

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

Date : 20th – 21st April, 2006

List of Participants : At Annexure-I (enclosed).

Shri A.K.Basu, Chairperson CERC and FOR welcomed Shri Sushil Kumar Shinde, Hon'ble Minister of Power and briefed him about the various important achievements of the Electricity Regulatory Commissions in the country.

2. The meeting was inaugurated by the Hon'ble Minister of Power. In his inaugural address the Minister applauded the Regulators for having taken crucial decisions and passed important orders in furthering the reforms in the electricity sector. He said, "The gigantic task of reforms in power sector including the targets set in terms of generation and transmission capacity addition can not be achieved without the active cooperation of the Regulators". Balancing consumer's interests and investor's return is the sensitive role of the Regulators, he noted. During the last several years, CERC as well as SERCs have provided a credible regulatory framework in the electricity sector, through various orders like Terms & Conditions of Tariff, Grid Code, Availability Based Tariff, various Retail Tariff Orders etc. The Minister appreciated that the regulatory mechanism has responded to the challenges of the changing environment unfolded by the Electricity Act, 2003. Regulations on Open Access have been issued by the Central and State Regulators. The institutions of Consumer Grievances Redressal Forum and Ombudsman have also been operationalised in several States. The Minister assured that the Central Government was fully committed towards ensuring the independence and autonomy of the regulatory mechanism so that it can operate on the professional lines.

3. The Minister's speech was followed by the address of Shri R.V. Shahi, Secretary (Power), Government of India. Shri Shahi said that the priorities of the Regulators in countries where there are only marginal capacity addition requirements are different from those in the countries like India where capacity addition is a big challenge. The Government has set the target of doubling the existing generation capacity every 10 years in the next 30 years. To this is the added need for associated transmission and distribution network to evacuate such power. The task is gigantic and it is in this context that role of the Regulatory Commissions in the electricity sector assumes significance.

4. Shri Shahi said that he would take this opportunity to raise certain issues for consideration by the Regulators. The issues are :-

- Harnessing of surplus captive power generation;
- Open Access in distribution;
- Rising cost of trading power;
- Introduction of Availability Based Tariff (ABT) at State level;
- Multiple Year Tariff (MYT) Framework for greater predictability and certainty;
- Adverse effect of regulatory assets;
- Mitigation of shortages.

Shri Shahi requested the Regulators to deliberate on these issues and evolve consensus on resolving them.

5. The address of Shri Shahi was followed by brief presentation by Shri A.K. Sachan, Secretary, CERC on the roles and achievements of CERC and SERCs. Besides the functions of Regulatory Commissions under the Electricity Act, 2003, Shri Sachan explained the transparent procedure for issuing regulations and orders by the ERCs in the country. The Minister was also apprised of the landmark regulations, several important orders issued so far and the impact of CERC and SERCs norms.

Constraints faced by the Regulatory Commissions in discharge of their responsibilities were also highlighted.

6. Following the presentation of Shri Sachan, Shri A.K. Basu, Chairperson, CERC highlighted some of the issues stymieing the initiative of Regulatory Commissions. For instance, some States are endangering grid by overdrawals. The States are not only overdrawing from the grid but also not paying the UI charges. The Central Commission has already written to the Ministry of Power that security of payment of UI charges as well as other charge dues, should be ensured through central appropriation. Shri Basu also highlighted that there was the need for Coal/Gas Regulator in the country to ensure that the efficiency gains effected through the electricity regulations were not negated by the unregulated fuel price hike. He also said that the surcharge formula in the Tariff Policy had given rise to wide variation in the amount of surcharge across the States. The surcharge calculated by this method ranges from (-) 69 paise in some cases to (+) 189 paise in others. He reiterated that the powers to determine surcharge vested with the Regulatory Commission under the Act and that it would not be advisable to prescribe a uniform formula for adoption by all States across the board.

