

MINUTES OF THE
SECOND MEETING OF THE FORUM OF REGULATORS (FOR)

- Venue** : **Jacaranda-I, First Floor, Convention Centre
India Habitat Centre, Lodhi Road
New Delhi- 110 003**
- Date** : **03rd November, 2005**
- List of Participants** : **At Annexure-I (enclosed).**

Chairperson, Forum of Regulators extended a warm welcome to Shri R.V. Shahi, Secretary, Ministry of Power, Government of India and to all members of Forum of Regulators. Justice B.N.P. Singh, Chairperson, Bihar State Electricity Regulatory Commission and Shri Shanti Prasad, Chairperson, Rajasthan Electricity Regulatory Commission having joined the Regulatory Commissions recently were introduced to the members of Forum of Regulators. Chairperson stated that the Forum of Regulators had the important function of co-ordinating and harmonising the reform efforts in power sector across the country through mutual discussions and arriving at consensus on various issues.

2. Chairperson, Forum of Regulators congratulated members for the considerable progress on various points discussed in the first meeting of the Forum. The progress report on these points is at **Annexure-II**.

3. Shri R.V. Shahi, Secretary, Ministry of Power in his Opening remarks stated that two immediate issues confronting the power sector needed attention at the earliest, and hence sought discussion on these issues :

- i) Ways and means of implementing Open Access as provided under the Electricity Act, 2003.

- ii) Bringing captive capacity to the grid to partly meet the shortages prevailing in the country.

4. Shri A.K. Sachan, Secretary, Forum of Regulators made a presentation describing the progress made by various State Commissions in framing regulations for Open Access under section 42 (2) of the Electricity Act, 2003. The presentation also covered the manner of calculating cross-subsidy surcharge by SERCs and difficulties in devising a common formula for calculation of surcharge across the States. It was brought out that the formula suggested in the draft Tariff Policy would lead to negative rates in some States and very high rates in others. It was felt that it was neither desirable nor practicable to lay down a uniform formula in a Central Policy document, and the formulation should be left to the SERCs.

5. Shri R.V. Shahi, Secretary, Ministry of Power expressed satisfaction that most of the State Electricity Regulatory Commissions had already framed regulations for Open Access providing for Open Access to consumers having load of 1 MW and above, much before the deadline stated in the provisions of the Electricity Act, 2003. The progress on actual operation of Open Access on the ground needed to be monitored.

6. The issue of facilitating Open Access to the consumers was discussed in detail in the Forum and following constraints were noted :

- i) High level of cross subsidy surcharges as also various other charges like transmission charge, wheeling charge, load despatch charge etc.
- ii) Non-availability of alternative firm sources of power.
- iii) Obstruction created by the state utilities on the plea of non-availability of transmission capacities.
- iv) Apprehension of State Government that provision for Open Access will lead to higher subsidy burdens on the State Government or tariff to small consumers will have to be raised.

- v) Apprehension that the stipulation for determining the surcharge “to meet the requirements of current level of cross-subsidy” may lead to high levels of surcharge.

7. Secretary, Ministry of Power stated that the fact that the supply market was constrained was well known and therefore there was no possibility of large amount of load going out of the distribution companies. However, efforts must be made to ensure that the Open Access was facilitated by way of promotional regulations. He further stated that if all the charges were applied on the basis of total cost, the Open Access might never succeed. Therefore, there appeared to be a case for applying some of the charges e.g. transmission and distribution on marginal cost principles.

8. After threadbare discussions, the Chairperson of the Forum of Regulators suggested that a group might be constituted to go into the whole gamut of issues and suggest measures to facilitate Open Access. He further stated that since Forum of Regulators had already recommended the Avoided Cost method for calculation of cross subsidy surcharge, the group might look at the other charges and recommend suitable measures. This was approved unanimously and group of following was constituted :

1. Chairperson, Gujarat Electricity Regulatory Commission.
2. Chairperson, Rajasthan Electricity Regulatory Commission.
3. Chairperson, Karnataka Electricity Regulatory Commission.
4. Chairperson, A.P. Electricity Regulatory Commission.
5. Chairperson, Maharashtra Electricity Regulatory Commission.
6. Chairperson, Orissa Electricity Regulatory Commission.
7. Chairperson, Chhattisgarh State Electricity Regulatory Commission
8. Shri T.R. Dhaka, Member, Haryana Electricity Regulatory Commission.
9. Shri K. Venugopal, Member, Delhi Electricity Regulatory Commission.
10. Shri A.K. Sachan, Secretary, Forum of Regulators will act as Member-Convenor of the Group.

