

A Good Beginning But Challenges Galore

**A Survey Based Study of Resources, Transparency,
and Public Participation in Electricity Regulatory
Commissions in India**

प्रयास

आरोग्य, ऊर्जा, शिक्षण आणि पालकत्व
या विषयांतील विशेष प्रयत्न

Prayas, Energy Group, Pune



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February 2003



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About Prayas, Energy Group

Prayas is a registered charitable trust based in Pune. Prayas's activities cover four substantive areas of Health, Energy, Learning and Parenthood, and Resources and Livelihoods. The Energy Group of Prayas is mainly engaged in policy analysis in the electricity sector and capability building of civil society institutions.

Its past work includes an analysis of the power purchase agreement between Dabhol Power Company (DPC) and the Maharashtra State Electricity Board (MSEB); the development of a least-cost integrated resource plan (IRP) for the state of Maharashtra; an analysis of agricultural power consumption and subsidy; a study of the regulatory aspects of the Orissa model of power sector reforms, and a critique of the activities of, and lending by, multilateral development banks for the energy sector in India.

Since the last few years, the Energy Group has focused mainly on issues relating to power sector reforms and regulation. All major publications, presentations, and reports of the Energy Group are available on our website. Prayas's activities are supported through project-based grants from charitable foundations.

PRAYAS

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We are extremely grateful to the chairmen, members, and secretaries of 12 electricity regulatory commissions (ERCs) that responded to our long questionnaire. The very fact that so many ERCs responded positively to this effort by a small civil society organization is a welcome sign of the changing environment in the sector. These ERCs and their commissioners need to be congratulated for this.

We also thank Dr. Madhav Godbole, Dr. E.A.S. Sarma, and Prof. S.L. Rao for taking time out from their busy schedules to review the questionnaire and prepare an independent report on the response to the survey and the report by Prayas. We especially thank them for the confidence they placed in us by agreeing to be members of the Panel of Eminent Persons. We greatly appreciate their active support and encouragement.

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Prayas Energy Group Research Team

Shantanu Dixit, Girish Sant, Subodh Wagle and N. Sreekumar

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Part I

Introduction, Objectives, and Methodology

1. Introduction

In the mid-1980s, the power sector in India started showing signs of financial stress. By the mid-1990s, most of the state electricity boards (SEBs) had incurred heavy financial losses and were unable to function without substantial financial support from their respective state governments. Highly subsidized tariffs (for some consumer categories), poor technical and commercial performance, very high transmission and distribution losses, rampant power theft, and excessive interference by politicians in the functioning of SEBs were some of the primary reasons for the crisis.

In order to address these multifaceted issues, the state of Orissa, with active involvement and support from the World Bank, initiated fundamental restructuring of its power sector. Apart from separation of the generation and distribution companies and privatization thereof, a crucial component of the restructuring process was the establishment of independent electricity regulatory commissions (ERCs or RCs). Soon, several states—either through their own Electricity Reform Act or through the central Electricity Regulatory Commissions Act—adopted this new governance structure and created state electricity regulatory commissions (SERCs).

In the new institutional structure of the power sector, the SERCs are expected to play very crucial and multiple roles. On the one hand, they are expected to prevent political interference in the power sector, rationalize tariffs and, on the other hand, they are also expected to protect consumers (and also non-consumers) by regulating the operations of power utilities and the tariff chargeable to consumers. They are also expected to cure the diseases of irrational decision-making and lax implementation by ensuring complete transparency and meaningful public participation in the governance processes.

The elements of transparency and participation will create greater credibility and acceptance for the ERCs, which would be needed to enforce rationality and discipline in governance of the sector. To carry out these functions successfully, it is widely accepted that ERCs must be provided with adequate financial and manpower resources. Several ERCs that have been set up in the last three to four years have started functioning and issuing tariff orders after some initial difficulties.

2. Objectives

Against this background, Prayas Energy Group (PEG) carried out a survey-based study of various regulatory commissions in India. The objectives of this exercise were: (a) to identify and assess resource limitations, if any, faced by the RCs (b) to assess and analyse the extent of transparency and public participation in the regulatory process in various states, and (c) to draw lessons for enhancing transparency and participation in future. The outcome of this study is intended to highlight various mechanisms and processes used by RCs to enhance transparency and public participation.

3. Methodology

This section explains the methodology adopted in this study.

3.1 Coverage

This exercise covered a limited number of states, which were chosen to ensure representation of different governing laws (e.g., the Central Act or the state-level Act), and the status of reform. Further, only those states were considered, where at least one tariff order has been issued. The Central Electricity Regulatory Commission (CERC) was also covered to understand the processes at the central level and also due to its importance. Of the 13 RCs covered or approached for the survey, only the Haryana ERC

did not respond to our questionnaire. Table 1 lists the various commissions covered in the study. It was unfortunate that the Haryana ERC did not respond to the questionnaire despite repeated follow-up requests.

Table 1: Electricity Regulatory Commissions Covered in the Survey

Sr. No.	Name of the ERC
1.	Central Electricity Regulatory Commission (CERC)
2.	Gujarat (GERC)
3.	Rajasthan (RERC)
4.	Karnataka (KERC)
5.	Madhya Pradesh (MPERC)
6.	Andhra Pradesh (APERC)
7.	Orissa (OERC)
8.	West Bengal (WBERC)
9.	Uttar Pradesh (UPERC)
10.	Delhi (DERC)
11.	Himachal Pradesh (HPERC)
12.	Maharashtra (MERC)
13.	Haryana (ERC did not respond to the questionnaire)

3.2 Survey Questionnaire¹

The RCs from the focus states (i.e. states covered or approached) were requested to fill-up an exhaustive questionnaire. The questionnaire, comprising both descriptive as well as objective type questions, was divided into seven major sections, viz. [A] Background, [B] Commission Staff and Resources, [C] Commission Consultants, [D] Review and Implementation of RC Orders, [E] Commission Advisory Committee, [F] Transparency, [G] Public Participation, and [H] Other Issues. The questionnaire (along with a note on objectives and methodology) was sent to the commissions in May 2002. Apart from this questionnaire, RCs were also requested to send documents such as minutes of the meetings of the Advisory Committee and Annual Reports. Additional information was also obtained from the official websites of the respective commissions.

3.3 Panel of 'Eminent Persons'

Three eminent persons from the power sector were requested to join a panel to comment on the survey questionnaire as well as on the study report to be prepared by PEG. Dr Madhav Godbole (former Union Home Secretary), Dr E. A. S. Sarma (former Union Power Secretary and Principal, Administrative Staff College of India, Hyderabad) and Prof S. L. Rao (former Chairman, Central Electricity Regulatory Commission) kindly agreed to act as members of this panel. For more details about the members of the panel see cover 3.

After compilation and analysis of the questionnaires, a draft report prepared by Prayas was circulated to the Panel. The Panel held a meeting in Pune on 30th January 2003, to discuss these findings and prepared an independent report. This report titled 'Comments and Observation of the Panel' is included as Part II of this volume.

3.4 Commissions' Comments

In order to ensure adequate opportunity for RCs to respond to our analysis, the first as well as final draft of Prayas report were sent to all participating RCs with a request to comment on the same. Seven ERCs pointed out factual corrections, which have been incorporated in this report. Two RCs, HPERC and CERC, also provided overall comments on the report and the same are presented in part IV of the volume.

