11 to deny open access. Members felt that section 11 should be amended to dissuade such tendencies.

Consensus:

- The expression “extraordinary circumstances” in section 11 should be modified to delete the words ‘public order’ and ‘such other circumstances’.
- A proviso under Section 11 should be added to stipulate that the direction under this provision cannot be given by the Appropriate Government to deny open access.

II. *Tariff Determination*

(i) Section 62 and Section 63

Discussion: Some members argued that Section 62 is the mother Section and Section 63 is an exception and hence section 62 should not be amended.

Further, there has not been sufficient participation in competitive bidding cases in States. Also, there is no level playing field between plants based on imported coal and those based on domestic coal. As such, the power market in India has not matured to a level where competitive procurement can be mandated. It was felt although competitive bidding is internationally accepted as more efficient, considering the current market situation in India, especially keeping in view the fuel shortage, both options of tariff determination - Sections 62 and 63 – should be continued for the present.

Consensus:

- Given the experience of competitive bidding processes in different states, both the options of tariff determination - namely, the options of Section 62 and Section 63 – should exist as they are in the existing Act, at least till we have fuel shortages.
- No amendment should be made to the provisions of Section 62 and Section 63.

(ii) Section 64(1), 64(3), 62(4)

Discussion: Members discussed and agreed on the need for amendments to sections 62 and 64 to address the issues like suo-motu petition, framework for periodic fuel and power purchase price adjustment formula.

Consensus:

Section 62 and Section 64 should be suitably amended to provide for suo-motu petition and framework for periodic fuel and power purchase price adjustment formula.

III. Performance of Regulators

Discussion: Some Members felt that review should be done by a superior body and in no case such review should be done by a Government Committee. Given the collegiate nature of the Commission, non-performance of the

Commission cannot be a ground for removal of individual member of the Commission.

Consensus:

- Proposal for review of performance by a Govt. Committee goes against the spirit of ‘distancing of government from regulations’.
- Regulatory Commission is a collegiate body. Hence, non-performance of the Regulatory Commission cannot be a ground for removal of an individual member.
- The proposal of the MoP Task Force to amend sections 89 and 90 should be dropped
- Peer review of performance of regulators should be done by FOR.
- FOR can be strengthened through rules.

IV. *Empowerment of Regulatory Commission*

Discussion: The Members reiterated the need for addressing the limitations of penal powers available with the regulators under section 142 of the Act.

Consensus:

Section 142 should be amended to provide that the orders of the Appropriate Commission would have the force of a decree of the court, in line with Orissa Reforms Act.

Wednesday, 29th August, 2012 -

Dr. Pramod Deo, Chairperson, CERC/FOR welcomed the Hon'ble Union Minister of Power Dr. M. Veerappa Moily on his arrival and conveyed to him the deep gratitude on behalf of the Forum for his presence and interaction with the Members of the Forum. He also welcomed Shri P. Uma Shankar, Secretary, Ministry of Power. Dr. Deo briefed the Hon'ble Union Minister of Power about the role being played by the Forum of Regulators (FOR) in discussing and evolving consensus on several critical issues facing the power sector. One of the important functions assigned to the Forum, he highlighted, involves harmonization of regulations in the electricity sector in India. The Forum has taken a number of steps in this direction. Dr. Deo specifically mentioned about the Model Tariff Regulations evolved by the Forum providing inter alia the requirement of Suo-Moto petition by SERCs in the event of non-filing of tariff petition by the DISCOM, periodic automatic pass through of fuel and power purchase price adjustment etc. He, however, pointed out that support of the State Government was critical to make reforms a success. This is more so in view of the fact that most of the distribution companies are State Government owned companies. Dr. Deo also touched upon the issue of open access for consumers and stated that in India we have sought to implement a limited form of competition through open access. Further, the recent advice of the Ministry of Power on mandatory open access for consumers of 1 MW and above means that utilities can charge market price and stay outside the purview of the regulator. This could have serious fallout. He cited the example of MSEDCL (the largest distribution company in Maharashtra) based on their MD's presentation in a seminar where he (the MD) informed that in the area of MSEDCL, consumers of 1 MW and above constitute only 0.01% of the total consumer base (-that is, out of the total number of consumers of 1.94 crore only

1965 consumers are of 1 MW and above) but contribute to 41% of the total revenue of the discom. With all these subsidising consumers going out suddenly, the burden would fall on the embedded subsidised consumers. There are at the same time limitations in terms of non-availability of surplus power at reasonable rates for such open access consumers to source their supply on long-term basis. Dr. Deo argued that open access is more a political reform mechanism than an economic instrument. The need of the hour is to address the broader issue of political economy. There are also issues like resource rich (hydro or coal) states' demanding free or concessional power that need to be debated and addressed.

