

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

Venue : **“MAGNOLIA” HALL, Convention Centre
India Habitat Centre, Lodhi Road
New Delhi- 110 003**

Date : **18th November, 2013**

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

Shri M.R. Sreenivasa Murthy, Chairperson, Karnataka Electricity Regulatory Commission (KERC) and senior most State Regulator welcomed Shri Gireesh B. Pradhan on his taking over as Chairperson of CERC and FOR and wished him all success in his endeavour to take the sector forward.

2. Shri Gireesh B. Pradhan, Chairperson, Central Electricity Regulatory Commission (CERC) and Forum of Regulators (FOR) extended a warm welcome to all members of Forum. In his brief address, he said that he took over as Chairperson, Central Electricity Regulatory Commission (CERC) on 22nd October, 2013. He recalled that he had attended FOR meetings as well as FOR Working Group meetings in the past, as Special Invitee from Ministry of Power and MNRE. He expressed his appreciation for the initiatives taken so far by FOR in harmonising regulation in the power sector and mentioned that studies conducted on a wide ranging issues were indeed commendable. He welcomed Dr. V. Bhaskar, Chairperson, Andhra Pradesh ERC and Shri Desh

Deepak Verma, Chairperson, Uttar Pradesh ERC who were attending the meeting of FOR for the first time. He also conveyed warm welcome to Members of CERC who were invited as Special Invitees in the meeting.

The FOR thereafter took up agenda items for consideration.

Agenda Item No. 1 : Confirmation of the Minutes of the 37th Meeting of “FOR” held on 21st August, 2013 at Vigyan Bhawan, New Delhi.

The Forum noted and endorsed the minutes of the 37th Meeting of 'FOR' held at Vigyan Bhawan, New Delhi on 21st August, 2013.

After discussion, the minutes were confirmed

Agenda Item No. 2 : "PROPOSAL OF MINISTRY OF POWER FOR AMENDMENTS IN ELECTRICITY ACT, 2003".

A presentation was made by Shri Sushanta K. Chatterjee, Joint Chief (RA), CERC (copy **enclosed** at **Annexure – II**). In his presentation, he highlighted salient features of the draft amendments proposed by the Ministry of Power in the Electricity Act, 2003. The draft amendments were presented and discussed under the following broad heads :

- **Separation of Distribution Network Business and Supply Business**
- **Grid Security**
- **Open Access**
- **Tariff**
- **Other Issues**

The Forum discussed the draft amendments proposed by Ministry of Power and the following consensus was evolved.

Discussion :

The Forum appreciated the need for separation of "carriage and content" in distribution to address the issues at stake in this segment of the power sector. However, it was generally felt that, as electricity was a concurrent subject, such a model should be implemented after wide consultation with stakeholders viz. State Governments, State utilities, Consumers, NGOs etc. The intent should be explained to the stakeholders and cost benefit analysis should be done before adopting the model. It was also strongly felt that Smaller States, especially, the hilly States may need separate treatment and the model may need to be modified accordingly. It was also suggested that the consumers should not be burdened with dealing with two licensees separately. It was also iterated by some of the members that successful implementation of such a model requires adequate power supply in the market. Concerns were also raised about the power supply arrangements to be made by incumbent supply licensee to serve its universal service obligation. There were issues like PPA re-assignment which needed to be addressed. The need for up-gradation and maintenance of infrastructure for successful implementation of such a model was also highlighted.

Consensus :

1. Separation of Distribution Network and Supply Business

The Forum discussed the model proposed by the Ministry of Power and reiterated the need for separation of distribution network business and supply business, in order to bring retail sale competition in true sense. However, the Forum viewed that the proposed model needs certain refinements. The recommendations of the Forum on the Draft amendments proposed by the Ministry of Power on separation of distribution network and supply business are as follows:

- **Section 14:** The proposal of grant of subsequent supply licence based on the consumer load profile/connected load amounts to cherry picking which is not desirable and also has the potential of creating an anomaly in the operation of the supply business. This would at the same time not provide the desired level playing field for the incumbent supply licensee.
 - In view of this, the Forum recommended that the subsequent supply licences should be granted for the entire area co-terminus with the incumbent supply licensee, with the obligation to supply electricity to all the consumers in its area of supply.
 - Consequential changes have been recommended in 12th proviso to section 14 of the draft amendments to have an obligation on the intra-State traders to supply electricity on demand to all consumers in its area of supply and not just open access consumers.
 - Similarly, section 42 (2) on introduction of open access in a phased manner and second proviso to section 51 B (1) also need to be amended suitably.
- The Forum also recommended to incorporate a new proviso after the 11th proviso to section 14 as under :-

"Provided also that the distribution licensee shall not engage in the business of trading in electricity".