3.5 Structure of the Report

The second part of this volume presents the 'Comments and Observations of the Panel'. The third part, the Prayas Report, presents the analysis and findings of the survey as well as our comments on these findings. HPERC and CERC provided overall comments on the Prayas Report and these are presented in the last part.

¹ If someone desires to have copies of the questionnaires filled by ERCs, they can be obtained from Prayas (at photocopying cost of Rs 400 per set).

Part II

Comments and Observations of the Panel

Dr. Madhav Godbole, Dr. E.A.S. Sarma, and Prof. S.L. Rao

This study carried out by Prayas on the Electricity Regulatory Commissions (ERCs) in India deals with a wide range of issues concerning the ERCs in different States. The issues covered in the study include the resources that are available to the ERCs in different States, the willingness on the part of the respective State Governments to empower them and the extent to which the Commissions have been able to ensure transparency and public participation in their proceedings. The Panel has had the benefit of discussing the material contained in the study in detail with Shri. Girish Sant, Shri Shantanu Dixit and Shri Subodh Wagle of Prayas and evaluating the findings in relation to the future course of action to be adopted by the government and the ERCs.

At the very outset, the Panel wishes to compliment Prayas on attempting such a study, which is perhaps the first of its kind on the working of the ERCs in the country. A robust and independent regulatory framework is crucial for the healthy growth of the electricity industry in India. Despite its limited resources, Prayas has been able to design and canvass a comprehensive questionnaire covering almost all important aspects of the functioning of the Regulatory Commissions and analyze the information received in response to arrive at a set of findings that should provide a valuable insight to policy makers in the government and the regulatory authorities on how they could enhance the effectiveness of the role of the ERCs in the coming years. Keeping in view the importance of the information contained in the study and the suggestions it offers, we would recommend that the study report be publicized widely among the various government functionaries, the ERCs themselves as also consumer organizations, NGOs and the public at large.

The Panel examined the findings in the context of the draft Electricity Bill that is presently under

consideration before the Parliament. The following are our observations in this regard.

The Prayas Report clearly brings out the need to address the following issues relating to the functioning of the ERCs.

- Independence & autonomy of the ERCs
- Empowerment of the ERCs
- Accountability of the ERCs
- Transparency & public participation in ERC proceedings
- Need to enhance the quality of professional inputs for the ERCs
- Ensuring that ERCs remain sensitive to important social issues

Independence & Autonomy

As quasi-judicial bodies, the ERCs should be multi-member bodies and should function as independent and autonomous institutions. This is important as such independence and autonomy is a prerequisite for instilling confidence among the consumers and the investors in the functioning of the regulators.

The functioning of the ERCs is subject to judicial scrutiny and, to a very large extent, this alone has a salutary impact on the manner in which the ERCs conduct their proceedings and pronounce orders that are consistent with the provisions of the relevant statute.

The Panel feels that the effectiveness of the ERCs would get further enhanced if the procedures for the appointment and removal of the members could be made more objective and free from political interference. The following steps are needed to realize this.

- The selection of the members of the State ERC should be entrusted to a statutory committee headed by the Lokayukta of the State wherever such an institution exists and in the other States, by a serving High Court judge nominated by the Chief Justice of the High Court. The other members of the committee should include the Chairman of the CERC, the Director of one of the IITs and the chairman of the CAT in the State. The State Power Secretary would be the convener of the committee.
- For the selection of the members of the CERC, a serving judge of the Supreme Court should head the selection committee with the chairman of the UPSC, the chairman of CAT at the national level and a Director of IIT as members. Secretary (Power) in Government of India should be its convener.
- The selection committee will be a standing committee so that any delay in constituting it would not delay the selection process. It will be the responsibility of the convener of the committee to refer vacancies to the selection committee at least 6 months in advance. Delays in the selection process at every stage, with reasons, if any, should be reported by the government to the State Legislature/ Parliament by laying a statement on the table of the House.
- In the normal course, it would not be desirable to select whether serving or retired government officials as members of the ERC as it would send a wrong signal on the independence of the Commission as perceived by the public. However, it was felt that not many candidates would be available at least for some time, from outside the government, whether technical or otherwise, with the necessary background to be able to function as members of the ERCs. In view of this, it was felt that not more than one technical member's vacancy should be filled from the CEA/ utilities and not more than one from any of the all-India/ Central Services. In such cases, care should be taken to ensure that persons with adequate background in the power sector alone are selected.
- Under no circumstances should the legislative provisions relating to the ERCs permit the appointment of persons known to represent political party interests on any of the ERCs, as the very purpose of constituting the ERCs is to disassociate economic decision making from politics.
- The Selection Committee should recommend two names for each vacant position for the appointment to be made by the government. The committee should record a speaking order justifying their recommendation. The government should make the appointment from out of those two names. If for some reason, those names are not acceptable, the reasons for not accepting those names must be recorded in writing and the government must ask the selection committee to give a fresh panel.
- Both the recommendatory statement of the committee and the reasons for not accepting the recommended names, in case of rejection, should be placed by the government in the public domain by laying a statement on the table of the legislature/parliament.
- The age limit for the appointment should be with reference to the date of appointment rather than the date of superannuation so as to permit a full term of five years for the incumbents, which will enhance their insights and efficiency. It should be 57 years for the members and 60 years for the Chairman.
- The procedure for the removal of members should be such that no political considerations could influence the process. In the case of both judicial and non-judicial members, the same procedure as provided for in the ERC Act of 1998 needs to be retained. The draft Electricity Bill needs to be amended suitably for this purpose as recommended by the Parliamentary Standing Committee.
- There will be no second term for the chairman or any member of the ERC.
- Once any person has officiated as a member of the selection committee for any of the regulatory commissions, he/she should be precluded from seeking appointment as the chairman or a member of that regulatory commission.
- It is understood that the oath in respect of the

Chairmen and members of some ERCs is administered by the Minister in charge of power. This is not in keeping with the objective of ensuring independence and autonomy of the ERCs. In the case of CERC, it should be administered by the President and in the case of SERCs, it should be administered by the Governor of the State.

- To provide financial autonomy to the ERCs, a separate fund should be created to finance the expenditure of the ERC. The resources for this could be raised through the levy of a cess on electricity levied by the ERC. All receipts from the cess and any fees, charges, fines and other such miscellaneous receipts of ERC should be credited to a separate head of account opened in consultation with the Comptroller & Auditor General of India. Such a fund should not form part of the consolidated fund of the state and should be entirely at the disposal of the ERC. The outflows from the fund should be determined at the beginning of each year through a discussion of the chairman of the ERC with the Finance Secretary and any related matter arising thereafter would be decided through mutual consultation at the same level.
- The same procedure as above will be adopted for any funding from external source for technical assistance to the ERCs.
- The ERCs should have the authority to fund in-house consumer advocacy, promotion of consumer organizations and professional consulting support for the ERC.
- There should not be any statutory provision for the government to issue directives to the ERCs. The experience so far has been that such directives are sometimes issued on non-policy matters.
- There should be a bar on any former member of ERC undertaking any assignment, whether on a full time, contractual or consultancy basis, from any utility or on any project in the state in which he was a member. There should also be a bar on such a former member appearing before the ERC. This will be in line with similar provision, which obtains for the high court judges.