In his keynote address, Dr. M. Veerappa Moily, Hon'ble Union Minister of Power welcomed all the Members of the Forum and appreciated the efforts made by the Regulators in furtherance of reforms in the power sector. The Hon'ble Minister stated that the regulations should encourage competition in the larger interest of consumers. There should be adequate regulatory incentives for encouragement of investment in the sector while at the same time the regulatory framework should ensure quality of service and protection of consumer's interests against market abuse by any utility. The Hon'ble Minister reiterated that the regulators have a very important role to play in ensuring the financial viability of the distribution companies. He expressed satisfaction over the fact that the regulators in as many as 20 States have passed tariff orders for the period 2012-13 and urged upon them to continue this effort in future in order to ensure sustainability of the sector. Apart from viability of the distribution company, fuel shortage and demand supply gap are the two other major challenges before the power sector today. The Central Government has been trying to resolve these issues. Concerted efforts are being made to facilitate capacity addition. He requested the regulators to come up with suggestions for

improvement in the sector. He stated that the Government is committed in strengthening the hands of the regulators. He requested the regulators to deliberate on the need for amendments to the Act and Policies in consultation with the stakeholders in their States and come up with suggestions. He would be open to further interaction in future with the regulators on these and other issues. He would welcome any initiative which can help the sector grow.

After the address by Hon'ble Union Minister of Power, a presentation was made by Shri Sushanta K. Chatterjee, Deputy Chief (Regulatory Affairs), CERC (copy **enclosed** at **Annexure – II**). He highlighted the issues on which there was a consensus in the Forum about the amendments to the Electricity Act, 2003. After the presentation the regulators shared their views in the light of their experiences on implementation of various provisions of the Act. The views of the Forum were noted by the Hon'ble Union Minister of Power.

In his remarks, Shri P. Uma Shankar, Secretary, Ministry of Power appreciated the role played by the Forum of Regulators (FOR) so far in evolving consensus on important issues, especially, the issue of financial viability of the distribution companies and Model Tariff Regulations for Distribution. Secretary (Power) referred to the recent grid collapse and stated that all out efforts should be made by all stakeholders to ensure that such events do not recur in the country in future. He urged upon the State Regulators to ensure that the requirements of the State Grid Code in terms of ensuring grid discipline are followed in letter and spirit by all the participants including the distribution companies. He also referred to the Power System Development Fund (PSDF) and felt that the funds lying in the PSDF should be utilized for the

objectives inter alia of safety and security of the grid, within the ambit of the Act.

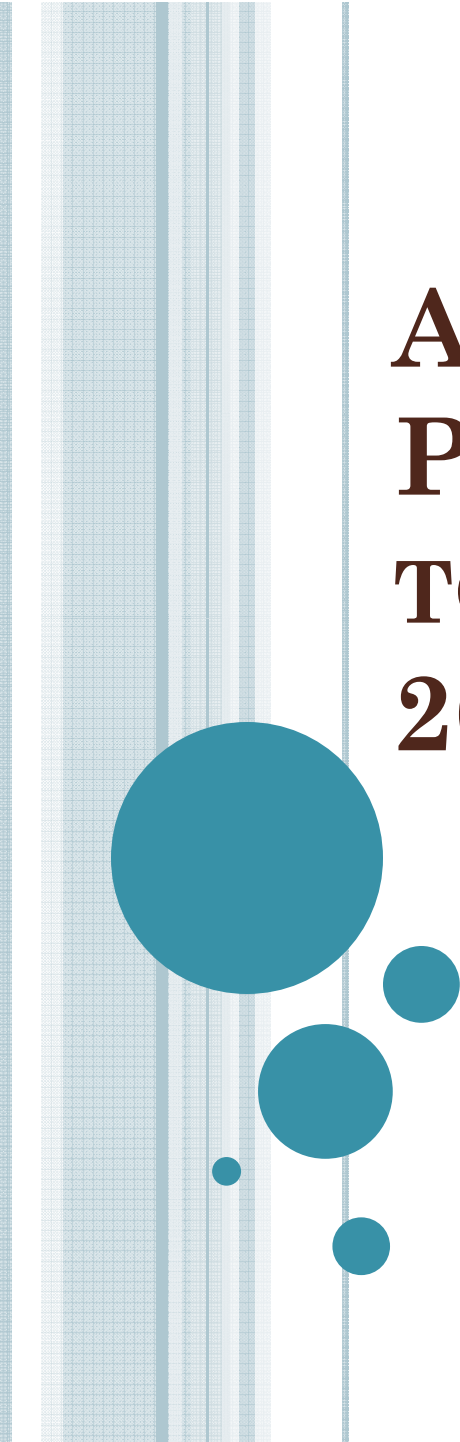
A vote of thanks was extended by Shri Rajiv Bansal, Secretary, CERC/FOR. He conveyed his sincere thanks to all the dignitaries present in the meeting. He also thanked the staff of “FOR” Secretariat for their arduous efforts at organizing the meeting.

