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Prof. S. L. Rao
Chairman
Central Electricity Regulatory Commission
New Delhi.

Subject: Submission on the Draft CBRs

Respected Prof. Rao,

Attending the first CAC meeting was really a refreshing and encouraging experience for various reasons. I was especially happy to experience the concern for unorganized and non-vocal sections such as consumes as well as the willingness to invite and receive participation.

I am writing this letter on behalf of the Energy Group of Prayas to explain our comments and suggestions regarding the draft CBRs. We see this as the first concrete opportunity for participation provided by the CERC. There is no doubt that formulation of the CBRs is one of the most critical processes, as it will not only define the future course for the functioning of the CERC but will also provide a benchmark for SERCs to draft their CBRs. Thus, these CBRs will play an important role in shaping the future of the Indian power sector. Naturally, formulation of the CBRs requires careful consideration of a range of technological and legal issues as well as that of imperatives and compulsions imposed by ground-realities. This, we understand, is mammoth task. To compound the difficulties further, there is an element of urgency in finalizing the CBRs, which comes from the need to immediately address the other pressing issues such as tariff guidelines and grid code.

This understanding underlies our submission on the draft CBRs. It is an outcome of the process of interaction we have been engaged in with our 'constituents'--various civil society institutions including labor unions, consumer groups, non-party political organizations, academics, and independent researchers. We feel that sharing the insights and understanding we gained in the process with the CERC and with our colleagues in CAC will certainly be helpful in formulation of the CBRs.

As you may be aware, we, at Prayas, have been working on policy research and analysis with the express aim of protecting the public interest--long-term interests of society or country as a whole. Because the processes of restructuring and regulatory design are being conducted under tremendous time pressures, we are apprehensive that the public interest may not be able to win a place in the list of core concerns.

We see roots of this possible neglect of the public interest in the paradigmatic shift that underlies the restructuring process and that often goes unnoticed. This paradigmatic shift involves moving gradually away from the "political" paradigm underlying the model of state-dominated electricity sector toward the "economic" paradigm which relies, with varying degrees, on the market mechanism for functioning of the electricity sector. The term "political" is used here in a wider sense. The "political" paradigm views electricity sector as a sector crucial for achieving the national objectives and, hence, considers it as a matter of concern for society as a whole. As against this, the "economic" paradigm views the electricity sector as an arena of a purely "economic" activity wherein various actors participate through various means (viz. capital, labor, technology, skills, and purchasing power) to achieve their own limited objectives.

This "economic" view of the sector is far too limited in a country like India where the contribution of the electricity sector will continue to be critical in achieving broader objectives such as national security, social progress, security of livelihoods, and even provisions of basic amenities. Further, considering the fact that about 40% of households in this country are not receiving basic electricity services that hold key to progress, security of livelihoods, and human dignity, this "economic" view of the sector is not just irrelevant but even exclusionary.

Thus, even after restructuring, the electricity sector in this country cannot escape its "political" responsibility, i.e., responsibility towards the wider objectives and long-term interests of the country as a whole. This means that, even if we adopt some elements of the "economic" paradigm in the new design of the sector, the society at large (or people) need to continue as the major actor in the affairs of the sector. But, in this new set-up, the state is divested of the monopoly of representing people, and, in turn, various sections of society are given opportunity to represent themselves through the regulatory process which would be the key decision-making process. This requires that the regulatory system and processes will have to remain transparent, accountable, and participatory not only to the "economic" actors but also to the public or people at large. The regulatory processes and system in the restructured sector will have to be viewed in this context. In other words, with divestment of the role of the regulator from the state and erosion of its authority as the policy-maker and as an owner in the new set-up, the regulatory system now becomes the main location for efforts aimed at promoting broader societal objectives and at protecting the public interests. This, then, requires the regulatory system to bring in transparency in its functioning, which is geared to people. It also requires that the regulatory system remains accountable primarily to people and ensures true and meaningful participation of people in the decision-making. But, as all of us are aware, people or most sections of population in this country will not be able to participate in the regulatory process on their own. The task of representing them will have to be taken up by various civil society institutions, i.e., organizations and associations outside the state and commercial sections of the society.

In the context of this discussion, we want to share one important observation. It is our observation that most of the civil society institutions currently lack awareness, mind-set (or psychological make up), skills and capabilities that are necessary to participate in the regulatory process. This makes it difficult for these institutions to benefit from opportunities created by the various regulatory provision related to transparency accountability and participation. There certainly are a wide range of factors about which these civil society institutions feel apprehensive. But they distinctly lack the capacities necessary to investigate these concerns and articulate them through systematic analysis and, then, to translate the outcome of the analyses into formulations useful in actual practice such as the CBRs.

This ground reality makes the tasks of the regulatory system somewhat more difficult. Still the regulatory system will have to take up these tasks to ensure proper and smooth functioning of the sector and especially to ensure promotion of broader "societal" objectives. They will have to take some extra steps considering the barriers created by the ground realities. We see the following four major steps or areas of work the regulatory system will have to undertake in this situation : (a) operationalizing transparency through mandatory provisions; (b) enhancing effectiveness of accountability and participation related provisions; (c) capacity building of civil society institutions; and (d) provision of an agency somewhat akin to the office of public advocate in the USA.