The draft Electricity Bill with the amendments proposed by the Parliamentary Standing Committee does not seem to capture these requirements fully. Moreover, the report of the Committee seems to suggest that the selection of the members of the ERCs should be entrusted to the Public Service Commissions! Keeping in view the recent revelations about the Public Service Commissions in several States and the fact that appointments to these Commissions have been highly politicized, the Panel earnestly urges upon the government to revisit the provisions of the draft Electricity Bill and try and set right the relevant clauses in line with our recommendations.

Empowerment of the ERCs

The Prayas Report provides the varying degree of willingness on the part of the respective State Governments to transfer the powers listed under Section 22(2) of the ERC Act, 1998.

The Panel is of the view that the ERCs cannot effectively discharge the responsibilities envisaged in the Act unless all the regulatory, licensing and other related powers listed under this sub-section are incorporated as inherent powers of the ERCs. Otherwise, the functioning of the ERCs will remain confined to that of mere tariff-setting with no say whatsoever in deciding on the capacity additions and fuel choices and the terms of the PPAs. Empowerment of the ERCs is necessary for safeguarding the interests of the consumers.

On all major initiatives for restructuring the electricity industry in the Centre or the State as the case may be, the concerned ERC should be consulted and it should be mandated statutorily.

It is also necessary to mention here that many State Governments have been brazen in defying the orders and directives of the SERCs, year after year. Even the basic requirement of submission of full data in support of the tariff increase proposals is not being met by the utilities. This does not augur well for the ERCs and suitable safeguards need to be incorporated in the proposed Electricity Bill.

Accountability

The Panel feels that the primary accountability of the ERCs should be to the Parliament or the concerned

State legislature as the case may be. This can be reinforced in the following manner.

The orders issued by the ERCs are not sufficiently exhaustive and self-contained and it becomes difficult to understand the basis underlying them. This indirectly dilutes their accountability.

- The annual reports of ERCs have tended to be far too cryptic and superficial and it effectively dilutes their public accountability. Their annual reports should be comprehensive and these should be placed before the Parliament or the concerned State legislature within the prescribed time limit.
- Though the present law provides for this, we understand that many ERCs have not either submitted reports at all, or have done so well after the due dates. Such violation of the legal requirement must specifically be brought to the notice of the concerned legislature.
- The reports should be released for publication without waiting for these being placed on the table of the parliament/legislature.
- The Annual Report should contain explicit disclosures on the number of public hearings held, the orders pronounced and their implementation by the concerned government/utility. It should also indicate the directives, if any, issued by the government either under the statute or otherwise and the views of the ERC thereon. The Annual Report should spell out the administrative and financial constraints, if any, imposed by the government on their functioning.
- The Annual Report of the ERCs should also disclose the decisions, statements or announcements of the government on matters that are essentially within the domain of the ERC or such other decisions that tend to pre-empt the decisions of the ERC.
- The accountability of the ERCs will get enhanced considerably if all information made available to the ERC by the government, the utilities and all other petitioners and agencies are placed in the public domain. Exceptions should only be to safeguard public interest and such public interest should be stated through a

speaking order that can be challenged in a court of law.

- Where the provisions of the Freedom of Information Act or the Competition Act are inconsistent with the transparency provisions under the ERC Act, the latter should prevail.
- Judicial scrutiny of the functioning of the ERCs is of paramount importance for enhancing their accountability. However, to discourage avoidable litigation, examination by the courts should only be with reference to points of law. On matters related to facts, unless there is a patent miscarriage of justice on the face of it, disputes should be looked into by the ERCs.
- The orders pronounced by the ERCs are subject to judicial scrutiny and no other authority can question the propriety of such orders. The CAG would audit the expenditure of the ERC and to that extent ensure accountability of the ERC to the legislature in budgetary matters.
- The Supreme Court has recently emphasized the need for constituting an appellate tribunal having the necessary technical expertise to decide on appeals preferred against the orders of the ERCs. While the draft Electricity Bill provides for such an appellate tribunal, this Panel's recommendations on the procedures for the selection etc. of the members of the CERC should be made applicable to the tribunal as well.
- Finally, transparency in the proceedings of the ERCs will ensure that the ERCs remain accountable to the consumers. The Panel's recommendations in this regard are recorded in the subsequent paragraphs.
- ERCs must be as vigilant and alert in respect of the working of the private utilities as the SEBs or their corporatised entities. It must be incumbent on such private utilities to file annual revenue statements before the ERC even if no tariff increase is to be asked for. If necessary, the law should be amended suitably.

The draft Electricity Bill does not fully factor in these aspects. The above recommendations are important from the point of view of enhancing the accountability of the ERCs.

Transparency & public participation

Many of the recommendations listed above will go a long way in promoting transparency of the functioning of the ERCs. In addition, the following measures may also be desirable.

- The Annual Report of the ERC should be made public even before it has been presented to the legislature, as the current practice is a legacy of our colonial past.
- All proceedings of the ERCs should be translated into local languages and made available to the public, if necessary, by suitably pricing them and through publication on the web.
- All ERC orders should be circulated to the print and electronic media, especially in local languages.
- The SERCs should hold public hearings at divisional headquarters by rotation.
- The government should formulate a scheme to fund consumer organizations and provide for their training.
- The ERCs should institute consumer advocates to argue for consumers.
- CERC should take the lead in bringing out a regulatory law digest for the benefit of the ERCs, lawyers and the public.
- The government should have an open mind for suggestions from the public on the functioning of the ERCs.

Need to enhance the quality of professional inputs for the ERCs

In a preceding section on empowerment of the ERCs, it has been suggested that the SERCs should have all the powers listed under Section 22(2) of the ERC Act. This will be feasible only when the ERC has acquired the necessary technical support. Even the CERC would need similar technical support in view of the kind of responsibilities that it is required to discharge. The following aspects are important in this context.

- The ERCs should have the freedom to appoint highly competent consultants and experts on contract basis to assist them and this would call for adequate delegation of administrative and

financial powers to the ERCs.

- Government restraints on salaries should not be applicable to ERC staff and flexibility must be agreed in the process of consultation that the chairman of the ERC would have with the Finance Secretary of the appropriate government.
- Similarly, the ERCs should have the authority to outsource some of its studies.
- The reports of the consultants, if any, appointed by the ERCs should be subject to peer review by independent experts as such a process would enhance the credibility of the working of the ERCS.
- ERC staff should not be permanent but only on contract (if not on deputation) for up to five years at a time.
- The ERC personnel should be exposed to the working of the other ERCs in the country and outside as also other regulatory authorities functioning in sectors such as telecom, insurance etc. The purpose of this is to promote the best practices all around.
- The ERCs should evolve a common code of conduct among themselves to start with and later among regulators in different sectors.
- The CERC could take the lead in developing a regulatory portal for the benefit of all ERCs.

Social sensitivity

The ERCs need to be sensitive to the social scenario in which they have to function. For example, there seems to be considerable amount of misinformation on the so called “ subsidies “ provided to the agricultural consumers without any critical examination of the needs of the farmers, the time of day at which electricity is supplied to them and the actual cost of supply. In some States, the wrong decisions taken by the government on demand forecasting, fuel choices, modes of generation and the terms of the PPAs have tended to push up the unit cost of supply and the subsidies to the consumers are determined on that basis. Any undue burden on the Indian agricultural consumer in the emerging WTO scenario in which he has to compete with his counterparts in the developed world that deliberately provide subsidies

can place him in a highly disadvantageous position. It is in this context that the ERCS should undertake a critical examination of some of these mindsets in discharging their functions.