- **Section 42 (2):** The Forum viewed that the first proviso to section 42 of the draft amendments needs clarity on "other charges" and "compensatory charge". Such terms should be clearly defined. If the intent is that open

access shall be allowed on payment of wheeling charges to the distribution licensee and a surcharge to the incumbent supply licensee to take care of the requirement of cross subsidy and obligation to supply by such incumbent supply licensee, then the proviso must be redrafted to bring clarity.

- **Section 45 (1):** The Forum recommended to delete the text "and such charges authorized by the Appropriate Commission or otherwise fixed" in section 45 as it is redundant. The prices to be charged by a distribution licensee shall be as determined by Appropriate Commission only. If the intent is to provide for electricity duty, taxes etc. then a clear provision should be made suitably in section 45.
- The title of **section 48** may be modified as "Additional terms of Distribution".
- **Section 51 A(2):** The Forum viewed that the State Governments would be in a better position to decide whether the timeline of three years, as mentioned in 51A (2), is to be extended for separation of distribution and supply businesses. In view of this, the requirement for extension of timeline 'with the approval of Central Government' may be dropped.
- **Section 51 H:** The Forum viewed that there should be a common and independent CGRF for distribution and supply businesses with representation from distribution and all the supply licensees to provide single window to the consumers for redressal of grievances in accordance with the regulations as may be specified by the State Commission. Unlike in the existing Act, the CGRF should be made independent of the distribution licensee and the State Commission should select the members of CGRF. There should be one ombudsman to be appointed by the State Commission.

2. Grid Security

- **Section 146:** The Forum felt that the scope and nature of enforcement of section 146 being different from that of section 142 (-section 146 being enforceable by the Courts), there was no need for amendment in section 146 by way of increasing the penalty amount.

3. Tariff

- **Section 3:** The Forum viewed that the proposal of inclusion of (3a) in section 3 of the Act to make provisions of National Electricity Policy and Tariff Policy mandatory amounts to excessive jurisdiction. It would not be appropriate to make policies issued by the executive mandatory over all the statutory functionaries under the Act who are expected to function independently. The proposed amendment to section 3 by way of insertion of clause (3a) should be deleted. Consequently the proposed insertion of proviso under section 61 (i) should also be dropped.
- **Section 61:**

Section 61 (a): The Forum did not endorse the proviso proposed to be added in section 61 (a). It was viewed that this encroaches upon the independence of the State Commission. State Regulators are 'guided' by the tariff principles and methodologies of CERC and the existing provision is adequate, working well and should not be changed.

- **Section 62**

Section 62 (1) (a): The Forum did not endorse the second proviso proposed to be added in section 62 (1) (a) regarding mandatory competitive bidding for procurement of power by distribution companies under section 63.

The Forum reiterated its earlier decision in this regard 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.

Section 62 (1A): There is no formula specified in the Tariff Policy for calculation of fuel, power purchase and procurement price surcharge. Accordingly, the reference made to Tariff Policy in (1A) should be deleted.

Section 62 (4): FOR had already suggested earlier, amendment to section 62 (4) as under :-

"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 fuel and power purchase price adjustment which shall be permitted under the terms of any the fuel and power purchase price adjustment surcharge formula ~~as may be~~ as specified by the Appropriate Commission."

The above formulation should be incorporated by way of amendment to section 62 (4) of the Act.

- **Section 79 (4) and 86 (4)**

The Forum felt that the existing provisions of section 79 (4) and 86 (4) of the Act providing that the Central Commission and State Commissions respectively shall be "guided by" the National Electricity Policy, National Electricity Plan and Tariff Policy, is adequate and in line with the spirit of distancing of Government and extending desired flexibility and freedom to the Regulators in discharge of its statutory functions. These provisions, therefore, do not require any change. The proposal of the Ministry of Power for amendments to section 79 (4) and 86 (4) should, therefore, be dropped.