The meeting ended with a vote of thanks to the Chair.

LIST OF PARTICIPANTS ATTENDED THE THIRTY SECOND MEETING
OF
FORUM OF REGULATORS (FOR)
HELD DURING 28TH – 29TH AUGUST, 2012 AT NEW DELHI

| S. No. | NAME | ERC |
|--------|---|--|
| 01. | Dr. Pramod Deo Chairperson | CERC – in Chair. |
| 02. | Shri A. Raghotham Rao Chairperson | APERC |
| 03. | Shri Digvijai Nath Chairperson | APSERC |
| 04. | Shri Jayanta Barkakati Chairperson | AERC |
| 05. | Shri Umesh Narayan Panjiar Chairperson | BERC |
| 06. | Shri P.D. Sudhakar Chairperson | DERC |
| 07. | Dr. P.K. Mishra Chairperson | GERC |
| 08. | Shri R.N. Prasher Chairperson | HERC |
| 09. | Shri Subhash Chander Negi Chairperson | HPERC |
| 10. | Shri S. Maria Desalphine Chairperson | J&KSERC |
| 10. | Shri Mukhtiar Singh Chairperson | JSERC |
| 11. | Dr. V.K. Garg Chairperson | JERC for Goa & All UTs except Delhi |
| 12. | Shri Himam Bihar Singh Chairperson | JERC for Manipur & Mizoram |
| 13. | Shri Rakesh Sahni Chairperson | MPERC |
| 14. | Shri V.P. Raja Chairperson | MERC |

| | | |
|-------------------------|--|----------|
| 15. | Shri Anand Kumar Chairperson | MSERC |
| 16. | Shri S.I. Longkumer Chairperson | NERC |
| 17. | Shri Satya Prakash Nanda Chairperson | OERC |
| 18. | Shri D.C. Samant Chairperson | RERC |
| 19. | Shri T.T. Dorji Chairperson | SSERC |
| 20. | Shri Manoranjan Karmarkar Chairperson | TERC |
| 21. | Shri Rajesh Awasthi Chairperson | UPERC |
| 22. | Shri Jag Mohan Lal Chairperson | UERC |
| 23. | Shri Vishwanath Hiremath Member | KERC |
| 24. | Shri Virinder Singh Member | PSERC |
| 25. | Shri K. Venugopal Member | TNERC |
| 26. | Shri Rajiv Bansal Secretary | CERC/FOR |
| 27. | Shri Sushanta K. Chatterjee Deputy Chief (RA) | CERC |
| SPECIAL INVITEES | | |
| 01. | Shri P. Uma Shankar Secretary | MOP |
| 02. | Shri Ashok Lavasa Additional Secretary | MOP |



AGENDA : PROPOSED AMENDMENTS TO ELECTRICITY ACT, 2003

*32nd Meeting of Forum of Regulators
28th-29th August 2012*

In this presentation...

- Proposed Amendments to Electricity Act, 2003
 - Background
 - General
 - Relating to Renewable Energy

Background- Electricity Act: Proposed Amendments

- Ministry of Power constituted a Committee for examination and recommendation on the proposed amendments in the Electricity Act, 2003.
- The Committee proposed amendments in Sections {11(1),14,62(1),63,64,66,70(4,5,15),79(1),86(1),89(6),90(2)(g),153,176(2),181(2)}.
- Based on the experience of implementation of Act and also with respect to the amendments proposed by the Ministry of Power, FOR has recommended some changes in the Act.