This can be ensured by strengthening the advisory committees that assist the ERCs by inducting experts who can provide the necessary inputs. The advisory committees would closely monitor the action taken by the ERCs on their recommendations. For this purpose, the ERC should invariably submit to the committee an action-taken report on the suggestions made by the committee at the meeting that follows immediately thereafter.

Other suggestions

We suggest that there should be an all India forum for regulators covering the statutory regulators in all sectors. At that forum, common issues afflicting the regulators, code of conduct and the best practices in the country and abroad could be discussed periodically. Consumer groups could be associated in these discussions.

General Observations

The Panel feels that the Prayas Report provides valuable insights to both the government and the ERCs themselves into the factors that constrain the effective functioning of the regulatory authorities in the power sector and in the other important sectors such as telecom and insurance. The report is timely as the government is contemplating to establish similar regulatory authorities in the case of other sectors and the lessons learnt from the electricity sector could be of guidance in designing the legislative framework for regulators for the other sectors. From this point of view, the Panel recommends a very wide circulation of the Prayas Report. Prayas has limited resources at its disposal and it will be appropriate that the government provides such NGOs with the necessary moral and financial backing in disseminating the contents of this report.

Many of the findings in this report and the recommendations that we have made here on that basis would call for a review of the proposed provisions of the Electricity Bill that is presently before the Parliament. We wish that the Parliamentary Standing Committee had the benefit of perusing the contents of this Panel report while making its recommenda-

tions on the legislation. Even at this juncture, we would strongly commend for the consideration of the Parliament the recommendations that have emerged from the Prayas Report before the draft legislation becomes a full-fledged Act. We have no doubt that the priority of the Parliament is to enact laws that safeguard the interests of the economy in the long run. In this context, it is important that the core concepts that we have listed out in the preceding paragraphs are suitably factored into the separate electricity legislations already passed in eight States. While there can be flexibility in respect of approaches to reorganization of the electricity industry and procedural matters, the basic concepts related to autonomy, accountability, transparency etc. of regulators should have consistency across the Centre and the States as well as across the States themselves.

We wish to emphasise here that the success of restructuring of the electricity sector and enhancing the flow of investment into the sector would be largely dependent on how effective, credible, transparent and accountable is the regulatory mechanism in the sector. We are sure that the gravity and seriousness of the power sector problems in the country will be fully appreciated by the parliament and the recommendations that we have made in this context adopted while enacting the electricity legislation that is presently under consideration.

There are many other aspects that are touched upon in the Prayas Report that could be adopted without much effort by the government and the ERCs themselves. For the first time, the Prayas study makes it possible for the ERCs to have a comparative evaluation of their functioning. It should help the ERCs in pointing out the best practices to their respective State governments and try and get them adopted in their own case.

We are sure that this study will trigger a healthy public debate on the role and the responsibilities of the ERCs. We hope that the study will lead to some basic changes in the regulatory framework in the country. We have no doubt that Prayas will continue its good work and bring out similar studies on many more important aspects of the power sector in the coming years. We are grateful to Prayas for associating us on this Panel.

Prayas, Pune

We feel that there are other important areas that need the attention of Prayas and others. These include, among others, cross subsidies, merit order dispatch, feasibility of metering and billing a large number of agricultural consumers spread out thinly over a large geographical area, working of private sector utilities in the sector, the working and viability of electricity co-operatives, continued involvement and interference of state governments in the working of electric-

ity boards, continued large subsidisation of tariffs by the state governments, lack of independence, in reality, to SEBs in filing ARR and tariff revision petitions, analysis of court orders, use of penalty powers by ERCs, best practices adopted by utilities nationally and internationally, comparative international experience of similar regulatory bodies in the sector, and so on.

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Part III

The Prayas Report

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Abbreviations

ARR	: Annual Revenue Requirement
BSES	: Bombay Suburban Electricity Supply Company
CAC	: Commission Advisory Committee
CBR	: Conduct of Business Regulation
CEA	: Central Electricity Authority
CSIs	: Civil Society Institutions
DFID	: (British) Department for International Development
DVB	: Delhi Vidyut Board
ECON	: Electricity Consumer Network, Karnataka
ERC	: Electricity Regulatory Commission (or RC)
FAQ	: Frequently Asked Question
FOIR	: Forum of Indian Regulators
FY	: Financial Year
GENCO	: Generation Company
GoI	: Government of India
GRIDCO	: Grid Corporation of Orissa Ltd.
HC	: High Court
IPP	: Independent Power Producer
IPS	: Irrigation Pump Sets
KPTCL	: Karnataka Power Transmission Company Limited
MSEB	: Maharashtra State Electricity Board
NA	: Not Applicable
NGO	: Non-Government Organisation
NTPC	: National Thermal Power Corporation
PFC	: Power Finance Corporation
PLF	: Plant Load Factor
PPA	: Power Purchase Agreement
Rs.	: Rupees
SC	: Supreme Court
SEB	: State Electricity Board
SERC	: State Electricity Regulatory Commission (abbreviations used for state ERCs are listed in Table 1 of Part I)
T&D	: Transmission and Distribution
TPC	: Tata Power Company
TRANSCO	: Transmission Company
u/s	: under section
UPPCL	: Uttar Pradesh Power Corporation Limited
UPSEB	: Uttar Pradesh State Electricity Board
USA	: United States of America
USAID	: United State Agency for International Development

Part III

The Prayas Report

This part of the report presents the analysis and findings of the survey as well as Prayas’s comments on the same. The analysis is primarily based on the response of ERCs to our questionnaire. This part of the report is largely arranged according to the sections in the questionnaire. In the last section we present our comments on the findings of the survey. The observations regarding CERC are presented in separate box (Box 1), considering the different nature of CERC’s responsibilities and the different social and political environment in which it operates as compared to the SERCs. Except for the Haryana ERC, all the other ERCs responded to our questionnaire. Hence, except for the first section, the rest of the report refers to the 11 SERCs. In the case of Haryana, the information needed for analysis of issues covered under the section ‘Background’ was available on HERC’s official website and hence it was considered in the analysis only for that particular section.

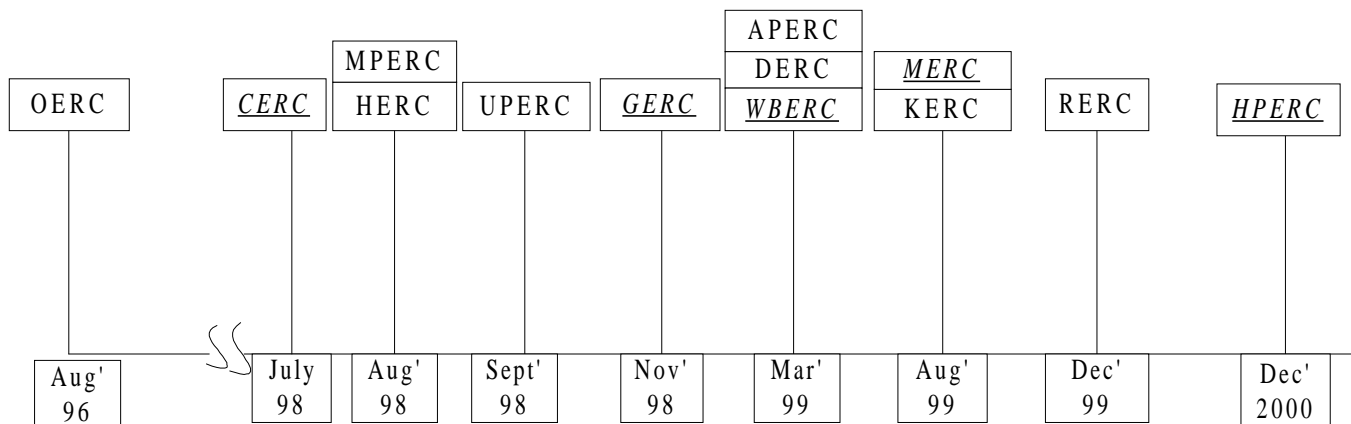
1. Background

This section of the questionnaire covered issues relating to the formation of the commission, authority and issues relating to the composition of and vacancies in the commission. Figure 1 shows the time line of establishment of various SERCs. It can be seen that all these commissions (except HPERC) have been operational for at least three years. Moreover, these commissions have also completed one or more tariff revision processes, and have also formulated the necessary regulations such as conduct of business and tariff regulations.