4. Other Issues

- **Section 121:** The Forum did not endorse the proposal of review of Regulator Commissions by a committee constituted by APTEL. The Forum reiterated its earlier stand and viewed that peer review of performance of regulators should be done by FOR and FOR should be strengthened through rules.

- **Definition 57A Renewable Energy Sources:** The Forum recommended to delete the reference of 'MNRE' in the definition of renewable energy as MNRE is already a part of Central Government.

- **Section 85:**

Section 85 (1): The Forum felt that the existing provisions in section 85 (1) on constitution of selection committee for selecting the Members of the State Commissions are adequate and should not be changed. The Forum also viewed that the provision of acting Judge of High Court as Chairperson of the Selection Committee may bring a conflict of interest.

Section 85 (5A): The Forum did not endorse the proposal of empowerment of Central Government to forward the names in case of delay in the constitution of the selection committee for more than two months or in the appointment of Chairperson or members of the State Commission for more than five months. It runs counter to federal nature of governance. It was recommended that instead of Central Government, the selection committee constituted to select Chairperson and Members of Central Commission may forward names of the two persons in case of delay in appointment of Chairperson or Members of the State Commission.

- **Section 176:** Clause (ya) of section 176 may be amended as follows:

*"(ya) conferment of **financial** powers of Department of the Central Government to the Chairperson, APTEL."*

Shri Gireesh B. Pradhan, Chairperson summed up the discussion and expressed satisfaction and appreciation for the consensus evolved on such an important issue on power sector reforms.

A vote of thanks was extended by Shri Sushanta K. Chatterjee, Joint Chief (RA), CERC. 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 EIGHTH
MEETING
OF
FORUM OF REGULATORS (FOR)
HELD ON 18TH NOVEMBER, 2013 AT NEW DELHI

S. No.	NAME	ERC
01.	Shri Gireesh B. Pradhan Chairperson	CERC – in Chair.
02.	Dr. V. Bhaskar Chairperson	APERC
03.	Shri Digvijai Nath Chairperson	APSERC
04.	Shri Umesh Narayan Panjiar Chairperson	BERC
05.	Shri NarayanSingh Chairperson	CSERC
06.	Shri P.D. Sudhakar Chairperson	DERC
07.	Shri R.N. Prasher Chairperson	HERC
08.	Shri Subhash Chander Negi Chairperson	HPERC
09.	Shri A. Chhawnmawia Chairperson	JERC for Mizoram & Manipur (M&M)
10.	Shri M.R. Sreenivasa Murthy Chairperson	KERC
11.	Shri T. M. Manoharan Chairperson	KSERC
12.	Shri Rakesh Sahni Chairperson	MPERC
13.	Shri Anand Kumar Chairperson	MSERC

14.	Ms. Romila Dubey Chairperson	PSERC
15.	Shri T.T. Dorji Chairperson	SSERC
16.	Shri Desh Deepak Verma Chairperson	UPERC
17.	Shri Pravinbhai Patel Member	GERC
18.	Shri D.S. Pawar Member	J&KSERC
19.	Shri T. Munikrishanaiah Member	JSERC
20.	Shri S.K. Chaturvedi Member	JERC for all UTs except Delhi
21.	Shri Sivapada Swain Member	OERC
22.	Shri S. Nagalsamy Member	TNERC
23.	Shri K.P. Singh Member	UERC
24.	Shri Sujit Dasgupta Member	WBERC
25.	Shri Sushanta K. Chatterjee Joint Chief (RA)	CERC
SPECIAL INVITEES		
01.	Shri V.S. Verma Member	CERC
02.	Shri M. Deena Dayalan Member	CERC
03.	Shri A.K. Singhal Member	CERC



Agenda: Draft Amendments in Electricity Act, 2003

38th Meeting of Forum of Regulators

18th November, 2013


In this presentation.....

- Background
- Draft Amendments in the Act

Background

- Task Force constituted by MoP proposed amendments in the Electricity Act, 2003.
- Committee constituted by Ministry of Power under the Chairmanship of Chairperson CEA for examination and recommendation on the amendments proposed by the Task Force in the Electricity Act, 2003.
- Proposed amendments discussed by the Forum during the 32nd FOR meeting held in August, 2013.
- Proposed amendments on grid security issues discussed by the Forum during the 35th FOR meeting held in February, 2013.