PROPOSED AMENDMENT GENERAL

9/18/2012

SECTION 11

9/18/2012

Section 11(1)- Directions to generating companies

| Proposed Provision- MOP | FOR Recommendation |
|---|--|
| <p>The Appropriate Government may specify that a generating company shall, in extraordinary circumstances operate and maintain any generating station in accordance with the direction of that Government</p> <p>Explanation. For the purpose of this section, the expression “extraordinary circumstances” means circumstances arising out of threat to security of the State, public order or a natural calamity or such other circumstances arising in the public interest <u>except for the implementation of Open Access as envisaged in the Act.</u></p> | <p>-The expression “extraordinary circumstances” in section 11 should be modified to delete the words ‘public order’ and ‘such other circumstances’.</p> <p>-A proviso under Section11 should be added to stipulate that the direction under this provision cannot be given by the Appropriate Government to deny open access.</p> |

TARIFF DETERMINATION

9/18/2012

Section 62(1)- Determination of tariff

MOP

Proposed Provision-MOP

The Appropriate Commission shall determine the tariff in accordance with provisions of this Act for-

~~(a) supply of electricity by a generating company to a distribution licensee:~~

~~Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement entered into between a generating company and licensee or between licensees, for a period not exceeding one year to ensure reasonable price of electricity;~~

~~(b)~~ (a) transmission of electricity;

~~(c)~~ (b) wheeling of electricity

~~(d)~~ (c) retail sale of electricity.

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

Section 63- Determination of tariff by bidding process MOP

Proposed Provision-MOP

~~Notwithstanding anything contained in section 62~~The Appropriate Commission shall adopt the tariff if ~~such tariff has been~~ determined through transparent process of bidding in accordance with the guidelines **and policies** issued by the Central Government **for supply of electricity by a generating company to a licensee;**

Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement entered into between a generating company and licensee or between licensees, for a period not exceeding one year to ensure reasonable price of electricity;

FOR RECOMMENDATION

- Given the experience of competitive bidding processes in different states, both the options of tariff determination - namely, the options of Section 62 and Section 63 – should exist as they are in the existing Act, at least till we have fuel shortages.
- No amendment should be made to the provisions of Section 62 and Section 63.

Section 64 (1) Procedure for tariff order

MOP

Proposed Provision-MOP

(1) An application for determination of tariff under section 62 shall be made by a generating company or licensee in such a manner and accompanied by such fee, as may be determined by regulations.

Provided that Every State Commission has to ensure that Annual Performance Review, true-up of the past expenses and Annual Revenue Requirement (ARR) and tariff determination is conducted on annual basis as per the time schedule specified in the regulation. In the event of delay in filing of the ARR, truing and Annual Performance Review, one month beyond the scheduled date of submission of the petition, the Appropriate Commission must initiate suo-moto proceedings for tariff determination in accordance with section 64 of the Act and Tariff Policy. The Appropriate Commission shall ensure automatic pass through for any increase in the power purchase cost arising out of rise in cost of fuel.

(2) Every applicant shall publish.....

64 (1) - Procedure for tariff order

FOR recommendation

FOR Recommendation

An application for determination of tariff under section 62 shall be made by a generating company or licensee in such manner and accompanied by such fee, as may be determined by regulations.

Provided further that the Appropriate Commission shall initiate suo motu proceedings for determination of tariff in case of delay, of one month beyond the date as may be specified by regulations, in filing the application by the generating company or the licensee as the case may be.

64 (3) -Procedure for tariff order

FOR recommendation

FOR Recommendation

The Appropriate Commission shall, within one hundred and twenty days from receipt of an application or initiation of suo motu proceedings under sub-section (1) and after considering all suggestions and objections received from the public,-

(a).....

62 (4) -Determination of tariff

FOR recommendation

| Existing Provision | Proposed Provision |
|---|---|
| No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified. | No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly <u>fuel and power purchase price adjustment which shall be</u> permitted under the terms of any <u>the</u> fuel <u>and power purchase cost adjustment</u> surcharge formula as may be <u>as</u> specified <u>by the Appropriate Commission.</u> |

PERFORMANCE OF REGULATORS

9/18/2012

New Provision-Section 89(6): Performance Review of Regulatory Commissions

Proposed Provision-MOP

The performance of the Regulatory Commissions shall be reviewed annually by a multi-disciplinary body on the basis of performance evaluation matrix and report to the Appropriate Government for necessary action. The Constitution of the body for the Central Commission shall be as under-

1. Member (energy), Planning Commission- Chairperson
2. Member Technical, APTEL- Member
3. Secretary (Power), GOI- Convener
4. Three outside experts to be nominated by the Central Government - Members

Constitution of the body for State Commission shall be as under-

1. Chief Secretary of the State Government/UTs – Chairperson
2. Chairperson, CEA – Member
3. Joint Secretary (Power) GOI or his representative - Member
4. Secretary, FOR- Member
5. Three outside experts to be nominated by the Central Government- Members

The Central Government shall devise the performance evaluation matrix and constitute a Monitoring Committee for the purpose through appropriate rule.

