

MINUTES OF THE 73rd MEETING OF THE
FORUM OF REGULATORS (FOR)
(Through Video Conferencing)

Day/Date: Monday, 21st & 29th September, 2020

The meeting was chaired by Shri P.K.Pujari, Chairperson, Central Electricity Regulatory Commission (CERC) and Forum of Regulators (FOR). He welcomed all the members of the Forum to the 73rd meeting of the FOR being conducted on virtual mode. He welcomed Shri Lokesh Jha who had taken charge as Chairperson of newly formed Joint Electricity Regulatory Commission for J&K and Ladakh and Shri D.K.Sharma who had taken charge as Chairperson of Himachal Pradesh ERC. The list of participants is at **Appendix - I**.

Chairperson, CERC apprised the Forum that the meeting was convened at a short notice at the request of the FOR members to discuss Draft Electricity (Rights of consumers) Rules 2020, proposed by the Ministry of Power. In addition, FOR was required to take a view on the report of the Committee on the membership fees of FOR.

Thereafter, the Forum took up the agenda items for consideration.

AGENDA ITEM NO.1: CONFIRMATION OF MINUTES OF 72nd MEETING OF FORUM OF REGULATORS

The Forum considered and endorsed the minutes of the 72nd Meeting of FOR which was held on 17th August 2020.

AGENDA ITEM NO.2: MEMBERSHIP FEES OF FORUM OF REGULATORS FOR FY 2020-21 & FY 2021-22

Deputy Chief (RA), CERC apprised the members that as per the decision taken in 71st FOR meeting, a Working Group was constituted with the Chairperson, UPERC as the Chairman and Chairpersons/Members from Assam ERC, Himachal

Pradesh ERC, Odisha ERC and Karnataka ERC as members and Chief (Regulatory Affairs), CERC as the Convenor to examine the issue of membership fees and suggest a suitable fee structure.

Chairperson, UPERC and Chairman of the Working Group informed the Forum that with due regard to the nature of expenses of FOR (comprising primarily meeting expenses, manpower/secretariat expenses, and expenses on training etc), the Working Group felt that segregation of budget under fixed and variable components might not be desirable. Instead, the Group has recommended reduction of membership fee from Rs. 6 lacs to Rs. 4 lacs for a period of two years viz. FY 2020-21 & FY 2021-22. As regards differential fees for members based on consumer base and geographical location, the Working Group felt that since each member has equal voice in the affairs of FOR, differential membership fee based on such factors shall not be appropriate.

After deliberations, the Forum approved the recommendations of the Working Group and also endorsed the revised membership fees of Rs. 4 lacs per member for two years (FY 2020-21 and FY 2021-22).

AGENDA ITEM NO.3: BUDGET FOR FY 2020-21 & FY 2021-22

Based on the reduced membership fee of Rs. 4 lacs, FOR Secretariat presented the revised budget for the FY 2020-21 and FY 2021-22.

With regard to the e court tool to be developed by NIC, Deputy Chief (RA), CERC informed the Forum that though generally NIC insists for 100% advance for the works, FOR Secretariat is proposing to make the payments in the ratio of 60:40 in the current financial year 2020-21 and in the next financial year 2021-22. However, the payment is required to be made in advance. The Forum agreed to the proposal.

The Forum approved the revised budget for FY 2020-21 and decided to review the budget for FY 2021-22 before the close of the financial year of 2020-21.

AGENDA ITEM NO.4: DRAFT ELECTRICITY (RIGHTS OF THE CONSUMERS) RULES 2020 ISSUED BY THE MINISTRY OF POWER

The FOR discussed the Draft Electricity (Rights of Consumers) Rules, 2020 issued by the Ministry of Power. There was consensus that the Act provides for specific powers to the regulatory commissions to frame regulations on matters which the draft rules seek to cover and therefore, framing of the proposed rules by the Ministry of Power should be avoided, as it would not only create confusion but also would not be in line with the letter and spirit of the Act.

After deliberation it was decided that response of FOR on the proposed Rules shall be drafted by a Committee of FOR members chaired by Chairperson of DERC and comprising of Chairpersons of UPERC, OERC, TERC, WBERC and GERC.

The Committee of the FOR met on 14th and 17th September and prepared the draft response. The FOR took up for discussion the draft response prepared by the Committee in the meeting held on 29th September 2020.

The FOR was of the consensus view that the Act has entrusted specific responsibilities in regard to rights of consumers to the SERCs/JERCs and many of the ERCs have already notified such Regulations and in some cases, with much more progressive provisions seeking to protect consumer interests. and therefore, framing of Rule by the Ministry of Power in this context might not be appropriate and it would be best to leave it to the concerned SERCs/JERCs to frame State specific regulations. The Forum also felt that given the differentiations in States in terms of economic development and consumer base, it would not be advisable to frame a uniform Rule for all States/Union Territories. Each State /UT should frame Regulations with due regard to the specific conditions prevalent in its geographies. Further, according to the Act, one of the primary objectives of the Forum of Regulators is to bringing harmonization in Regulations to the extent possible. The Forum has been discharging this responsibility through evolving guidelines and model regulations wherever felt necessary. In the context of consumer protection, the Forum has already framed Model Regulations, inter-alia, on Standards of

Performance for Distribution Licensees, Model Supply Code, Consumer protection including Consumer Grievance Redressal Forum and Ombudsman.