We suggest that, being a pioneering agency, the CERC should take the first steps in this direction. We also see advantage in the CERC going an extra mile to ensure transparency and accountability towards people in general and their participation. Unfortunately, the process of restructuring of the sector (or for that matter the process of economic reforms) was initiated without much of a public debate. Even the process of enactment of the laws that brought the CERC into being

was highly controversial. All this has made it difficult for the CERC--the body made up of appointed members--to gain the legitimacy and respect in the eyes of people in general, which is necessary for performing the crucial and delicate tasks entrusted to it. We feel that the CERC can overcome this lacuna by making extra efforts to bring people in the regulatory process. Bringing people into the regulatory system is going to be a multi-task, long, and continuous process for the CERC. One way to begin is to make an extra effort at the initial stage to involve at lest a group of civil society institutions in the consultative process over CBRs. This process could be started through a two-day meeting of the representatives of the interested civil society institutions specifically to discuss and evolve workable but mandatory CBR provisions to ensure transparency, accountability, and participation. Prayas will be glad to extend its full cooperation in the programmatic and logistic aspects of such a meeting. We are aware that the CERC is overburdened with many crucial tasks at this juncture. But, at the same time, we feel that importance of this initial step cannot be denied. We, at Prayas, will be more than happy to help and assist the CERC in this endeavor.

Coming back to the submission, this is an effort constrained by time and resource limitations. As a result, there are many places where we would have liked to improve it. We hope to continue to be in touch with the CERC in this regard. We are making this submission--consisting of this letter and four annextures--on the issue of CBRs as our contribution to the process initiated by the CERC. The first annexture is a note explaining the theoretical basis of a perspective appropriate for the Indian power sector. The second annexture takes cue from our suggestion that the CERC should work in some critical areas and discuss the four areas mentioned above as illustrations. The third annexture contains our suggestions on some urgent revisions in the draft CBRs. The fourth annexture includes some pieces of literature describing some elements of good practices and other aspects of the international experience in the context of issues raised in this submission.

We are sorry for the delay and request you to still take our submission into consideration. We tank you for this opportunity and reiterate full cooperation from our side. If you desire to discuss any of these issues in detail, we will be glad to have meeting with you.

With regards,

(Girish Sant)
Member, Prayas Energy Group

encl. :

Annexture I : "Promoting Public Interest: Civil Society Institutions and the Independent Regulatory Agencies in the Electricity Sector" This annexture contains an article elaborating the theoretical basis of our arguments. This is specially written to include in the submission to the CERC.

Annexture II : "Operationalising the Transparency"
This annexture elaborates how mandatory procedures regarding information sharing can be incorporated in the CBRs. It would be desirable to evolve such procedures to take care of other issues related to transparency, accountability, and participation (TAP) through discussions with a wider cross-section of the society as mentioned in the letter.

Annexture III : "Comments and Suggestions on the Draft CBRs" This annexture lists some suggestions which can be incorporated in the CBRs immediately, with a view to facilitating modification of CBRs in near future to accommodate the earlier mentioned principles of TAP, and remove the provisions which can obstruct incorporation of TAP.

Annexture IV : "International experience" This Annex consists of two papers. The first paper by Mark

Chao and Ashok Gadgil, describes the elaborate process adopted by the RC in California while arriving at restructuring decisions. The second document is a presentation by Dr. John Byrne, organised by Prayas in Bomaby, titled "*Is regulation key to efficiency and welfare : Learning from the US experience*". The marked slides from this presentation shows the elaborate procedure adopted in the US while deciding important matters such as rate base.

Annex I
Promoting Public Interest: Civil Society Institutions and the Independent Regulatory Agencies in the Electricity Sector

Introduction

The Indian power sector is entering into a new era in its history. The move into this new era, as often said, involves a "paradigm shift". This indicates fundamental, comprehensive, and simultaneous restructuring of the sector at various levels--from the underlying conceptual core to its most mundane operating details. While understanding and working with the new structures and procedures, it is important to clarify the conceptual and theoretical foundations on which they are being built. This note is an attempt in this direction.

The Rationale and the Methodology

This note is written with a specific perspective that could be termed as the 'public-interest perspective'. It takes 'protection and promotion of the public interest' as the fundamental objective. The term public interest is used here as an umbrella term encompassing the broader objectives and long-term interests of the society as a whole. These would, among others, include: development, national security, social progress, preservation of ecological heritage.

The concern here is that, in the ongoing process of the restructuring of the power sector, the public interest might be compromised. This note attempts to trace the roots of the possible threat to the public interest in the paradigmatic changes that underlie the restructuring process.

The methodology adopted here is thus centered on the paradigms. It begins with construction of the two opposing Weberian 'ideal-types' of paradigms.[1] The ideal-types are constructed in terms of the following three components: (a) Nature of the sector as visualized in the paradigm, (b) Structure of the sector in terms of the three critical roles – the owner, the policymaker, and the regulator, (c) Norms related to transparency, accountability, and participation (TAP) procedures (please see the accompanying table). As the next step, the implications of various elements of these ideal-types for the public interest are investigated at conceptual as well as practical levels. Learning from this analysis, an effort is made to construct a paradigm appropriate for the Indian power sector. This conceptual design is then translated into a set of practical lessons.

Ideal Type I: The "Political"/ State Paradigm

The Nature and the Structure of the Sector

This ideal type assumes that the electricity sector is a key sector for the country as a whole. Its contributions are crucial for the protection and promotion of the public interest. Hence, it is considered as an issue related to governance of the country. In this sense, the ideal type views the sector in "political" perspective.