7. Shri R.V. Shahi, Secretary (Power) responded to some of the issues raised by Shri A.K. Basu. On the issue of non-payment of UI charges, Shri Shahi said that he would look into the suggestions of the Central Commission. He further informed the Forum that the Petroleum Regulatory Board Bill had already been passed, which facilitated setting up of a Regulatory Authority in the petroleum and natural gas sector. Also in a recent meeting of the Energy Coordination Committee, headed by the Hon'ble Prime Minister, the proposal of setting up of Regulatory Authority for coal sector was also approved, Shri Shahi added.

8. After the clarification by Shri Shahi, the floor was opened for interaction of the Minister with the Regulators. Some of the important issues raised by the Regulators were as under :

- Consumer Grievance Redressal Forum Rule, as framed by the Government of India runs counter to the guidelines issued in this regard by some State Commissions. This has already been brought to the notice of the Ministry of Power with the request to make suitable amendments in the rules as the powers to frame guidelines on the subject vested with the State Commissions under the Act. Secretary (Power) informed that this issue was already under consideration of the Ministry and suitable amendments would be issued shortly.
- The Maharashtra Electricity Regulatory Commission (MERC) Chairperson said that in a judgement given by the Hon'ble Bombay High Court (which has since been upheld by the Hon'ble Supreme Court), it had been observed that a captive generating plant needed licence for supplying electricity to consumers. He requested the Minister of Power to intervene and said that a lot of confusion had been created as a result of this judgement. The Secretary (Power) requested the MERC Chairperson to send him detailed note in this regard for further action.
- On the issue of rising cost of traded power, it was highlighted that there was practical problem in exercising the power under section 86 (1)(b) of the Act. Quite often even after restrictions were put by the SERCs for the distribution licensees for procurement of power beyond a specified limit, they resorted to procurement at a very high cost at the instance of State Governments. The Minister of Power was requested to bring to the notice of the Chief Ministers of all States the adverse effects of such a practice. It was also suggested that if the purchases made at the instance of State Government, the State Government should compensate the licensee by means of grant of subsidy and that such high cost power purchases should not be allowed as pass through in the annual revenue requirements.

9. In the two-day long meeting the following specific issues were discussed :

Issues arising out of the Tariff Policy

Harnessing of Surplus Captive Generation

Rising Cost of Traded Power

Consumer Advocacy Mechanism

The following important decisions were taken in the meeting:-

❖ **Tariff Policy related issues**

- The Tariff Policy has identified certain actions for the Regulatory Commissions and the Forum of Regulators. The Regulatory Commissions

have already taken actions on several counts as appreciated by the Minister of Power. Some of these are indicated below:

- Distribution Open Access regulations have finalized by 22 SERCs
 - Terms & Conditions for Tariff announced by 16 SERCs
 - Performance standards have been set by 13 SERCs
 - Consumer grievance redressal forum and Ombudsman have been institutionalised by 19 SERCs
 - Electricity Grid Code has been issued by 13 SERCs.
 - ToD Tariff has been introduced by several SERCs
 - Terms and Conditions for integration of captive generation with grid and purchase by licensee have been finalised by several SERCs
 - Orders on obligation to purchase power from renewable sources have been issued by several SERCs
 - The Regulatory Commissions have initiated actions towards implementation of intra-State ABT. Some State Commissions have finalized orders in this regard and others would finalize them in near future.
- Two Groups were constituted to deliberate and make recommendations on three issues arising out of the Tariff Policy
- (I) One Group consisting of Chairpersons of APERC, CSERC, GERC, JSERC, KERC, KSERC, TERC, UPERC, UERC and WBERC (i) to deliberate and make recommendations on Distribution Margin as the basis for allowing returns in distribution business; and (ii) to review the return on equity in distribution. This Group would meet on 12th May, 2006 at Bangalore. KERC undertook to make necessary arrangements.
 - (II) The second Group consisting of Chairpersons/Members of Bihar, Chhattisgarh, Delhi, Haryana, Kerala, Tamil Nadu, Uttar Pradesh and Uttaranchal to deliberate on the operating norms for

distribution. This Group will meet on 12th May, 2006 at DERC's Office.