New Provision- Section 90(2) (g)

MOP

Proposed Provision-MOP

(g) has been rated below par/ unsatisfactory after annual review of performance by the multi -disciplinary body constituted for the purpose.

FOR RECOMMENDATION

- Proposal for review of performance by a Govt. Committee goes against the spirit of ‘distancing of government from regulations’.
- Regulatory Commission is a collegiate body. Hence, non-performance of the Regulatory Commission can not be a ground for removal of an individual member.
- Peer review of performance of regulators should be done by FOR.
- FOR can be strengthened through rules.

EMPOWERMENT OF REGULATORY COMMISSIONS

Background

- Powers to enforce orders
 - Section 142: Punishment for non-compliance of directions by Appropriate Commission.
 - Limited Scope. Penalty of Rs 1 lakh.
 - Need to empower the Regulatory Commissions to enforce their orders

142 - Punishment for non compliance of directions by Appropriate Commission

FOR Recommendation

(Punishment for non-compliance of orders and directions by Appropriate Commission)- In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any order or direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.

All orders and directions, interim or final, passed by the Commission shall be enforceable in law as if it were a decree passed by a Civil Court.

The Appropriate Commission shall be entitled to take such assistance from the police and other authorities required to effectively enforce the orders and directions given by it.



AMENDMENTS TO OTHER PROVISIONS

14- Grant of Licence (sixth proviso)

| Proposed Provision - MOP | FOR Recommendation |
|---|--|
| <p>.....Provided also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area <u>after defining their roles and responsibilities</u>---</p> <p>-</p> | <p>This tantamounts to stipulating that in future license will be given only for supply business without the requirement of having distribution network by such licensee. In other words, the future supply licensees will have to depend on the network of the incumbent distribution licensee for supply of power. Such a provision does not fully address the issue of conflict of interest as is evident in the existing structure of open access.</p> <p>This issue needs further deliberation as it involves substantial change in the market design for the electricity sector.</p> |

SECTION 14- Grant of Licence (seventh proviso)

| Existing Provision | Proposed Provision |
|---|---|
| Provided also that in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person, that person shall not be required to obtain any separate licence from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply: | Provided also that in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person <u>including a franchisee</u> , that person shall not be required to obtain any separate licence from the concerned State Commission <u>and shall perform such functions of the distribution licensee as may be mutually agreed between the distribution licensee and that person subject to the condition that the distribution licensee shall have the overall responsibility and accountability</u> and such distribution licensee shall be responsible for distribution of electricity in his area of supply: |

15- Procedure for grant of licence

| Existing Provision | Proposed Provision |
|---|--|
| (8) A licence shall continue to be in force for a period of twenty-five years unless such licence is revoked. | (8) A licence shall continue to be in force for a period of twenty- five years unless such licence is <u>renewed or</u> revoked. |

42 (1)- Duties of distribution licensees and open access

Proposed Provision

(1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.

(a) Every distribution licensee shall prepare in advance, with the approval of the Appropriate Commission, a plan for capital investment and power procurement.

42 (3)- Duties of distribution licensees and open access

Proposed Provision

Where any person, whose premises are situated within the area of supply of a distribution licensee, ~~(not being a local authority engaged in the business of distribution of electricity before the appointed date)~~ requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access .

51- Other businesses of distribution licensees

Proposed Provision

A distribution licensee may, with prior intimation to the Appropriate Commission, engage in any other

Provided further that the distribution licensee shall maintain separate accounts for each such business undertaking to ensure that distribution business neither subsidises in any way such business undertaking nor encumbers its distribution assets in any way to support such business.

~~Provided also that nothing contained in this section shall apply to a local authority engaged, before the commencement of this Act, in the business of distribution of electricity.~~

56 (1)- Disconnection of supply in default of payment

Proposed Provision

(1) Where any person, except where the person is prepared to take the supply through a pre-payment meter, neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

.....