As the result, it was considered not only logical but necessary that the state is entrusted with full responsibility of all the three critical roles in the sector -- the policy-maker, the owner, and the regulator.[2] In other words, the state was seen as the custodian of the public interest. With these responsibilities the state was bestowed with full control of the sector and wide powers to govern the sector.

TAP Norms

It was an implicit assumption underlying the governance structure that the state which represents people of the country would not fail in protecting or promoting the public interest. Hence, it was also assumed that the state will be transparent in its functioning except for the information sensitive from the security angle.

In general, the decision-making powers and authority bestowed in the state are assumed to be balanced by the overall accountability of the state towards people. The main mechanism for ensuring this overall accountability has been elections to legislating houses.

Apart from this general mechanisms, there were many other specific accountability mechanisms in-built in the democratic system of governance that are relevant in the case of the electricity sector. These include various structures within the executive and legislature with consultative or autonomous status.[3]

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[1] A Weberian ideal-type is defined as an entity "constructed hypothetically by an investigator from component elements with a view to making comparisons and to developing theoretical explanations; the components out of which a 'type' is constructed being empirically observable or historically recognizable". (Fontana Dictionary of Modern Thought, 1993 p. 403)

[2] The term 'the state' is here used to denote the apparatus of governance of the country that includes legislature, the government, and the bureaucracy operating at various levels. The state is considered to have mandate to govern the country on behalf of people. This mandate is acquired through the democratic process of election. In Indian situation, the function of decision-making is normally performed by the Councils of Ministers.

However, most of the accountability mechanism and tools were indirect, limited or discretionary.[4] Further, most accountability mechanisms were largely governed by conventions and precedents. While the indirect mechanisms were manipulated beyond recognition, the limitations of various mechanisms were further exposed with excessive increase in the size of the sector and the structures governing it. The discretionary powers bestowed in the state created an ironical situation in which the agency whose accountability was to be ensured was vested with powers to dispose off these accountability measures.

Implications for the Public Interest

The design of the electricity sector prevailing in India is largely based on the first ideal type. Its failure to protect the public interest is too evident to discus here. This failure is often traced to its failure to perform the three critical roles, and primarily the role of the regulator.

It is observed that the powers and authority bestowed on the state in order to protect the public interest were usurped by certain "partisan" and "vested" interests, resulting into excessive "partisan" interference, indiscipline, and inefficiency in the functioning of the sector.

It is argued here that this high-jacking of the state and usurping of its authority were possible and allowed mainly because the TAP related tools and mechanisms could be sabotaged.

This sabotage, in turn, was possible due to two reasons, or rather shortcomings. The first shortcoming was structural. The structure for governance of the sector had a severe design flaws in the form of indirect, ambiguous, limited, and discretionary TAP mechanisms and tools. These very characteristics made the TAP tools susceptible for sabotage. It was effected through a range of means--from subtle to blatant. While most discretionary powers were used for subtle manipulations, inconvenient conventions and precedents were flouted with impunity.

The second weakness was institutional.[5] For various reasons, even in the post-independence era, the captains of society did not or could not work to build organizations and institutions within the civil society.[6] Due to the distinct lack of civil society institutions, the electoral politics controlled largely by the "partisan" interests has remained the only avenue for people in India to engage into "political" activity.[7] Thus, people had no means to keep their representative--the state--in control once the accountability measures within the state system were sabotaged and flouted.

Ideal Type II: The "Economic" / Market Paradigm

The Nature and the Structure of the Sector

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[3] Some good examples of such tools are the Consultative Councils (CC) in SEBs and the office of the Comptroller and Auditor General of India (CAG). These also include legislative tools such as the Public Accounts Committee (PAC) in the Parliament and the legislative procedures such as various types of questions that representatives can raise in the legislative house.

[4] The good example of indirect accountability mechanism is elections to legislative houses. They are indirect because they generally are not fought on specific issues such as power sector issues. Further, there are severe limitations on efficiency and efficacy of bodies like CAG or PAC. They are simply not in position to handle the large number of issues and cases that need to be brought before them. Common citizens face enormous barriers in getting these bodies to decisively act on their grievances. In the case of the bodies such as CCs, the state governments have discretion in their formation, functioning, and even disbandment.

[5] The term 'institutions' is used in sociological sense, i.e., it includes, along with organizational structures, traditions, conventions, precedents, and practices.

[6] Here, the term 'civil society' is used to denote that part of the society which lies outside the boundaries of the state and the commercial interests. The civil society is seen here as space for citizens to work for "common" interests of the society as a whole.

With a gradual development of democratic societies in the West over the centuries, formal and informal institutions in the civil society also evolved. Their flexibility, spontaneity, ability to evolve in response to changing situation, the "automatic" legitimacy they enjoy through their close and live links with different sections of the society, and the lack of coercive and repressive power, made them best suited to perform many functions to help the society to progress and evolve. One such function for the civil society institutions (CSIs) was to provide an alternative to the state by taking up the "political" task of protecting and promoting the public interest.

[7] "Political" activity here means activity to protect and to promote the public interest and not aimed at protecting interests of one section of the society or the other.