Background

- The Committee under Chair CEA suggested :
 - the distribution system may be separated from supply of electricity with two separate licensees to two separate legal entities.
 - FOR Secretariat to prepare a concept paper.
- Study on “Introducing Competition in Retail Electricity Supply in India” discussed in the 33rd and 36th FOR meetings. 
- Based on the recommendations of the Committee, Ministry of Power circulated draft amendments in the Electricity Act, 2003 for comments of stakeholders.

Draft Amendments in the Act

- Distribution Network and Supply business separation
- Grid Security
- Open Access
- Tariff
- Other Issues

Network and Supply business separation

- Distribution network and supply businesses to be recognized as separate licensed activities. [Proposed amendments in definitions and addition of (d) in section 14 (Grant of Licence)]
- To start with, the existing distribution licensee to be treated as deemed distribution licensee and deemed supply licensee. (A new proviso (second proviso) added after the first proviso in section 14)
- Existing distribution licensee to be segregated into two separate companies/entities for undertaking the business of distribution and supply separately. (Amendment in Section 131- addition of 4(A) (a) and (b))

Network and Supply business separation

- **Distribution licensee:** The distribution licensee to be responsible for development, operation and maintenance of distribution network business. (*Definition 17*)
- **Incumbent supply licensee:** To be carved out of the existing distribution licensee.
 - Responsible for arranging supply of electricity for all the consumers in the area of supply. The areas of supply for the incumbent supply licensee to be the same as area of distribution for a distribution licensee.

(Addition of definition 35A under section 2 and (4A) (a) under section 131)

Network and Supply business separation

- **Subsequent supply licensees:** Subsequently supply licences to be granted to other applicants in the area of supply of the incumbent supply licensee.
 - The licenses to be granted based on the load of the consumers (say 1 MW and above).
 - Enabling provision for gradual reduction of threshold voltage level for the purpose of open access and grant of supply license corresponding to the said voltage level.

(Addition of definition 70b and amendment in the seventh (sixth proviso of existing Act) proviso of section 14)

Network and Supply business separation

- Part VI Distribution of electricity proposed to be separated into three parts- Part VI "Distribution of electricity" and Part VI A "Supply of electricity" with separate provisions for distribution and supply businesses and Part VI B on Consumer Grievances Redressal.
- **Distribution licensee:** To have an obligation to provide connection on demand to any consumer in its area of distribution. [\(Section 43\)](#)
- **Incumbent supply licensee:** To have universal supply obligation to serve all the consumers in its area of supply [\(First proviso of section 51B \(1\)\)](#).
- **Subsequent supply licensee:** To have service obligation to supply on demand to all consumers of the specified voltage level for which supply license has been granted to it. [\(Second proviso of section 51B \(1\)\)](#)

Network and Supply business separation

- The generators and traders to continue to be eligible to supply electricity directly to the consumers.
 - All consumers (including 1 MW and above) who have been provided open access to make own arrangements of power procurement (mutual agreement).

(Amendment in Section 49)

- Existing intra-state traders to be treated as deemed supply licensees with service obligation to supply on demand to all consumers of specified voltage level.

(New addition- Last proviso of section 14)

Network and Supply business separation

- Tariff for the open consumers (consumers who are mandated to choose their supplier) not be regulated.
- Tariff for the remaining consumers of the incumbent supply licensee to be regulated.
- Regulator to determine ceiling tariff for the open consumers in the area of supply.
- *(Proposed amendment in proviso to Section 62 (1) (d))*
- All the consumers getting electricity supply from supply licensees, other than the incumbent supply licensee, or other sources like generators to pay a surcharge to the incumbent supply licensee inter-alia to meet the cross subsidy requirement for supply of power to unregulated consumers.
(Proposed amendment in the first proviso to section 42 (2))


Network and Supply business separation

- Finally, a single network licensee (Transmission & Distribution) to develop, maintain and operate the network business in a State.
(Amendment in Definition 35 "high voltage line")
- Other consequential changes in - definitions 23, 24, 25, 27 and sections 24, 86, 166.