- Para 5.1 of the Tariff Policy mandates all future procurements of power from private power projects through competitive bidding. The Ministry of Power has recently issued a clarification stipulating inter alia that a project for which appraisal by the Financial Institutions has started before 06th January, 2006 would be treated as falling outside the scope of clause 5.1 of the Tariff Policy if in such a case the final PPA has been filed before the Regulatory Commission by 30th September, 2006. The Forum of Regulators feels that such a stipulation has the potential of encouraging several projects to come up on MOU route as against the spirit of having a competitive regime for power procurement.
- The Tariff Policy has stipulated a formulation for computation of Cross Subsidy Surcharge. Application of this formulation leads to wide variation in determination of surcharge. The powers to determine surcharge vest with the Regulatory Commissions and as such it should be left to the Forum of Regulators to evolve consensus in this regard.

❖ **Harnessing of Surplus Captive Generation**

- Harnessing of surplus captive generation is crucial to mitigate huge shortages as also to encourage distribution open access and consumer choice.
- As recommended by the FOR Group constituted for the purpose, it was decided unanimously that various charges levied on the Captive Generation for sale of surplus power to the grid would be rationalized.
- SERCs were urged to encourage the utilities to procure firm committed supply from captive generation. For such purchases – (i) the tariff could be benchmarked or (ii) a maximum and minimum ceiling price could be fixed or (iii) the price could be linked to frequency linked UI rates.

- Standby arrangements for backup supply to an open access consumer shall be provided by the incumbent licensee on payment of charges equivalent to temporary connection charges.
- Some States have already determined temporary connection charges. Others would specify such charges in near future.

❖ **Consumer Advocacy Mechanism.**

- Several State Commissions have taken pro-active role in reaching out to the consumers to apprise them of the regulatory actions and also to ensure that their interests are protected and grievances redressed by the distribution licensees.
- Some State Commissions have set up dedicated consumer advocacy cells to effectively monitor compliance of performance standards and redressal of grievances of consumers. Others would also set up such cells in near future.
- State Commissions were urged to have regular interface with consumer groups.
- It was also decided to require the licensees to use the back of the electricity bill for dissemination of information regarding Consumer Grievance Redressal Forum, Ombudsman etc.

❖ **Rising Cost of Traded Power**

- The Forum expressed concern over the trend of rising cost of traded power and that regulators needed to intervene in this matter in the interest of consumers. Member, OERC stated that the issue was pending before the Appellate Tribunal and the Forum should wait for their decision. It was, however, felt that no injunction had been issued by any authority and therefore, Forum was fully within its rights to discuss the issue.
- Various measures were discussed. It was reiterated that the authority available with the State Commissions under section 86 (1)(b) of the Act should be used more rigorously to put a check on the procurement of

power by the distribution licensee beyond a ceiling price to be determined by the State Commission. State Commissions were also urged to use their authority under the Act to discourage artificial price volatility and keep the price within reasonable limits. The regulators who have allowed utilities under their jurisdiction to trade power at a particular rate or ceiling should ensure that the power is traded within that ceiling amount.

10. It was also decided that the following important issues be taken up with the Ministry of Power by the Chairperson, Forum of Regulators :-

(a) Status of continuation of State Electricity Boards (SEBs) –

The SEBs are being allowed the fresh lease of life at regular intervals with the mutual consent of Central and State Government. The Government should specify the terms and conditions for continuation of SEBs with due regard to the various schemes of operation under the Electricity Act, 2003.