1.1 Functions of the SERCs

Out of the 13 ERCs that are considered in this section, five commissions (HPERC, WBERC, GERC, MERC and CERC) have been constituted under the central Electricity Regulatory Commissions Act 1998 (ERC Act), while the others have been established under the respective state-level

Figure 1: Establishment of the regulatory commissions



Note: Italics and underscoring indicate that the particular ERC is operating under the ERC Act 1998; others are operating under respective state electricity reform Act.

electricity reform laws. In the case of CERC, the delegation of all functions mentioned in the ERC Act is mandatory and the central government has no discretion in this regard. Similarly, in the state reforms acts, delegation of all functions to SERC is mandatory. All state acts and the ERC Act; have also conferred significant judicial powers to the ERCs to be able to discharge these functions. These powers include the power to summon people, carry out enquiry, search and seizure, as well as power to punish people (penalty and/or imprisonment).

The ERC Act, however, takes a two-step approach in delegation of authorities to SERCs. Section 22.1 of the act automatically delegates some important functions to SERCs once they are established. These include tariff determination and regulation of power purchase. However, Section 22.2 of the ERC Act provides for certain functions, which can be delegated to the SERCs as per the discretion of respective state governments. In the case of HPERC, even two years after its inception, the state government has not delegated any function under section 22.2 to the commission. In the case of WBERC, even after three years, the state government has delegated only three functions under section 22.2 to the commission, viz. that of licensing under Section 22.2 (d), of adjudicating and arbitrating disputes under Section 22.2 (n), and of aiding and advising the state government under Section 22.2 (p). In the case of MERC, out of 16 discretionary functions listed in Section 22.2 of the ERC Act, only seven functions have been delegated. Functions of crucial importance such as investment regulation and licensing are still not given to MERC. In the case of GERC, except for the crucial function of investment regulation, all other functions have been given to the commission. Table 1 lists the important functions *not* delegated to SERCs established under the ERC Act 1998.

Table 1: Important Functions Not Delegated to SERCs Under the ERC Act 98

Name of the ERC	Important S. 22.2 functions <u>not</u> delegated
MERC	<ul style="list-style-type: none"> · Investment regulation · Licensing
HPERC	<ul style="list-style-type: none"> · Investment regulation · Licensing · Arbitration and dispute resolution
WBERC	<ul style="list-style-type: none"> · Investment regulation
GERC	<ul style="list-style-type: none"> · Investment regulation

Thus, out of the four SERCs established under the ERC Act and covered in this exercise, *none* has been given all functions under the ERC Act. Lack of delegation of crucial functions, such as investment regulation and licensing to commissions established under the ERC Act 1998, indicates that state governments are still not reconciled to the idea of delegating authority to independent bodies. In this context it is essential to make delegation of all functions under s. 22.2 of the ERC Act 1998 also mandatory.

1.2 Background of Members and Secretaries

With the creation of ERCs, it was expected, among other things, that new expertise and a new perspective would be infused in the regulation of the sector through participation of individuals coming from diverse backgrounds such as the private sector, research or academic institutions as well as social sectors. Table 2 and Figure 2 summarize the background of chairmen, members, and secretaries of the RCs covered in the survey. In this table, the background of even past occupants of the posts is considered. About 66 such instances were covered in the survey and, as shown in the table, Indian Administrative Services (IAS) officers and retired staff of SEBs regulated by the ERCs account for more than half of these key posts. This analysis reveals that individuals from outside the government occupy negligible number of posts - in fact they are the exception - and that the regulation of the sector is still firmly within the ambit of career government employees.

Table 2: Background of ERC Chairmen, Members and Secretaries

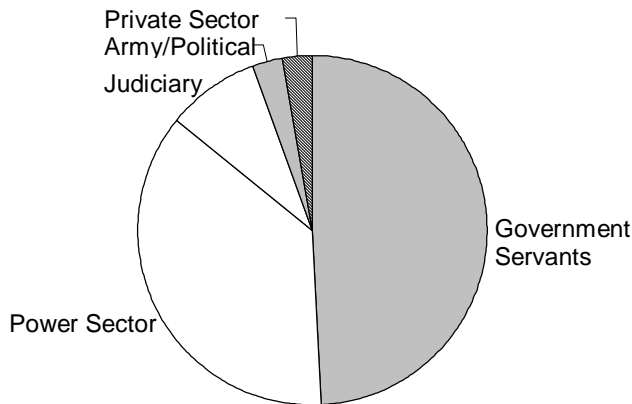
Post	Total	IAS	OCS	Utility	OPS	Judiciary	Political	Army	Pvt. Sec.
Chairman	21	10	2	1	2	5			1
Member	31	2	6	11	9	0	1	1	1
Secretary	14	10	0	1	2	1			
Total	66	22	8	13	13	6	1	1	2

Notes:

Utility – Implies retired employees of utilities being regulated by the RC

OPS – Other power sector establishments such as CEA and PFC or utilities not regulated by the same RCs (other state's SEBs etc.)

OCS – Other civil services such as Revenue, Income Tax and Audit

Figure 2: Background of Members and Secretaries

1.3 Tenure of the Commission Members and Secretaries

For consistency of decision-making in the RCs, it is desirable that members serve their full term. This will enable them to gather more experience, which will help improve the quality of the regulatory process and of the decisions of commissions. The reform acts and the ERC Act specify a term of five years for these posts, with some ceiling on the age. Table 3 summarizes the actual tenure of ERC members and secretaries as observed in the survey, including those of current and past occupants. The table shows that the stipulation of five years' tenure is not being followed in spirit, as about 45% of the occupants had (or have) a tenure of less than three years and only about 30% have a full five-years tenure.

Table 3: Tenure of ERC Chairmen, Members, and Secretaries

	Total No.	Average (years)	Less than 1 year	Between 1 & 3 years	More than 3 years	Full 5 years
Chairman	19	3.46	2	7	1	9
Members	28	3.71	0	9	12	7
Secretary	15	2.36	3	6	3	3
Total	62	3.18	8%	35%	26%	31%

1.4 Vacancies and Appointments

The reform acts as well as the ERC Act provide that any vacancy in the commission should be filled up expeditiously and, to achieve this, the acts also specify a timetable. Timely appointments to the RCs is crucial, as lack of any one member might make the entire commission inoperative, as happened in the cases of Tamil Nadu and Gujarat.