Grid Security

- Recommendations of the Enquiry Committee set up by Ministry of Power on grid disturbance.
 - Powers of Load Despatch Centres and Regulatory Commissions related to non-compliance of statutory/regulatory provisions including that for non-compliance of directions and non-payment of UI charges, need review.
 - Appropriate amendments need to be carried out in the Electricity Act, 2003 after such review.
- Proposed to increase the penalty for non compliance of orders/ directions.
(Amendment in sections 29, 33, 142 and 146)
- Proposed to make mandatory for a person owning and maintaining a dedicated transmission line to comply with the grid standards.
(Amendment in section 34)



Open Access

- Directions by some State Government under Section 11 to prohibit sale of surplus power from a generating unit to the entities outside the State.
(Proposed Amendment in Section 11: Addition of new proviso that such directions of the Appropriate Government shall not affect in any manner the capacity of the generating station already committed under a valid and binding contract and open access for conveyance of such capacity duly taken and validity of 30 days for such directions by the State Government.) 
- Amendments proposed in sections 38, 39 and 40 to bring clarity on levy of open access surcharge, if any, determined by the Appropriate Commission.

Tariff

- **Section 3:** Proposed to make provisions of the National Electricity Policy and Tariff Policy, to the extent specified in such policy, to be binding. *[Amendment in section 3. Consequential changes in section 61 (i) (Addition of a proviso)]*
- **Section 61 (Tariff Regulations):**
 - A proviso is proposed to be added in section 61 (a) empowering the Central Government to direct the State Commissions to follow principles and methodologies followed by Central Commission for determination of tariff as it considers appropriate.
 - Addition of (da) in section 61 so that the tariff regulations allow the licensees to recover appropriate tariff determined under section 62 without significant revenue gap.
 - Addition of (ha) to promote hydro power generation through tariff regulations.

Tariff

- **Section 62 (Determination of Tariff):**
 - Proposed to amend Section 62 (1) (a) to include determination of tariff for supply of electricity by a generating company to a licensee including under a back to back arrangement involving an intermediary electricity trader or any other licensee.
 - Para 5.1 of Tariff Policy, 2006 on mandatory competitive bidding for procurement of power: A proviso is proposed to be added in section 62 (1) (a) to incorporate this provision.
 - Provisions to incorporate the impact of fuel and power purchase price adjustments in the tariff. *(Addition of (1a) and amend 62 (4))* 
- **Section 64 (Procedure for tariff order):** Amendment proposed to initiate suo-motu proceedings for determination of tariff under section 64 by the Appropriate Regulatory Commission. 

Tariff


Functions of Central Commission (79) and State Commissions (86)

- **Section 79 and 86 (4):** Proposed to be amended such that the Central Commission and State Commission be consistent with (and not guided by) the National Tariff Policy.
- **Section 86 (1) (jb):** Proposed to add new function (jb) to specify a road map for and ensure time bound reduction for reduction of cross-subsidies in tariff.

Other Issues

- **Performance of Regulatory Commission-** Section 92, 121.
 - Section 121 proposed to be amended to include review of performance of Regulatory Commissions by a committee constituted by Hon'ble APTEL. ▶
- **Renewal of licence-** Section 15 and 20.
 - Existing Section 15 (Procedure for grant of licence)- A licence to be in force for a period of twenty- five years unless such licence is revoked. ▶
 - **Proposed Amendment:** As there is no provision for renewal of licence under the Act, Section 15(8) is proposed to be amended to include provision for renewal of licence. Consequential changes proposed in section 20.

Other Issues

- **Prepayment meter- Section 56**
 - Existing Section 56: Disconnection of supply by the licensee or generating company in default of payment by the consumers by giving him a notice of not less than 15 days. This provision is not applicable when electricity is supplied through pre-paid meters.
 - **Proposed Amendment**: An exception has been proposed to be carved out in section 56(1) for electricity supplied through pre-paid meters. 

Other Issues



Development of Market - Sections 66

- Need for clarity in the Act on jurisdiction issues regarding forward and future market products.
- **Forward Market Commission (FMC) vs CERC**
 - Bombay High Court Decision-
 - Neither FMC nor CERC has exclusive jurisdiction over futures in electricity.
 - A clear provision regarding exclusive jurisdiction for any regulator would have to be made through appropriate enactment by the Parliament.

(Exclusive jurisdiction under section 66 proposed.)