Coming to the second ideal type of paradigm, it views the power sector essentially as an arena of "economic" activity, wherein various actors and sections of society participate to achieve their own objectives and protect their own interests. [8]

The role of the state as a "political" body, i.e., as the representative of people is considerably reduced in this design. The state is expected to discharge its security related functions, i.e., to provide the necessary security from external aggression and internal disturbance.

However, coming to the three critical roles, the state is completely divested of its regulatory function. The regulatory function is delegated to a properly constituted, adequately empowered authority which is independent of the state.

As far as ownership is considered, the private parties are the main owners. The state, if it wishes, is allowed to act as one of the owner but on par with the other actors. It is assumed that the state would wish to do so in order to represent or to protect interests of weaker sections or to take care of externalities (such as environmental).

The state is allowed to retain its policy-making function. But is often strongly advised to shape its policies in a manner that would allow the power sector to function with minimum constraints as envisaged in this paradigm.

TAP Norms

In this paradigm, generally, the TAP related norms are primarily geared to protect the interests of the "economic" actors including consumers.

For the large part, transparency comes into picture only to enhance confidence of various actors about fairness of the system in general and about fairness of the actions of regulators and those of the eternal 'bad boy'–the state.

The regulators are often held accountable for their decisions and are expected to provide justifications for their decisions. They are considered accountable also to the consumers and, hence, the issues of redressal of consumer grievance and accountability to consumers are often part of the accountability related provisions.

The paradigm provides considerable opportunities to various actors for participating in the decision-making process of the sector. However, the participation is circumscribed by the rules of the game which are designed with the "economic" view of the sector in mind.

Implications for the Public Interest

Let us now turn to the problems with the image of electricity sector as a purely "economic" sector. It means that the sector is to be largely left to the supposedly impartial, and, hence, optimal operations of market forces. This image is justified by many, especially in the case of developing countries, by saying that the state support and guidance, which is required in the early phases of development of the sector, is not required once the electricity sector and the economy of the country have matured.

There are two problems with this argument, even if we accept, for the time being, that certain "economic" actors in the sector have achieved certain levels of techno-economic maturity. First, this argument implicitly assumes that most, if not every, sections of society are equipped to participate in the functioning of the sector on the basis of their own economic and not political strength (capital, labor, purchasing power, etc.). This certainly is not the case with India, where about 40% of population still does not afford basic electricity services.

The second problem is related to the lack of proper civil society institutions. The "Economic" paradigm primarily is based on the experience of democratic societies in the West. As a result, it implicitly assumes existence of strong, capable, and mature civil society institutions. With powers of to the state restricted, the ultimate guarantee for proper functioning of the independent regulatory system (especially regarding protection of the public interest) comes from the indirect and direct pressures from civil society institutions. This, as we saw earlier, is difficult to achieve in the Indian society.

An Appropriate Paradigm for the Indian Power Sector

Considering the strengths and weaknesses of the two paradigms and considering ground realities in India, an appropriate paradigm needs to be evolved for the Indian power sector. This is an attempt to present an outline of one such paradigm. The starting point obviously is the Indian power sector in its current state.

The Nature and the Structure of the Sector

As it is clear from the previous discussion, it is quite premature to view the affairs of the sector on purely "economic" grounds. Thus, on the one hand, we cannot rely entirely on 'market' to resolve the crises faced by the electricity sector. On the other hand, considering the current state of affairs in the spheres of governance and electoral politics as well as the way the state agencies are functioning, it is a foregone conclusion that the currently functioning of the electricity sector cannot be left at the mercy of the state as envisaged in the "Political" paradigm.

Thus, separation of three critical roles entrusted earlier to the state—the policy-maker, the owner, and the regulator—is unavoidable.

[8] Contrary to the "political" activity – economic activity is related to activities conducted by various actors in the society in order to protect their own interests, rather than "common" interests.

Coming to the first critical role of policy-making, in a democratic society the state is the only competent agency to handle the task of the policy-making as it has the mandate of people to do so. So, the state cannot be divested of this role.

But, as our experience suggests, the state has utterly failed in its role as a regulator. It simply is too susceptible to various pressures to handle this task. In this situation, there is no alternative to installation of the independent regulatory authorities.

It is often argued that the current financial condition of the state and most of its agencies also compels admission of the private parties as owners. This is not the place to go into the current controversy over this issue. But, as it appears now, in the near future at least, the state will continue to be the major owner in the Indian power sector.

In this design, the independent regulatory authority will be the key decision-making body that will act within the boundaries of the relevant legislation. However, the state as an owner and even as the policy-maker will obviously be subjected to the authority and demands of the independent regulatory agencies.

TAP Norms

In this paradigm, we have argued that the public ought to be a bonafide actor in the sector and that the power sector need to be subjected to "political" considerations along with "economic" ones. This enables redefinition of norms of transparency, accountability, and participation. In this paradigm, the key decision-maker is the regulatory agency. Hence, the regulatory agencies will have to be transparent in their functioning, and they will have to be accountable to not only "economic" actors but also to the public. Further, the regulatory process should provide space and opportunity for true and meaningful participation of people.

Implications for the Public Interest

In this design, there are two locations for protection and promotion of the public interest. The first such location is the policy-making function of the state.