But, as shown in Table 4, it appears that this timetable for filling up vacancies is hardly followed. Out of twenty-two vacancies mentioned in the survey responses, about 60% were filled after three months, while three vacancies were filled up after one year. Out of these three instances, two were in relation to CERC. The significant delay in the appointment of new members indicates, on the one hand, the governments' apathy and, on the other hand, indicates the need to make the timetable for appointment stipulated in the acts more stringent. Most acts do not have any restriction on the time frame for governments to select commissioners from the list submit-

ted by the selection committee. To prevent delays in appointments, this loophole need to be plugged.

In the context of selection of RC members another important aspect needs to be noted. There have been a few instances (at state as well as central level) where members of the selection committee have been appointed as ERC Chairmen. It is possible that in some of these cases, the concerned individuals may have recused themselves from the selection process. It is also possible that such persons may have been extremely capable and well suited for the post. But, it needs to be noted that such instances do not bode well for enhancing the credibility of the selection process as well as the independence of ERCs. Considering the importance of credible regulatory process, it is essential that such practice be avoided. Some of our other suggestions for enhancing the credibility of the selection process are discussed in section 11.

Table 4: Duration of Vacancies in the ERCs

	Total	< 3 months	3- 12 months	> 1 Yr
Chairman	7	3	3	1
Members	11	4	6	1
Secretary	4	2	1	1
Total	22	9	10	3

2. Commission Staff and Resources

The second section of the questionnaire sought information about the staffing pattern of the commissions, their budgets, funding mechanisms, and degree of financial autonomy.

2.1 Commission Staff

Adequate manpower with necessary skills and capabilities is crucial for SERCs to be effective. To analyse this aspect, we asked ERCs to provide information on certain elements such as number of posts sanctioned, posts actually filled up, and nature of appointment (i.e. permanent, on deputation, or contract) for five categories of posts, viz. technical, finance/economics, legal, administration and other.

In the first three categories put together, the maximum number of posts is in APERC (more than 20) and only two in case of WBERC and MERC. On an average, SERCs have about eight to 10 posts for these key technical, finance/economic, and legal functions. Similar to the case of members of the SERCs, about two-thirds of the technical staff is from regulated utilities even in case of these posts, while in the case of staff performing finance/economics and legal functions, the proportion of staff from regulated utilities is significantly less. With high proportion of technical staff from regulated utilities (who have come on deputation) in the commission, it is difficult to envisage independent and fresh analysis.

In the case of administrative and other staff, the average sanctioned posts are around 20 to 30 for all SERCs. MPERC reported sanctioned staff strength of around 65 while APERC reported it to be less than 10. But while commenting on the draft report, the MPERC pointed out that, although the sanctioned staff strength is correct, about half of the posts are actually filled. It was also pointed out that as per the information available on the APERC website, the number of sanctioned posts (doing administrative work) is around 60.²

Another peculiar observation is that a very low proportion of staff in SERCs is hired on a permanent basis. Except for four commissions—viz. OERC, HPERC, MERC and APERC, no other commission has even a single permanent staff performing the crucial technical, economic/finance, or legal functions.³ In fact, four SERCs, – KERC, APERC, DERC and RERC – specifically mentioned that it is a policy either of the ERC or the state government (and stipulation of rules and regulations) not to appoint any permanent staff.

Absence of permanent staff performing substantive functions is a significant issue for three reasons. First, it would imply that there would be no building up of any ‘institutional memory’ on substantive, procedural, or strategic issues, which is very crucial

2 It seems that the APERC response (i.e. questionnaire) indicated filled up posts rather than sanctioned posts.

3 The number of permanent staff in OERC, APERC, HPERC and MERC that handle substantive matters is 12, 8, 3 and 1 respectively.

for regulating a complex, dynamic, and politicised sector like electricity. Second, the temporary nature of the appointment would tend to compromise the independence of the RC staff, as they are more likely to toe the line of the commissioners. It is also possible that their job insecurity would make them more susceptible to pressures and enticements from other actors in the sector. The third crucial issue is how to ensure commitment and accountability of temporary staff or staff brought in on deputation from the large bureaucracies. On the other hand, appointment of permanent staff may also lead to corruption. Thus, to balance the economic and other advantages of temporary and deputation staff against the disadvantages, it is advisable to maintain a careful balance between permanent staff and temporary (and deputation) staff.

Out of the 11 SERCs responding to our questionnaire, the state governments of four turned down their requests for additional staff. In the case of WBERC (12 posts) and HPERC (20 posts), requests for additional staff for key technical, finance/economics and legal posts are pending approval for over 30 months and 17 months respectively (up to July 02).

2.2 Commission Resources

Timely availability of adequate financial resources is crucial for effective functioning of the SERCs. The responses from SERCs in our survey indicate that, barring a few; requirements of SERCs in this regard are being met to a large extent. On an average, the approved budget of SERCs is about Rs 3 crore a year. However, the approved budgets of RERC and HPERC are less than Rs 1 crore per year. Table 5 shows, for two financial years, the proportion of budget approved by the state government as a percentage of budget proposed by SERC as well as the proportion of the actual amount received by the SERC (before the end of the relevant financial year) as a percentage of the approved budget. Except for UPERC, all other SERCs have either faced some reduction in budget or the actual amount received is less than the approved budget.

But, broadly, it appears that except in the cases of HPERC and MPERC, the commissions are not significantly handicapped in terms of the availability of financial resources as yet. There have been some

odd incidents to the contrary⁴. The case of HPERC is serious, as the approved budget was only 16-18% of the proposed budget for two consecutive years. In the case of MPERC, for two consecutive years, the approved budget was significantly less than the proposed budget and the actual funds received were also substantially less than the approved budget.

The impact of such cuts and delays may not have been significant in the cases of most SERCs until now. However, the fact that, except for a couple of ERCs, all others had to face such cuts and delays in the last two years, raises questions about the continued availability and smooth flow of adequate and timely financial resources.

Table 5: SERCs Budgets: Proposed, Approved, and Actual Receipts

Name of RC	FY 00-01	FY 01-02	FY 00-01	FY 01-02	Average Approved Budget (Rs. Cr./Yr)
	% Approved	% Approved	% Receipts	% Receipts	
MERC	46	82	100	100	2.2
HPERC	16	18	100	100	0.3
OERC	87	49	100	100	1.1
MPERC	65	76	43	61	1.0
RERC	78	92	100	97	0.9
WBERC	100	100	73	51	1.6
APERC	100	100	65	88	3.5
KERC	100	100	100	100	3.1
UPERC	100	100	100	100	3.6
GERC	93	100	52	70	2.1
DERC	180	111	100	70	1.9

Notes:

1. '% Approved' – approved budget as % of the budget proposed by RC and
2. '% Receipts' – funds actually received before the end of the financial year as % of the approved budget.
3. In the case of DERC, '% Approved' is more than 100%, as it also covers some part for the funds from the budget of earlier years.

4 These include incidents such as 50% reduction in budget in the case of MERC and OERC in FY 00-01 and FY 01-02 respectively and actual fund receipts, which are less than half of approved budget (in the relevant financial year) in the cases of WBERC (in FY 01-02) and GERC (in FY 00-01).

2.2.1 SERCs' Expenditure on Consumer Education:

Following the main objective of this survey, data regarding expenditure by RCs on education and capability building of consumers was also sought. Out of about 25 commission-years (i.e. addition of number of years for which the data was made available by all commissions), only in three commission-years some expenditure was done on consumer-related activities. GERC reported spending about Rs 2.85 lakh in the financial year (FY) 1999-2000 and FY 00-01 and KERC reported spending Rs 1 lakh in FY 01-02 on consumers' education and capability building. Apart from these two commissions, other SERCs have neither budgeted nor spent any amount on developing consumer-related activities.