The Forum therefore unanimously felt that the Central Government should not frame Rules in this regard. Rather, contents of the Draft Rules could ideally be considered by the Forum to suitably modify and update the guidelines and model regulations, for the States/UTs to adapt or adopt with appropriate modifications as may be required to suit the conditions in their States/UTs.

Accordingly, FOR resolved that response as above along with the legal position as per **Appendix – II** be sent on behalf of FOR to the Ministry of Power.

AGENDA ITEM NO.5: ANY OTHER ITEMS

With regard to the proposed Global Regulatory perspectives program for Chairpersons/Members of SERCs, members of the Forum suggested that the program may be held during November/December 2021 and IITK may also explore other global venues for the program.

Accordingly, it was decided that FOR Secretariat may take up the matter with IITK.

CONCLUSION:

At the end of the meeting, Secretary, FOR/CERC thanked everyone for participation and the officials and staff of the FOR Secretariat for their efforts in organizing the virtual meeting.

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

APPENDIX – I

LIST OF PARTICIPANTS OF THE 73RD MEETING

OF

FORUM OF REGULATORS (FOR)

HELD ON 21ST AND 29TH SEPTEMBER, 2020.

S. No.	NAME	ERC
01.	Shri P.K. Pujari Chairperson	CERC / FOR – in Chair.
02.	Shri Subhash Chandra Das Chairperson	AERC
03.	Justice (Shri) Satyendra Singh Chauhan Chairperson	DERC
04.	Shri Anand Kumar Chairperson	GERC
05.	Shri Depinder Singh Dhesi Chairperson	HERC
06.	Er. D.K. Sharma Chairperson	HPERC
07.	Shri M.K. Goel Chairperson	JERC (State of Goa & UTs)
08.	Shri Lokesh Dutt Jha Chairperson	JERC for UTs of J&K and Ladakh
09.	Shri Ngangom Sarat Singh Chairperson	JERC for Manipur& Mizoram
10.	Shri Shambhu Dayal Meena Chairperson	KERC
11.	Shri Preman Dinaraj Chairperson	KSERC
12.	Shri S.P.S. Parihar Chairperson	MPERC
13.	Shri P. W. Ingty Chairperson	MSERC
14.	Shri U.N. Behera Chairperson	OERC

15.	Ms. Kusumjit Sidhu Chairperson	PSERC
16.	Shri Shreemat Pandey Chairperson	RERC
17.	Shri M. Chandrasekar Chairperson	TNERC
18.	Shri D. Radhakrishna Chairperson	TERC
19.	Shri Raj Pratap Singh Chairperson	UPERC
20.	Shri D.P. Gairola Officiating Chairperson/Member (Law)	UERC
21.	Shri Sutirtha Bhattacharya Chairperson	WBERC
22.	Shri Bhanu Pratap Singh Member	HPERC
23.	Shri Rabindra Narayan Singh Member	JSERC
24.	Shri M.D. Ravi Member	KERC
25.	Shri I.M. Bohari Member	MERC
26.	Shri Sanoj Kumar Jha Secretary	CERC
27.	Dr. Sushanta K. Chatterjee Chief (RA)	CERC
28.	Ms. Rashmi S. Nair Dy. Chief (RA)	CERC
SPECIAL INVITEES		
29.	Shri H.T. Gandhi Chief (Fin.)	CERC
30.	Shri Vijay Menghani Chief (Engg.)	CERC

APPENDIX - II

A note on the legal position in the context of the Draft Rules circulated by the Ministry of Power - Forum of Regulators (FOR)

Appropriate Government has been defined under Section 2, sub-section (5) of the Electricity Act 2003 (Act). Further, the area of the operation of the Central Government and State Government has been demarcated in Clauses (i), (ii), (iii) and (iv) under sub section (5) (a) and Clause (5)(b) of Section 2 respectively.

The Central Government has the jurisdiction under Section 176 (1) of the Act to make Rules on the subject matters covered under Section 2 (5) (a) (i) to (iv) whereas the State Governments have the jurisdiction under Section 180(1) of the Act to make Rules on the subjects covered under Section 2(5)(b) of the Act.

The power has been conferred upon the State Commissions to make regulations under Section 181 of the Act. The regulations have to be framed consistent with the provisions of the Act and the Rules generally to carry out the provisions of this Act. Section 181 sub-section (2) provides the subject matter in respect of which the State Commission is empowered to exercise its jurisdiction and frame regulation on the subject matter under clauses (r), (s), (x) and (za) of sub-section (2) of Section 181. Section 176 does not cover the aforesaid subjects.

It is a settled principle of law through various judgements of the Supreme Court that if the law requires to do a thing in a particular manner, then the same thing should be done in that manner only and other modes are prohibited. Therefore, the Central Government cannot frame the proposed draft Rules in respect of the subjects which are within the jurisdiction of the State Commissions. The power has been conferred upon the State Commissions to frame regulations in respect of consumers' rights which exercise has already been undertaken by the respective State Commissions.

Even assuming that the power can be exercised under Section 176 (2) (z) which is a general clause wherein it has been provided that any other matter which is required to be, or may be, prescribed, the powers under this general clause cannot be exercised by the Central Government to nullify any specific provisions of the Act or to impinge upon the jurisdiction of the State Commission under Section 181 of the Act.

The subject matters covered in the draft Rules proposed by the Central Government pertain to provisions of Sections 42 (5), 50 and 57 of the Act. Under these sections, exclusive powers have been conferred upon the State Commissions to frame regulations as contemplated under Section 181 of the Act.