(b) Separate Funds for ERCs under the Act –

The Act provides for Special Fund for the Electricity Regulatory Commissions with a view to ensuring financial autonomy. In some States, Fund Rules have been notified with the concurrence of the CAG while in others as also for CERC such Rules have not yet been operationalised. This issue should be taken up with the Ministry of Power requesting its intervention to issue uniform Fund Rules for all Regulatory Commissions in the country.

(c) Supporting Staff and infrastructure –

In some States, SERCs have been constituted merely to avail funds under APDRP Scheme. Necessary support in terms of staff, infrastructure and funds has not been extended to the SERCs. This should be brought to the notice of the Ministry

of Power with the request that APDRP funds should not be released to the States unless they provide necessary infrastructure support to the ERCs by way of staff, accommodation, finances etc. and the utilities file their tariff petitions.

(d) Consumer Grievance Redressal Forum Rules –

The Rule as framed by the Government of India runs counter to the guidelines issued in this regard by some State Commissions. Request may be sent to Secretary (Power) to make suitable amendments in the rules as the powers to frame guidelines on the subject vested with the State Commissions under the Act.

(e) Surcharge formula in Tariff Policy –

It was felt that a uniform formula for cross subsidy surcharge for the whole country was neither desirable nor practicable, given the wide diversity in power sector reforms and socio-economic development. Ministry may be requested to take up the matter with the Union Cabinet so that Para 8.5 of the Tariff Policy is suitably modified since section 42(2) of the Electricity Act clearly mandates that the surcharge shall be “as may be determined by the State Commission”.

(f) Legislative Assembly observations on OERC Orders on Open Access Regulations

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OERC Regulation for Open Access in Distribution was placed before the Orissa Legislative Assembly. The Legislative Assembly made following amendments in the Regulation :

All cases of Open Access shall be allowed by OERC with approval of the State Government.

The application fee will be Rupees One Lakh per MW.

The above two amendments may have an adverse impact on Open Access cases in the State. Ministry of Power may be requested to take up the matter suitably with the Government of Orissa.

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

LIST OF PARTICIPANTS ATTENDED THE THIRD MEETING

OF

FORUM OF REGULATORS (FOR)

HELD ON 20TH – 21ST APRIL, 2006

AT

NEW DELHI

S. No.	NAME	MOP/ERC
01.	Shri Sushil Kumar Shinde Hon'ble Minister of Power	Ministry of Power
02.	Shri A.K. Basu Chairperson	CERC/FOR
03.	Shri R.V. Shashi Secretary	Ministry of Power
04.	Shri K. Swaminathan Chairperson	APEREC
05.	Shri J.P. Saikia Chairperson	AERC
06.	Shri S.K. Misra Chairperson	CSERC
07.	Shri Berjinder Singh Chairperson	DERC
08.	Shri G. Subba Rao Chairperson	GERC
09.	Col. Raghbir Singh Chairperson	HERC
10.	Shri K.B. Pillai Chairperson	J&K SERC
11.	Shri SKF Kujur Chairperson	JSERC
12.	Shri K.P. Pandey Chairperson	KERC
13.	Shri C. Balakrishnan Chairperson	KSERC

14.	Shri P.K. Mehrotra Chairperson	MPERC
15.	Dr. Pramod Deo Chairperson	MERC
16.	Shri Jai Singh Gill Chairperson	PSERC
17.	Shri Shanti Prasad Chairperson	RERC
18.	Shri A. Balraj Chairperson	TNERC
19.	Shri S.S. Chakraborty Chairperson	TERC
20.	Shri Vijoy Kumar Chairperson	UPERC
21.	Shri Divakar Dev Chairperson	UERC
22.	Shri S.N. Ghosh Chairperson	WBERC
23.	Shri Surinder Pal Member	APERC
24.	Shri S.K. Jayaswal Member	BSERC
25.	Shri S.K. Jena Member	OERC
26.	Shri A.K. Sachan Secretary	CERC
27.	Shri S.K. Chatterjee Assistant Secretary	CERC