134- Payment of compensation or damages on transfer

Proposed Provision

Payment of compensation or damages on transfer.- Notwithstanding anything contained in the Industrial Disputes Act, 1947 or any other law for the time being in force and except for the provisions made in this Act, the transfer of the employment of the officers and employees referred to in subsection (1) of section 133 shall not entitle such officers and employees to any compensation or damages under this Act, or any other Central or State law, save as provided in the transfer scheme.

(a) Reorganization of State Government Electricity Department.- The provision of Sections 131 to 134 shall apply mutatis mutandis in case of reorganization of the State Government Electricity Department engaged in generation, transmission or distribution of electricity prior to the enactment of the Electricity Act 2003.

172 (a) - Transitional Provisions

Proposed Provision

(a) a State Electricity Board constituted under the repealed laws and State Government Electricity Department, engaged in generation, transmission or distribution of electricity prior to the enactment of the Electricity Act 2003, shall be deemed to be the State Transmission Utility and a licensee under the provisions of this Act for a period of one year from the appointed date or such earlier date as the State Government may notify, and shall perform the duties and functions of the State Transmission Utility and a licensee in accordance with the provisions of this Act and rules and regulations made there under:

.....

172 (c) - Transitional Provisions

Proposed Provision

- (c) the undertaking of the State Electricity Boards established under section 5 of the Electricity (Supply) Act, 1948 and State Government Electricity Department, engaged in generation, transmission or distribution of electricity prior to the enactment of the Electricity Act 2003 may after the expiry of the period specified in clause (a) be transferred in accordance with the provisions of Part XIII of this Act;
- (d)

PROPOSED AMENDMENT FOR RENEWABLE ENERGY

New Definitions Proposed

Proposed to be added

“Renewable sources of energy” means energy sources which are renewable on regular basis and whose renewal rate is relatively rapid to consider availability over an indefinite period of time, and includes among others, biomass, wind , geothermal, ocean energy, small hydropower, solar, waste to energy and other emerging renewable energy sources so specified by the Central Government;

“Renewable Energy Certificate” means a market based instrument that represents proof of renewable energy generated and the attributes of which shall be specified by the Central Commission;

New Definitions Proposed

Proposed to be added

“Obligated entity” means the distribution licensee or the consumer owning the Captive Power Plant or the generating station to the extent of its auxiliary consumption or the open access consumer, as the case may be, which is mandated under Section 86 of the Act, to purchase electricity from or any market instrument representing renewable energy sources.

66 -Development of market

| Existing Provision | Proposed Provision |
|---|--|
| The Appropriate Commission shall endeavour to promote the development of a market (including trading) in power in such manner as may be specified and shall be guided by the National Electricity Policy referred to in section 3 in this regard. | The Appropriate Commission shall endeavour to promote the development of a market (including trading <u>and forward market</u>) in <u>electricity</u> power including <u>from renewable energy sources</u> in such a manner as may be specified and shall be guided by the National Electricity Policy referred to in Section 3 in this regard. |

86 (1) (e) -Functions of State Commission

Proposed Provision

(e) promote generation (including cogeneration) of electricity from renewable sources of energy ~~by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;~~

(i) by providing suitable measures for connectivity with the grid; and sale of electricity to any person;

(ii) by creating market based instruments such as renewable energy certificates, and also specify;

(iii) for purchase by the obligated entities, of electricity from such sources or any instrument representing generation of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee, in accordance with the provisions of the National Electricity Policy and Tariff Policy referred to in Section 3 in this regard;

(iv) means for ensuring compliance of renewable purchase obligation including by way of levy of penalty for non-compliance of such obligation without prejudice to any other penalty under this Act.

Thank You

Competition Act, 2002

Section 39

"39. Execution of orders of Commission imposing monetary penalty.-

(1)If a person fails to pay any monetary penalty imposed on him under this Act, the Commission shall proceed to recover such penalty in such manner as may be specified by the regulations.

(2)In a case where the Commission is of the opinion that it would be expedient to recover the penalty imposed under this Act in accordance with the provisions of the Income-Tax Act, 1961 (43 of 1961), it may make a reference to this effect to the concerned income tax authority under that Act for recovery of the penalty as tax due under the said Act."