Other Issues

- **Power Trading** – Sections 86 (1) (j)
 - Proposed Amendment: Mandatory function of the State Commissions to fix trading margin in intra-State trading of electricity irrespective of final destination of the electricity under section 86 (1) (j).
- **Renewable Energy**- Addition of Definition of 57 A (renewable energy sources). 
- **Local Authority**- Special dispensation carved out under section 42 and 51 for a local authority (such as BEST, NDMC etc) engaged in the business of distribution of electricity before the commencement of the Act.
 - Emerging market dynamics: Rationale behind special dispensation for local authorities has lost relevance. (Proposal to do away with such special status for local authorities in section 42 and section 51) 

Other Issues

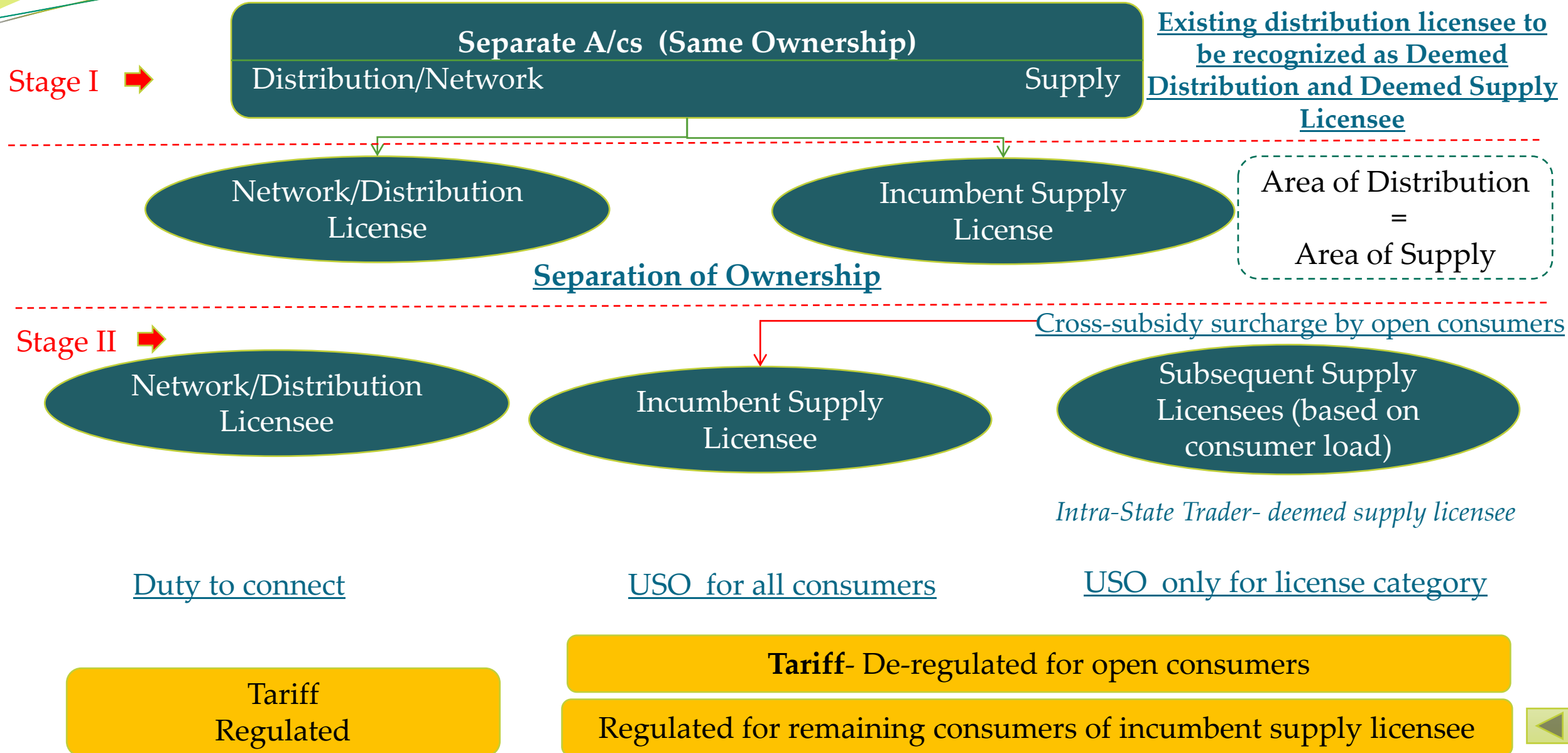
- **Other amendments in -**

- Definitions- 8 (Captive generating plant), 16 (dedicated transmission lines) to bring clarity and 72 (transmission lines).
- Section 68 (overhead lines), section 70 (constitution of CEA), section 85 (Constitution of Selection Committee to select Members of State Commission), section 162 (Appointment of Chief Electrical Inspector and Electrical Inspector), section 176 (Power of Central Government to make rules) and section 180 (Power of State Government to make rules)



Thank You

Proposed Model- Network and Supply business separation



Study on Introducing Competition.....