The state in its policy-making function could be pressurized by the public through the usual channels of electoral politics. But there are two problems in this strategy. The first problem is that, in this design, the authority of the state as the policy-maker is considerably limited, once it passes the legislation enabling the independent regulatory authority to take over the decision-making function. Second, as we have seen earlier, in the absence of the effective civil society institutions, the state tends to be highly susceptible to "partisan" and "vested" interests. Thus, in the present situation, working at this location would only bring limited results.[9]

The more prospective location for action aimed at protecting public interest is the regulatory function handled by the independent authorities. In view of the problems in the first location, this location becomes crucial for protection and promotion of the public interest.

The independent regulatory system could be made instrumental in protecting the public interest in two sets of means. The first set consists of ways for which the regulatory system would have clear mandate. The mandate normally requires the authority to ensure that, on the one hand, the sector is not allowed to be unduly influenced by the economically strong actors, and, on the other hand, that the functioning of the sector and the regulatory process is not allowed to be dominated by "partisan" and "vested" interests acting through the state.

The means in the second set involve more pro-active steps to promote the public interest mainly by the public and civil society institutions. To what extent the regulatory system would allow this will depend upon two things: (i) how flexible and 'public-friendly' is the mandate of the regulatory agencies as defined in the relevant legislation, and (ii) the additional space for such promotion that could be created by ingenuous interpretation of the mandate by various actors.

There is another barrier to realizing this. It is often and quite rightly argued that the 'independent' regulators could also be susceptible to the same kinds of pressures (from economic, partisan, and vested interests) as the state had been during the olden days. This is especially true when the role of the regulators becomes so crucial.

This points at the need for active efforts by the public or civil society institutions to simultaneously 'protect' regulatory agencies from "partisan" as well as the "vested" interests acting through the state as well as the "economic" interests acting independently.

To sum up, the design of the electricity sector based on the suggested paradigm needs to emphasize two crucial aspects: (a) direct and mandatory TAP provisions and (b) active role of capable civil society institutions. Further, the role of the independent regulatory agencies is critical in protecting and promoting the public interest. Similarly, the public and civil society institutions will have to make extra efforts to ensure that the regulatory process is not unduly influenced.

The Few Extra Steps Regulators Need to Take

Having arrived at the key elements of the desired structure of the sector, now we need to examine it in the context of ground realities before we derive some lessons for practice. Even if we assume existence of direct and mandatory TAP related provisions, a stark ground reality comes immediately to the mind, which could hinder effective

[9] However, it is also argued that, devoid of the absolute power to rule the sector, there is possibility that the state may become more sensitive to public interest.

utilization of these provision. We have seen that situation in India is bleak as far as civil society institutions are concerned. They are very small in numbers and lack awareness, mind-set, and various skills as well as capabilities that are required to participate in the regulatory process. These capabilities include analytical capabilities in the spheres of technology, economics, finance, and law, and the required skills include analytical and legal skills.

This distinct lack of awareness, mind-set (psychological make-up), capabilities and skills will have to be addressed through special efforts. The first critical question is who will undertake these efforts. In the current situation, it is quite unlikely that either the state or the private actors would be interested in doing this. Naturally, the responsibility falls on the shoulders of the regulatory agencies who are also entrusted with the critical responsibility of ensuring proper functions of the sector.

In order to address the above-mentioned shortcomings of the civil society institutions, the regulatory agencies will have to work on a range of issues and areas. The following are few examples of such issues and areas. As the debate on the issue of public interest will develop and get refined, more such areas could be identified.

(i) Making TAP Provisions Direct, Specific, and Mandatory: In view of the past experience of sabotage of TAP related provisions, they will have to be refined to protect them from sabotage.

(ii) Operationalizing Transparency : This relates to the fact that creating transparent procedure is not enough to enable the civil society institutions in this country to utilize there procedures. Some extra steps will have to be taken.

(iii) Making Provisions for Accountability and Participation More Effective: Considering the critical nature of provisions in these two areas, similar extra steps will be needed to remove the hindrances and barriers faced by civil society institutions in utilizing them.

(iv) Capacity Building of Civil Society Institutions: A variety of programs and efforts will hare to be undertaken to gradually build capacities of civil society institutions in different spheres.

(v) The Issue of Office of Public Advocate (OPA): Though the capacity building efforts are initiated, it will take some time before the civil society institutions could be ready to handle the tasks involved. It is often suggested that an OPA be created in the intervening period.

Conclusion

Even if we design a structure of the sector that is accepts "political" responsibility and suitable to the Indian conditions, protecting the public interest is not an easy task. It would require a combination of critical factors: existence of direct, mandatory, and effective TAP mechanisms and tools as well as the capable and aware civil society institutions to utilize the tools. In the given circumstances in India, the regulatory agencies in the restructured electricity sector will have to take some extra steps to ensure that these conditions are met and the public interest is protected.