Special invitees:

1. Shri V.S. Verma, Member, Central Electricity Authority
2. Shri Alok Kumar, Director, Ministry of Power

It was also decided that the meeting of the group would be held in the Conference Hall of Central Electricity Regulatory Commission, Core 3, 7th Floor, Scope Complex, Lodhi Road, New Delhi on 16th and 17th November, 2005 at 10.00 a.m.

9. The issue of bringing captive generation to the grid was also discussed. Secretary, Ministry of Power briefed the Forum about the recent study conducted by Central Electricity Authority on the issue. According to the study the captive capacity in the country was about 41000 MW, out of which 23000 MW consist of captive of 1 MW and above. The study also suggested that many of these captive power stations were connected to the state grid and it was possible to tap this resource to meet the shortages. The issue was to harmonise the expectation of the offtaker (availability of power at cheap cost) and the owner of the captive (supply to grid for financial gain). Secretary, Ministry of Power further referred to the National Electricity Policy which inter alia called upon all stakeholders to make efforts to bring the captive capacity to the grid.

10. Shri V.S. Verma, Member, Central Electricity Authority stated that there were a number of difficulties because of which the captive capacity could not be brought to the grid, the important constraints being the large number of charges levied by State Government under the power of taxation and also by the regulations specified by the Regulatory Commissions. Non-availability of Open Access is also causing difficulties.

11. Shri A.K. Basu, Chairperson, Forum of Regulators informed the members that a group was set up by Forum of Indian Regulators to discuss the issue of bringing captive capacity to the grid. The group is yet to submit its findings. He, therefore, suggested that the group constituted for Open Access issue might also deliberate on these issues and recommend measures. This was unanimously accepted.

12. The State Electricity Regulatory Commission brought out the following important issues for consideration of Secretary, Ministry of Power:

- (i) The issue of rules regarding constitution of Grievances Redressal Forum by utilities under the Electricity Act, 2003 was brought to the notice of Secretary, Ministry of Power. According to the rule framed by Ministry of Power, the Grievances Redressal machinery is to be manned by officers of utilities only. The State Electricity Regulatory Commissions were of considered opinion that such machinery would be totally ineffective and therefore, there was need to induct some outsiders so that this machinery was neutral.

Secretary, Ministry of Power stated that various suggestions were received in this regard and the Ministry was in the process of issuing an amendment to the rules. In the meanwhile the forum for redressal of consumer grievances notified by regulators with outside members might continue to function.

Chairperson, FOR said that Section 42(5) of the Electricity Act authorized the SERCs to specify the guidelines for establishing the Consumer Redressal Forums. The rule making power of the Central Government did not cover this subject. Hence, the matter should be left to the jurisdiction of the SERCs.

- (ii) Chairperson, MPERC stated that though the State Electricity Boards had been unbundled this remained on paper because the revenue collected by the distribution companies had to be deposited with holding company of State Electricity Board, which frustrated the purpose of unbundling. He, therefore, suggested suitable guidelines be issued to the States so that power sector reform could be implemented effectively.