Education and capability building of consumer organizations are prerequisites for meaningful participation of consumers in the regulatory process, especially in the initial stages of this institutional experiment. Further, meaningful public participation in the regulatory process is vital for the success of this institutional innovation. At least in the initial years, when other agencies (such as governments) are not making any efforts in this direction, it is desirable that SERCs take the lead. In fact, such a progressive approach would also enhance the credibility and support of the regulatory process among various consumers, which is also crucial for SERCs in their initial years. Even in developed countries, where the regulatory process has matured and consumer groups have considerable capabilities, RCs do provide substantial financial assistance (in various forms such as reimbursement of travel costs and funding for studies) to consumer groups.

2.2.2 Funding of SERCs and Financial Autonomy:

In order to ensure that RCs function effectively as well as autonomously, it is essential that they should have assured funding sources and also autonomy in actually spending the money. Considering the miniscule budget of ERCs (as compared to the revenue they would be controlling and hence the responsibility cast on them), such financial independence is certainly affordable in the larger sense of the term. But to prevent the evolution of a large bureaucracy, it is advisable to continue the present practice of seeking government approval for permanent posts. A regular audit of the ERCs' expenditure by agencies such as the Comptroller and Auditor

General (CAG) should be sufficient to deter possible misuse of the financial authority and autonomy.

Currently, the expenditure of RCs is either charged to a consolidated fund of the state government, or is supported through government's budgetary provisions. Regarding the possibility of supporting the expenses of ERCs through 'surcharge' or 'fees', six SERCs (viz., DERC, OERC, KERC, RERC, MERC and HPERC) responded that this is not allowed, whereas APERC and GERC mentioned that they have not looked into this issue as yet.

UPERC and WBERC mentioned that they are using fees received from petitioners to support their expenditure, and the amount to be received from the government is reduced to that extent. WBERC has received Rs 1.7 crore in the last two years (about 55% of the approved budget in that period) through such fees, whereas UPERC has received about Rs 6.8 crore in the last three years through such means (about 65% of the approved budget in that period). MPERC also mentioned the need for allowing ERCs to utilize fees, which at present have to be deposited with the government.

Apart from adequate availability of finances, autonomy in actual expenditure from within the approved budget is also crucial for the smooth functioning of ERCs. Except for OERC, DERC, and MPERC, all other SERCs mentioned that they do not have to approach the government on a case-to-case basis for actually spending the budgeted amount.

OERC's request for enhancing financial freedom is pending with the government and the Auditor General for vetting, whereas in the case of DERC, approval of the state government is needed for certain specified expenditures such as foreign travel of chairman and members or purchase of vehicles/cell phones.

Thus, in terms of actually spending the budgeted amount, there appears to be sufficient freedom for the SERCs, except in the case of MPERC, which has to take government approval on a case-to-case basis. This is nothing but interference in the day-to-day affairs of the RC with a potential to curb the RC's independence.

3. Consultants to the Commissions

Due to reasons such as lack of adequate and trained manpower in the commission, or the need to induct fresh analysis and perspective, SERCs are depending on external support, mainly from consultants. In the case of these newly established agencies the dependence and role of consultants becomes even more crucial. One section of the questionnaire was devoted to assessing these aspects.

The expenditure on consultancy appears to be reasonably small (from 2% to 17% of the total expenditure, or between Rs 2 lakhs to 40 lakhs per year) in cases where consultancies are funded by SERCs. But, where consultancies are funded by bilateral or multilateral agencies such as the World

Bank or DFID, the costs are comparatively very large. For example, the World Bank supported consultancy provided by M/s. National Economic Research Associates (NERA), Washington to APERC cost about Rs 7 crore. The information provided by four SERCs, viz. APERC, OERC, GERC and UPERC, which utilized the services of consultants funded by bilateral or multilateral agencies, is given in Annexure 1. Some RCs have not provided the cost of such consultants. In view of the large costs of such consultants, it is essential to evaluate the additional benefits of the analysis and information provided by these consultants as compared to those provided by consultancies carried out using Indian funding.

Box 1: The Central Electricity Regulatory Commission

In this survey, we focused on 12 SERCs and the CERC. Of these 13 ERCs, HERC did not respond to our questionnaire. The analysis of the remaining 11 SERCs that did respond to our questionnaire is presented in various sections of this report. However, the CERC is different from the SERCs in terms of the nature of its responsibilities and administrative and institutional environment. Hence, observations about CERC are presented separately in this box.

CERC has a staff strength of about 60, in which about 24 posts are for important substantive areas such as technical, finance/economics and law. Like many SERCs, it also has no permanent staff in these categories, and it also reported that none of the present staff is from regulated utilities.

In terms of financial resources, its average approved budget for the last three years was about Rs 6 crore per year, which is about 80% of the budget it had requested. It has regularly received the full amounts of the approved budget before the end of the financial year, and it also reported that it does not need approval from the Government of India on a case-to-case basis for spending the actual budgeted amount.

In the last three years, on an average, it has spent Rs 28 lakh per annum on consultants and no expenditure was incurred on consumers' education and related activities. CERC has availed the services of Alankid and Dr B. Tannanbaum (Advising on Indian Electricity Grid Code) and of M/s Robert Phillips (for Transmission Licensing). These consultants were funded by multilateral or bilateral agencies.

CERC has also not yet declared any document as confidential, and unlike many SERCs, it has a library/reading room with a classified index of all petitions and related documents available for public inspection. All

orders, and at times consultants' reports, are available on CERC's website. CERC feels that an 'advisory committee' should be like an external auditor. But, it is unfortunate to note that it has not held any meeting of the advisory committee after May 2000, though in the preceding one and a half years, three CAC meetings were held.

Like many SERCs, CERC also does not have any institutional mechanism such as an 'Office of Public Advocate' or 'Consumer Representatives'. Public participation in the proceedings before the CERC has remained negligible. This is mainly due to the complex nature of issues coming before the CERC, as well as the indirect effect of CERC's decisions on actual consumer tariff in the states.

CERC has issued over 450 orders in the last four years. The Availability Based Tariff, norms for central public sector utilities, grid code and regulations for competitive bidding of generation and transmission projects are some of the important orders/regulations developed by CERC. It has also decided the tariff for the first mega power project namely, the Hirma project in Orissa.

The central generation and transmission utilities as well as the promoters of the Hirma project have strongly resisted implementation of the key orders of CERC. They have extensively used review petitions and court cases to challenge CERC's decisions. Of the 48 review petitions, 35 have been by the transmission and generating companies. Whereas redressal via the High Court has been equally used by state utilities (consumers) and the central utilities (sellers). Cases related to Availability Based Tariff and operational norms are in the Supreme Court. CERC has issued revised directions in case of grid code violations.

Although consumers do not easily understand CERC's role, it is extremely important in shaping the Indian power sector. Due to limitations of resources and time, we could not do a detailed analysis of CERC's orders and the dynamics behind it. We intend to take up this task separately.

Mostly, the task of consultants is to assist the commissions during tariff revision cases and develop tariff concept/philosophy papers. SERCs also seek help from consultants for estimation or study relating to T&D losses, agricultural consumption, and development of management information systems.