Power Sector Paradigms: The Two Ideal Types

The Parameter	Political / State Paradigm	Economic / Market Paradigm	Paradigm Appropriate for Indian Power Sector
Nature of the Sector	Sector is crucial for the country as a whole, Hence, it is an issue of governance.	Sector is an arena of purely "economic" activity. Hence, to be left to market forces.	Sector should abide by "econo-mic" logic but cannot escape "political" responsibilities
Structure of the Sector [a] Policy Maker's Role [b] Owner's Role [c] Regulator's Role	[a] The State [b] The State ***[c] The State***	[a] The State (Restricted) [b] Private [c] Independent Authority	[a] The State (Restricted) [b] Private and the State [c] Independent Authority
T, A, and P Norms: [a] Clients [b] Servers [c] Transparency (T) [d] Accountability (A) [e] Participation (P)	[a] The Public [b] The State [c] Ambiguous; Implicitly Transparent [d] Indirect and Discretionary Tools. [e] Indirect; Through Elected Representatives	[a] "Economic" Actors [b] The State and the Regulators [c] Commercially Allowable Transparency Norms [d] Accountability to Ensure Fairness in Functioning [e] Participation (Within the Economic Logic)	[a] The Public & "Economic" Actors [b] The State and the Regulators [c] Transparency (To the Extent Possible) [d] Full Accountability to Ensure Public Interest [e] Full Participation by the Public and Civil Society Institutions

Annex II
Operationalising the Transparency

As discussed in the Annex II, we feel that the CERC should take steps to operationalise the transparency principles. This would greatly help capability building of the civil society institutions and also help improve the trust and respect for the CERC. We urge the commission to establish mandatory procedures for the same.

It is usually argued that mandatory procedures are cumbersome and might unnecessarily increase the work burden of the commission. It is also feared that some ill-motivated persons may use these provisions for harassing the commission office. Hence, the tendency is to rely on setting good precedence in this regards, and avoid mandatory procedures. But as the work of commission progresses, there are going to be several urgent and extremely important issues that the commission will have to handle. Then, streamlining the information disclosure procedures would remain a low priority. And in the absence of pressure from the civil society, we are afraid that, it will be left undone, despite the best intentions of the commission. Hence, this plea for mandatory procedures. Coming back to the issue of operatinalising transparency, there can be many elements of this process. Each element will have to be first analyzed and based on this analysis, practical provisions will have to be articulated.

As an example, we have worked out a set of procedures for information sharing that can effectively handle most requests for information without causing trouble for the commission. We also worked out the cost of staff time and other facilities (inclusive of out-reach) required for this purpose. We realise that this cost is not high. We believe it is possible to identify other similar issues and device a workable system for operationalising the intended principles.

The Issue of Information Sharing:

It is an immediate reaction of many that the mandatory procedures for information sharing would be highly problematic to the office handling this task. Hence, we begin by dealing with this aspects. The mandatory provisions would prove problematic in following three situations.

1. The office does not have streamlined procedures for handling requests for information. As a result, each of the request ends up taking a lot of time of important officers.
2. The person demanding information does not know what is available, where can he/she find the required information and what is the procedure for obtaining the available information.
3. Ill-motivated persons simply want to harass the officials by asking for unnecessary information.

The office can experience substantial trouble in any of these situations. But, as can be realized the origin of trouble is different in each case. And hence, these need to be and can be handled differently. This annex outlines a process that can be laid down to avoid first two kinds of situations. For the third situation, the solution is to design the information dissemination process so that the functioning of the office is insulated form the troublemakers. The system can be designed so that the person trying to harass will need to spend money / time disproportionate to what the officer has to spend, which acts as dis-incentive for such harassment. In addition, when a large chunk of information (that satisfies needs of most persons) is openly and easily available, the commission will have higher moral authority to use its discretion to firmly deal with situations of the third kind.

Types of Information Need to Be Made Public:
Coming back to the information sharing, let us begin by identifying what kinds of information need to be made available to the public:
(a) Records of the proceedings, inclusive of brief minutes of the hearing.
(b) In addition, for being able to hear and request for participate in proceedings, people need to know several details about the impending proceedings (such as the issue involved, parties to the proceeding, the point of view of different parties, date of hearing, etc.).
(c) Expected issues to be taken up by the commission, the likely dates by which these will be decided,
(d) Technical and commercial (tariff related) information, including the filing by the utilities and the consultant reports.

Steps in the Procedure for Information Sharing:
Requests for such kinds of information can be met through the following set of steps.

Step 1: The CERC should establish a "Public Information Office" (PIO).

Step 2: The PIO should maintain the following registers, which should be open to the public.

Reg. 1 :	List of on-going proceedings (short title), parties to the proceedings (upto maximum 10 names of important petitioners and respondents) Dates of the meetings / hearings held and issues discussed Dates of the meetings / hearings planned and the issues for the same
- Reg. 2 :	List of ALL records of each proceedings. The list should contain date of filing, short title, number of pages of filings by the petitioner, and respondents, comments / objections by the public (either in response to public notice or otherwise), orders by the CERC, and reports of the consultants, experts appointed by the CERC, etc.
- Reg. 3 :	Chronological list of all regulations / notifications by the RC
- Reg. 4. :	Statutory fillings by the utilities and other institutions with the commission.
- Reg. 5. :	Other documents (reports of other institutions, conference proceedings, etc.) available with the commission.

(Note : this illustrative list can be modified based on discussions with civil society institutions)

The Secretary of the commission should be made responsible for updating the registers every eight working days (i.e. documents received by the commission should be entered in the respective register within eight working days).

Step 3: The PIO should register any interested individual or organisation, after payment of a fee. The PIO should send monthly updates of the register by registered post to each of these organisations. Copies of this update should also be sent to two depository libraries in various states. The PIO registration fees should be sufficient to cover the copying and postage costs of such mailings. The updates should give the costs and possible modes of obtaining the copies of these documents. Anyone should be able to request the PIO for sending copies of the public documents listed in the registers by paying the said charges. The documents should be dispatched within a fixed time limit (such as, documents related to on-going proceedings in eight days and other documents within fifteen days).