Implementation Roadmap- Phase I

Phase I
(0 – 3 Years)

Essential Pre- requisites

- Wholesale Market Reforms
- Cost-reflective tariffs (dealing with cross subsidies)
- Treatment of existing losses (distribution and financial losses)
- Suitable supply infrastructure

Segregation of
Business and
Employees

Transfer of PPA to
Supply License

Applications invited
for subsequent
licensees

1

2

3

4

5

Separation of
Licenses (Same
Ownership)

1. Supply
2. Network

Tariff Determination

- Network Business: Regulated Tariff (Voltage-wise)
- Supply Business: Regulated (with supply margin linked to losses)
- Consumers of 1 MW and above have the choice to take supply through open access from generator, trader or CPPs (with cross subsidy surcharge)

Study on Introducing Competition.....

Phase II (3-6 Years)

Implementation Roadmap- Phase II

- Network Business: Regulated (incentive based)
- Supply Business:
 - De-regulated for 1 MW & above consumers.
 - Regulated for consumers below 1 MW (with concept of supply margin linked to loss reduction)
 - No surcharge (as cross subsidy and losses would have been reduced substantially in the 1st phase and due to other design changes)

Tariff Determination

Network licensee cannot be in supply business

1

2

3

4

Onset of second/subsequent supply licences

New supply licensees to have their own generation contracts.

Choice for 1 MW and above to choose suppliers

Competition in Supply Business

- **Deemed licensee to be the provider of the last resort.**
- Competition between deemed supply licensee and second/subsequent supply licensee: former will have cheaper power purchases but high losses while the latter will have higher power purchases but lower losses and operation costs.

Study on Introducing Competition.....

Implementation Roadmap- Phase III

Phase III (Beyond 6 Years)

- Further de-regulation of Supply Business –
 - Deregulation of consumers in the 500 kW to 1 MW segment.
 - Deregulation for consumers in the 100 kW - 500 kW segment.
 - Treatment of PPA and tariff determination/deregulation on similar principles as for phase II





RECOMMENDATIONS OF FOR ON THE AMENDMENTS PROPOSED BY MOP TASK FORCE



GENERAL

Section 11(1)- Directions to generating companies

FOR Recommendation

- 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.



14- Grant of Licence (sixth proviso)

FOR Recommendation

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.

This issue needs further deliberation as it involves substantial change in the market design for the electricity sector.

62(1)- Determination of tariff

63- Determination of tariff by bidding process

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.



64 (1) - Procedure for tariff order

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

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

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~~ fuel and power purchase price adjustment which shall be permitted under the terms of ~~any~~ the fuel and power purchase price adjustment ~~surcharge~~ formula ~~as may be~~ as specified by the Appropriate Commission.

Performance Review of Regulatory Commissions

New Provision Proposed by MoP Task Force -Section 89(6) and Section 90(2)(g)

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.
- Proposal for amendment to sections 89 and 90 should be dropped
- Peer review of performance of regulators should be done by FOR.
- FOR can be strengthened through rules.



Section 14- Grant of Licence (seventh proviso)

FOR Recommendation

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 including a franchisee, that person shall not be required to obtain any separate licence from the concerned State Commission 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 ~~and such distribution licensee shall be responsible~~ for distribution of electricity in his area of supply:

15- Procedure for grant of licence

FOR Recommendation

(8) A licence shall continue to be in force for a period of twenty- five years unless such licence is revoked or renewed.



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

FOR Recommendation

(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

FOR Recommendation

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

FOR Recommendation

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

FOR Recommendation

(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

FOR Recommendation

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 sub-section (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.

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.

172 (a) - Transitional Provisions

FOR Recommendation

(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

FOR Recommendation

(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)



RENEWABLE ENERGY

New Definitions Proposed

Proposed to be added- FOR Recommendation

“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- FOR Recommendation

“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

FOR Recommendation

The Appropriate Commission shall ~~endeavour to~~ promote the development of a market (including trading and forward market) in electricity ~~power~~ including from renewable energy sources 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

FOR Recommendation

(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 from such sources 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.