Other points:

13. CMD, Power Finance Corporation Limited, brought out various issues on behalf of PFC as well as other financial institutions concerning investment in power sector. After threadbare discussions, following conclusions were drawn on various issues :

i) Mandatory filing of tariff petitions: The proposed tariff policy of Government of India takes care of this issue.

ii) In principle approval of project cost:
It was pointed out that one of the main features of the Electricity Act, 2003 was to do away with TEC of CEA. Provision of in-principle approval would be seen as if TEC is being brought back through the back door. Shri Alok Kumar, Director, Ministry of Power explained that the emphasis should be in getting the projects through Competitive Bidding route. While the Commissions will consider any petition for in-principle approval of project cost, it is expected that the financial institutions will do due their own diligence by studying market conditions and draw the conclusions about feasibility of the project.

iii) ROE and depreciation:
The case of Uttranchal relating to ROE issue is in the Appellate Tribunal and the judgement of the Tribunal will serve as a guideline.

iv) Cost of restructuring of loans:
It was clarified that where ever restructuring of loans was beneficial to the consumer, the cost was allowed to be recovered by the regulators from the consumers. However, where the utility could not prove that restructuring was beneficial to the consumers, the regulations could not pass on the costs associated with such restructuring to the consumers.

v) Assignment of licence in the event of default:
It was explained that Section 17(3) of the Electricity Act, 2003 provides for assignment of licence with the approval of the Appropriate Commission. It may be possible to assign the licence if whole of the asset for which licence has been obtained is funded by a financial institution. However, for incremental investments in an ongoing licenced projects, it may be difficult to get the assignment approved.

It was made clear that the Regulatory Commissions could not become a forum for recovery of dues of financial institutions. It was also advised that the financial institutions should monitor the progress of projects for which the loans had been granted so as to check diversion of funds. At occasions it has been noted that funds obtained for projects are diverted to meet revenue expenses.

vi) Approval of R & M investments:

It was stated that the Regulatory Commissions had to approve the R & M investments as the tariffs were to be recovered from consumers. The difficulties in grant of approval often arise because project reports do not clearly indicate cost benefit proposition.

vii) Approval of cost escalations for Hydro Projects:

It was explained that CERC regulations on the issue were very clear. According to these, cost escalation on account of natural calamities and geological surprises only would be considered. Escalation on all other counts would not be allowed. In this connection, Chairperson, HPERC stated that his Commission has written to PFC raising certain issues of concern about Larjee HEP, which should be taken into account.

14. The letter written by Shri A.R. Ramanathan, Ex-Member, CERC about qualifying requirement for appointment of a Consultant was also discussed and it was felt that for appointing individual Consultants, the qualifying requirement in terms of turn over might be kept at reasonable level.

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

LIST OF PARTICIPANTS ATTENDED THE SECOND MEETING

OF

FORUM OF REGULATORS (FOR)

HELD ON 03RD NOVEMBER, 2005

**AT JACARANDA-I, FIRST FLOOR, CONVENTION CENTRE
INDIA HABITAT CENTRE, NEW DELHI**

S. No.	NAME	ERC
CERC / SERC		
01.	Shri A.K. Basu Chairperson	CERC
02.	Shri Bhaskar Barua Chairperson	AERC
03.	Justice B.N.P. Singh Chairperson	BSERC
04.	Shri S.K. Misra Chairperson	CSERC
05.	Shri G. Subba Rao Chairperson	GERC
06.	Col. Raghbir Singh Chairperson	HERC
07.	Shri S.S.Gupta Chairperson	HPERC
08.	Shri K.B. Pillai Chairperson	J&K SERC
09.	Shri SKF Kujur Chairperson	JSERC
10.	Shri K.P. Pandey Chairperson	KERC
11.	Shri C. Balakrishnan Chairperson	KSERC
12.	Shri P.K. Mehrotra Chairperson	MPERC
13.	Shri D.C. Sahoo Chairperson	OERC
14.	Shri Shanti Prasad Chairperson	RERC

15.	Shri Divakar Dev Chairperson	UERC
16.	Shri Surinder Pal Member	APERC
17.	Shri K. Venugopal Member	DERC
18.	Shri A.K. Sachan Secretary	CERC
MINISTRY OF POWER		
19.	Shri R.V. Shahi Secretary	
20.	Shri Alok Kumar Director	
CEA		
21.	Shri V.S. Verma Member (P)	
22.	Shri A.S. Bakshi Chief Engineer	
23.	Shri Amarjit Singh Director	
PFC		
24.	Shri V.K. Garg CMD	
25.	Shri V.S. Saxena Director	
26.	Shri D. Ravi General Manager	