Competition Act, 2002

Section 42

"42. Contravention of orders of Commission-

(1)The Commission may cause an inquiry to be made into compliance of its orders or directions made in exercise of its powers under the Act.

(2)If any person, without reasonable clause, fails to comply with the orders or directions of the Commission issued under sections 27, 28, 31, 32, 33, 42A and 43A of the Act, he shall be punishable with fine which may extend to rupees one lakh for each day during which such non-compliance occurs, subject to a maximum of rupees ten crore, as the Commission may determine.

(3) If any person does not comply with the orders or directions issued, or fails to pay the fine imposed under sub-section (2), he shall, without prejudice to any proceeding under section 39, be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to rupees twenty-five crore, or with both, as the Chief Metropolitan Magistrate, Delhi may deem fit:

Provided that the Chief Metropolitan Magistrate, Delhi shall not take cognizance of any offence under this section save on a complaint filed by the Commission or any of its officers authorized by it.]

State Reforms Act

Orissa Reforms Act

“All orders and directions, interim or final, passed by the Commission shall be enforceable in law as if it were a decree passed by a Civil Court.

The Appropriate Commission shall be entitled to take such assistance from the police and other authorities required to effectively enforce the orders and directions given by it.”



PROPOSED AMENDMENT IN ELECTRICITY ACT 2003 BY MOP

Section 11 (1)

| Existing Provision | Proposed Provision-MOP |
|--|---|
| <p>The Appropriate Government may specify that a generating company shall, in extraordinary circumstances operate and maintain any generating station in accordance with the direction of that Government</p> <p>Explanation. For the purpose of this section, the expression “extraordinary circumstances” means circumstances arising out of threat to security of the State, public order or a natural calamity or such other circumstances arising in the public interest.</p> | <p>The Appropriate Government may specify that a generating company shall, in extraordinary circumstances operate and maintain any generating station in accordance with the direction of that Government</p> <p>Explanation. For the purpose of this section, the expression “extraordinary circumstances” means circumstances arising out of threat to security of the State, public order or a natural calamity or such other circumstances arising in the public interest <u>except for the implementation of Open Access as envisaged in the Act.</u></p> |

Section 14

| Existing Provision | Proposed Provision-MOP |
|--|--|
|Provided also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area,..... |Provided also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area <u>after defining their roles and responsibilities</u> ---- |

Section 62(1)

Proposed Provision-MOP

The Appropriate Commission shall determine the tariff in accordance with provisions of this Act for-

- ~~(a) supply of electricity by a generating company to a distribution licensee:~~
~~Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement entered into between a generating company and licensee or between licensees, for a period not exceeding one year to ensure reasonable price of electricity;~~
- ~~(b)~~ (a) transmission of electricity;
- ~~(c)~~ (b) wheeling of electricity
- ~~(d)~~ (c) retail sale of electricity.

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

Section 63

Proposed Provision-MOP

~~Notwithstanding anything contained in section 62~~The Appropriate Commission shall adopt the tariff ~~if such tariff has been~~ determined through transparent process of bidding in accordance with the guidelines **and policies** issued by the Central Government **for supply of electricity by a generating company to a licensee;**

Provided that the tariff of the generating and transmission projects who have entered into agreement with the distribution companies for supply or transmission of electricity under the cost plus tariff prior to notification of the Tariff Policy or the projects exempted from tariff based bidding under the Tariff Policy shall continue to be determined by the Appropriate Commission.

Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement entered into between a generating company and licensee or between licensees, for a period not exceeding one year to ensure reasonable price of electricity;

Section 64

Proposed Provision-MOP

(1) An application for determination of tariff under section 62 shall be made by a generating company or licensee in such a manner and accompanied by such fee, as may be determined by regulations.

Provided that Every State Commission has to ensure that Annual Performance Review, true-up of the past expenses and Annual Revenue Requirement (ARR) and tariff determination is conducted on annual basis as per the time schedule specified in the regulation. In the event of delay in filing of the ARR, truing and Annual Performance Review, one month beyond the scheduled date of submission of the petition, the Appropriate Commission must initiate suo-moto proceedings for tariff determination in accordance with section 64 of the Act and Tariff Policy. The Appropriate Commission shall ensure automatic pass through for any increase in the power purchase cost arising out of rise in cost of fuel.

(2) Every applicant shall publish.....

Section 66

Proposed Provision-MOP

The Appropriate Commission shall endeavour to promote the development of a market (including trading and forward market) in power in such manner as may be specified and shall be guided by the National Electricity Policy referred to in section 3 in this regard and other directions issued by the public interest from time to time.