Step 4 : The annual report of the CERC should contain a section reporting the activities of the PIO, giving details such as (a) dates on which monthly updates were dispatched, (b) time-wise

classification of the documents enetered in the register (c) requests received for documents and the response time details.

Explanation :

1. A simple PC based programme linking the PIO computer and inward register can handle this process very efficiently, eliminating most of the added work.
2. With the advent of Internet, the request for hard copies will not increase too much. Further, the CERC can direct utilities to make their information public on the web (this is in addition to the CERC-PIO registration) and provide a link to the web-sites of utilities from the CERC web-site, this can greatly reduce the burden on the CERC site.
3. The work of making copies of the documents can be sub-contracted to a private party, which should keep its machine and person available in the PIO. The photocopying charges should be slightly higher than the commercial charges (~ Rs 0.80/- per page).

In our estimate, the cost of such comprehensive information disclosure exercise will at most be Rs. one crore p.a., including the cost of man-power and other facilities and even considering mass free mailing (5,000 copies of monthly updates each consisting of 40 pages). This cost is a fraction of the percentage of the turnover that CERC is to control. We feel that this cost needs to be weighed against the enormous public access to information it will develop. In addition, these procedures would help commission send the right signals.

Implications for the CBR:

This procedure needs to reflect in CBR provisions. We have attempted doing this. The provisions can be as follows.

Section 1 : The Secretary shall cause, a set of registers, mentioned in Section 2 to be maintained and updated every week. Every document entered in the register shall be classified in the three categories : (a) a public document, (b) a confidential document, or (c) a public document after a particular date. Copies of the monthly updates of these registers shall be made available, by registered post, before the end of each calendar month, to any interested individual or organisation upon payment of an annual fee, to be determined by the Commission from time to time. These monthly updates shall also be mailed to two public libraries in each state, to be nominated by the commission. The monthly updates shall also contain information about how and at what cost public can obtain copies of the public documents mentioned in the updates.

Section 2 : For the purpose of Section 1, the Secretary will maintain registers as may be directed by the commission. The list would include but not be limited to the following:

Proceedings Register : This register will list all the proceedings before commission, giving details such as the proceeding number, short title, names of petitioner and respondents, dates of meetings relating to the proceeding and the issues discussed during these meetings, dates of future meetings related to the proceedings and the issues to be discussed during the meeting.

Proceedings Record Register : This register will list all records of each proceedings giving classification of each document such as filings by the petitioner, filing by the respondent, comments / objections by the public (either in response to public notice or otherwise), order by the commission, reports of the consultant etc., along with the date on which it was received by the commission, and approximate page numbers of each record.

Statutory filings register : This register will contain a list of all documents filed by the utility or other organisations, pursuant to commission directions, along with details such as date of filing, commissions directive under which the document is filed, number of pages etc.

Commission notifications register : This register will contain chronological list of each notification published by the commission in the official gazette, giving date of publication of the

notification, date and number of earlier notification which it modified by this notification, and the short description of the objective and subject of the notification.

Section 3: The Secretary shall cause all requests for documents to be entered and serially numbered into a separate register to be maintained for the purpose. Documents related to on-going proceedings shall be dispatched within eight working days, and all other documents shall be dispatched within fifteen working days, by the mode of dispatch mentioned in the request, if it is consistent with option given in the monthly updates mentioned in section one.

The Issue Regarding a Public Notice :

The CERC would be giving a public notice only when it feels that the issue involved does need attention of public at large. Hence, the procedure for giving public notice should be very effective. We have some suggestions to make this happen.

(1) Organisations, groups of consumers should be allowed to register with the CERC (or with PIO), with nominal fees, for obtaining copies of public notices. Along with publication in the news paper, the CERC (or PIO) can mail copies of the notice to the registered organisations / individuals. Some of the users may prefer to receive notice by e-mail.
(2) The web page of the CERC can have a prominent display of the new notices.
(3) The news-paper advertisement is meant for persons who do not visualise a need to keep continuous track of the CERC activities. But, it is not unusual that such public advertisements get lost in the massive information appearing in the news-papers. A process followed in the USA is worth considering for this purpose. All regulatory notices appear at a specific position in the news papers. The RC usually gives a small (brief) public notice specifying the issue in the consideration. The interested persons can then obtain more information from the RC office. For our situation, we suggest that the CERC can follow a procedure that the news paper advertisements (notice) appear on Sunday on the second page right side (top or bottom) of the papers. The CERC can specify that the advertisement will appear in the new-papers with the largest circulation (or the names of the news papers can be specified).

We believe that this process can greatly improve the effectiveness of the public notice.

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Annex III
Comments and Suggestions on the Draft CBRs

The letter accompanying this annex and Annex I suggest the areas on which the CERC should take some extra steps to ensure protection of public interests while finalising the CBRs. But, if, for some reasons, the CERC is not able to adopt these suggestions, then at this stage, at least, care should be taken to make the CBRs an enabling document for ensuring the public interest. To achieve this objective, certain amendments in the Draft CBRs are required. The following are some suggestions in this regard. These suggestions aim at removing the provisions which would adversely affect the above-mentioned objective, and, at the same time, adding provisions that can facilitate operationalising it in the near future.

The Draft CBRs are, in many ways, similar to the CBRs of framed by the OERC, and, hence, we are enclosing a copy of our article making extensive comments on the OERC procedures. The article points out how the discretionary powers of the commission and the lack of mandatory procedures can lead to severe erosion of the rights of the public regarding getting information, participation in the procedures, and accountability of the regulators. Effectively, the fate of the of the public interest and rights again relies on the presence of good-intentioned RC members.

We have following specific suggestions that need to be immediately incorporated in the CBR.

1. (Section 7, 8, 9) Language of the Commission: The Commission should accept Hindi as another official language and should not require English translations of Hindi documents. The acceptability of Hindi documents should not be a discretionary provision.
2. Section 22 pertains to the attendance by the Ex-officio Member and his voting powers. This provision appears discriminatory. As the Act, does not specify such differential treatment, it would be better if this provision is either made applicable to all members or removed altogether. In any case, this provision necessitates defining what constitutes “full proceedings”.
3. Section 26, mentions that the CERC can appoint any of its officer or other person to present the matter as petitioner. We request you to make it amply clear that this provision does not affect the rights of the original or any other petitioners.
4. (Section 31-41) All requests for petition / hearing should be numbered and the same should be communicated to the applicant. The CERC should impose on itself a time limit for accepting or rejecting a petition for hearing.

Public Right to Intervene (Sections 42 to 53 for Item Nos. 5 to 7)

5. The CERC would choose whom to serve the notice, i.e. who is the affected party. In very limited number of cases, the notice will be served in the news papers. As a result, in the case of all other petitions, no person (other than those chosen by RC) would have any information or right to intervene. In fact, people should know about all the impending or on-going proceeding, they should have access to records of all the proceedings, and they should also be free to file relevant information to be included as a part of the records of the proceedings. (Care should be taken that categories as respondent to public notice, party, non-party, etc. should not affect this right). In addition, people should be allowed to make an application for becoming a party to the on-going or impending proceeding. The CERC should be free to reject the same, after giving reasons.
6. The CERC should acknowledge every comment or objection received regarding any proceeding.
7. The CERC should explore the desirability of introducing a mandatory provision asking that each pleading or petition be accompanied by a abstract (of not more than 2 pages). In fact, we wish to request the CERC to record of minutes of all meetings as well as hearings and abstracts of the evidence and filings. This should be made a part of the records.
8. (Section 67 and 110 Confidential information): The RCs often require that the contents of “privileged or confidential” part of the document need to be made public along with the name of the person who has authorised it.

9. (Sections 84, 87, 89) The commission should expand the list of issues that it will decide through proceeding route. Issues such as 'tariff guidelines', 'incentive schemes' and 'procedure for tariff proposals' should also be decided through the proceedings route. Explicit provision to this effect should be incorporated in the CBR.
10. (Section 100) All periodic submissions or filings made by the utility in pursuance of the CERC directives should also be made public. The utility may request the CERC to classify some parts of the report as confidential. The above procedure should be followed for classifying such information.
11. (Section106) This is a welcome step and spirit behind it is appreciated. But it would remain a non-starter unless people know the details of the impending proceedings (such as issue to be discussed, who are parties to it, what are the hearing dates, etc.). Hence, it is essential that the CERC makes these and other such details public so that this information is easily and widely accessible. A procedure that needs to be adopted along with an efficient system of outreach has been outlined elsewhere.
12. (Section 109): The period of seven days as stipulated in the CBRs is too limited for serious participation by civil society institutions. This should be viewed in the context of the ground realities including tha facts that it takes about two days just for reaching Delhi from many parts of the country and a letter requires at least one week to be delivered. Considering this, a reasonable period of at least three weeks should be specified as the minimum time. Some other desired provisions regarding the public notice are also discussed elsewhere.
13. (Section 110, sub-section 2) The CERC (i.e. the Public Information Office, described elsewhere) should provide the necessary copies of the documents to public in a time bound manner or if the documents cannot be made available will specify the reasons for the same.
14. (Sections 117, 113) These Sections should clearly specify that it will be used only when the commission is unanimous on (a) necessity of its use and (b) the view that action intended through use of this provision does not undermine the overall public right to information and justice, and the principle of transparency.

    Please do see the strict provisions of rule 79 of the RC in California (a copy attached herewith). Just for taking up matters not appearing on the agenda of the meeting (which is made public at least 10 days prior to the meeting), the RC needs agreement by a two-third majority.

In addition to above :

The commission should spell out its intention to operationalise the transparency by indicating in CBRs that : "An appropriate process of making the information available to the public will be evolved. The commission will establish a public information office (PIO) for the said purpose. All documents which are not specified as confidential would be available at PIO for inspection and for making copies. The list of public documents along with the abstracts of submissions and reports sufficient to give a fair idea of the content of the original document will be made available at the regional libraries designated by the commission. A list of documents classified as confidential, along with the summary of the document, date of it being classified, and the name of the person classifying it will also be made available in the PIO and the regional libraries."

Consumer Education – so as to protect consumer rights:
The CBRs should contain a expression of intent in this matter. The provision similar to the following can be adopted.

"The commission will publish a set of documents for educating the public about the role of commission, rights of the public and consumers, and the procedures of the commission, etc. These documents will be made available at PIO and through other public / private book distribution channels."

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