Section 70(4)

| Existing Provision | Proposed Provision-MOP |
|--|------------------------|
| The Central Government may appoint any person, eligible to be appointed as Member of the Authority, as the Chairperson of the Authority, or, designate one of the full time Members as the Chairperson of the Authority. | To be omitted. |

Section 70(5)

Proposed Provision-MOP

~~The Members of the Authority shall be appointed~~ The Central Government may appoint the Chairperson and Members of the Authority from amongst persons of ability, integrity and standing who have knowledge of, and adequate experience and capacity in, dealing with problems relating to engineering, finance, commerce, economics or industrial matters, and at least one Member shall be appointed from each of the following categories, namely:-

- a. engineering with specialization in design, construction, operation and maintenance of generating stations;
- b. engineering with specialization in transmission and supply of electricity;
- c. applied research in the field of electricity;
- d. applied economics, accounting, commerce or finance

Section 70(15)

Proposed Provision-MOP

The eligibility conditions for appointment and other terms and conditions of service of the Chairperson and Members of the Authority including, subject to the provisions of sub-section (6), their terms of office shall be such as the Central Government may prescribe.

New Provision- Section 79(1)

Proposed Provision-MOP

(k) to regulate coal prices and its transportation.

~~(k)~~ (I) to discharge such other functions as may be assigned under this Act

New Provision- Section 86(1)

Proposed Provision-MOP

(e) Promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from ~~such sources~~ renewable sources of energy, a percentage of the total consumption of electricity in the area of a distribution licensee.

New Provision- Section 86(1)

Proposed Provision-MOP

(j) fix trading margin in the intra-State trading of electricity, ~~if considered, necessary; and~~ irrespective of final destination of the electricity;

(k) to define the roles and responsibilities of the distribution licensees in case of multiple licensees in the same area; and

~~(k)~~ (I) to discharge such other functions as may be assigned under this Act.

New Provision-Section 89(6): Performance Review of Regulatory Commissions

Proposed Provision-MOP

The performance of the Regulatory Commissions shall be reviewed annually by a multi-disciplinary body on the basis of performance evaluation matrix and report to the Appropriate Government for necessary action. The Constitution of the body for the Central Commission shall be as under-

1. Member (energy), Planning Commission- Chairperson
2. Member Technical, APTEL- Member
3. Secretary (Power), GOI- Convener
4. Three outside experts to be nominated by the Central Government - Members

Constitution of the body for State Commission shall be as under-

1. Chief Secretary of the State Government/UTs – Chairperson
2. Chairperson, CEA – Member
3. Joint Secretary (Power) GOI or his representative - Member
4. Secretary, FOR- Member
5. Three outside experts to be nominated by the Central Government- Members

The Central Government shall devise the performance evaluation matrix and constitute a Monitoring Committee for the purpose through appropriate rule.

New Provision- Section 90(2) (g)

Proposed Provision-MOP

(g) has been rated below par/ unsatisfactory after annual review of performance by the multi -disciplinary body constituted for the purpose.

New Provision- Section 153

Proposed Provision-MOP

The State Government may, for the purposed of providing speedy trial of offences referred to in sections 135 to 140 and section 150 by notification in the Official gazette, constitute as many Special courts and mobile Police Stations as may be necessary for such area or areas, as may be specified in the notification.

(2) A special court shall consist.....

New Provision- Section 176 (2)

Proposed Provision-MOP

(h) Eligibility conditions for appointment and other terms and conditions of service of the Chairperson and Members of the Authority under sub-section (15) of section 70.

.....

(z) to devise a matrix and constitute Monitoring Committee for the performance evaluation of CERC and SERCs.

(za) conferment of powers of Department of the Central Government to the Chairperson, APTEL.

~~(z)~~ (zb) any other matter which is required to be, or may be, prescribed.

New Provision- Section 181 (2)

Proposed Provision-MOP

(zp) to define the roles and responsibilities of the distribution licensees in case of multiple licensees in the same area.

~~(zp)~~ (zq) any other matter which is required to be, or may be, prescribed.

New Provision- Regarding Energy Sector Regulator

Amendments in all applicable Acts and Rules

Proposed Provision-MOP

Creation of Energy Sector Regulator may be made through legislation to ensure CERC additional functions till the time energy sector regulator is set up.