4. Petitions, Orders, and Appeals

The number and nature of petitions before the commissions, the quality of the orders of the commissions, and the implementation of the orders/directives of commissions are important factors that determine the effectiveness of this new institution. This section looks at the petitions made before the SERCs, the *suo motu* petitions conducted by SERCs, implementation of the RC's directives by the utilities, and the appeals against the orders of SERCs in High Courts and the Supreme Court. This analysis, however, does not go into the substantive aspects of actions/orders by commissions. Though such an analysis is badly needed, it is matter for a separate study.

The first sub-section looks at the orders of the commission, which are organized according to their subject matter. The second sub-section describes survey responses from the SERCs on the status of implementation of their directives. The third sub-section narrates the views expressed by SERCs in their tariff orders and other important orders on the issue of implementation. The fourth sub-section lists the *suo motu* petitions by the SERCs, while the last sub-section deals with the review cases before SERCs and appeals in the courts.

4.1 Petitions handled by SERCs

Since no SERC maintains the petition (case) register on its website, it is not easy to analyse the nature of petitions filed before RCs. But, as mentioned elsewhere, many RCs have kept several orders on their websites. The following table (Table 6) is compiled by analysing the orders on the RC websites. The review and interim orders are considered as separate orders.

Table 6: Category-wise Orders by SERCs

Category	Total
Utility's Interest/tariff	97
Utility Dispute	8
Power Purchase	32
Captive/Third Party Sale	47
Commercial/Private Interest	120
Class Benefit/Public Interest	28

Note: The interim orders, ad-interim orders, and review orders are all considered as separate orders. The list is based on the orders available on the SERCs' websites a few months prior to writing this report. This excludes (a) suo motu cases by SERCs, (b) some category of cases relating to licence & regulation, (c) large number of applications relating to permission for captive plants in MP and large number of review petitions in AP (as these are treated as separate category of cases).

The table clearly indicates that orders on cases filed by actors with commercial interests (including industrial actors) are the highest in number. They are followed by orders in the category of utility-initiated cases. Orders in the category of 'class-benefit' or 'public-interest' cases are few despite a very broad definition used here for this category. Any case applicable to a class of consumers (rather than an individual consumer) is included in this category (such as cases on seasonal consumer tariffs, meter rent, or connection charges). Moreover, the bulk of cases in this category (nearly 60%) are from the state of Maharashtra alone. In fact, only a handful of these cases could be aptly called 'public-interest' cases, as most of them do not deal with the larger and broader interests of society as a whole (such as utility's efficiency). A large number of the cases from Maharashtra, which were truly 'public-interest' cases (which were initiated by individual consumers or consumer organizations), have substantially increased transparency and responsiveness of the utility to the regulatory process.

This analysis has limitations, as it looks at orders and not cases. The cases that are not on the websites, or pending cases, are not covered in this analysis. But, the finding—that consumers, the public at large or organizations representing them, are not sufficiently active in intervening before the RCs—is striking.

4.2 Implementation of RC directives

Effective implementation of the RC directives is a key requirement for a successful regulatory process. The commissions seem to have a mixed opinion on this issue. RERC, OERC and DERC seem to be largely comfortable about the implementation of their directives, whereas HPERC has very strong words to offer about non-implementation of its orders.

HPERC issued show cause notices the SEB for non-implementation of directives, creating mistrust between the HPERC, the government and the utility. The commission states: "Due to lack of administrative and financial support the commission is not able to discharge its functions effectively."

Several other commissions seem to be expressing some concern about implementation of their directives. The following are some of the observations in this regard.

- The response from APERC states that, of the 15 directives, four have been fully complied with and 10 have been partially complied with. The directive that was not complied with at all required the utility to give full details and to obtain approval of the RC for projects having investment more than Rs 5 crores.
- UPERC has a 10-page chapter on this issue in the tariff order of 2001-02 (dated 1st Sept 2001). The RC is clearly dissatisfied with the implementation of its directives and has issued warnings to the utility.
- The Orissa commission says that a majority of its orders have been implemented by the utilities. In cases where orders have not been implemented, the commission has issued show-cause notices and initiated *suo motu* petition (against three utilities). The RC had to go to the extent of imposing a fine on one of the utilities and finally appointing an administrator for it.
- The Delhi RC says that of the nine directives, two have been implemented, four partly implemented and three not implemented. It has not initiated any action for non-compliance.
- The MPERC lists compliance for 52 directives, of which 17 are fully implemented, 21 partially,

and three were not implemented. The list also contains some major items for which compliance is not discussed. These include plant load factor (PLF) and heat rate improvement targets. The MP utility has not been able to meet these targets. The commission also does not comment on compliance about other issues such as (a) rate of power purchase from captive needs to be approved by RC (b) procurement of power/new agreement need approval of commission. The commission has not taken any action for non-implementation.⁵

- MERC seems to be largely comfortable with the implementation of the directives. It has listed 77 directives it gave MSEP in the two tariff orders. Thirty-four of these have been fully, and 35 partially, implemented, while only eight have not been implemented by the MSEP. MERC has not mentioned anything about directives to other utilities. It says that it has not taken any action when directives have not been followed. But as we see, in the tariff order of the year 2002, MERC has fined the Maharashtra State Electricity Board (MSEP) Rs 7 crore (in the form of disallowance) for non-implementation.
- The Rajasthan RC seems comfortable with the implementation of its order and directives. Since the utilities have followed all orders, it says, no action has been required. Of the 14 directives listed, eight have been fully implemented, four are under implementation and two are partially implemented (preparation of age-wise break-up of arrears and reduction of distribution loss by 5.4%). Rajasthan RC also reported that the utility has failed to achieve reduction in the T&D losses as directed by the commission.
- Most utilities under the WBERC have appealed against its order to the High Court and hence the RC does not comment on the implementation of its directives.

5 While commenting on the draft report, the MPERC provided updated information about the compliance of directives by the utility. Regarding the targets for generation including the PLF and heat rate, the MPERC pointed out that, MPSEB had reported the ground realities beyond their control for non-achievement of those targets. It also says that MPSEB has stated that it would approach MPERC with any proposal for power purchase. It further says that, "out of 52 directives given, 23 are fully implemented and 22 are partially implemented."

- The Gujarat RC has given one order each for the three utilities under it (one SEB and two private utility). The RC has not answered the questions related to this issue in the questionnaire.

4.3 Compliance as Reflected in RCs Orders

The above section presented quantitative analysis of compliance of RC directives as reflected in the responses from SERC to our questionnaire. But, some of the important issues regarding compliance with the RC's directives are not adequately represented or raised in the above analysis. However, the tariff orders and other important orders by RCs have, many a time, pointed out instances of non-compliance of important directives and also have deliberated in detail on these issues. The following subsection—based on a quick review of RCs' orders—presents highlights of discussions in the RC order on this issue. This is mainly aimed at conveying the gravity of the issues. The issues under this category are clubbed in the following four groups.

4.3.1 Regulatory Data Requirements and Data Quality

- The KERC's second tariff order (8th May 2002) has a 37-page long section reviewing the issue of implementation of its directives. KERC concludes that, in general, the implementation has been poor and KERC had to reissue several directives. The development of a management information system (MIS), conducting energy audits, improving power quality, and approval of the investment decision seem to be the key areas of non-implementation.
- KERC's first tariff order points out that crucial data such as details of agreements with central utilities or other power suppliers (neighbouring SEBs etc.) were not provided by the licensee. For such lack of data, KERC deducted Rs 5 crore as penalty from the power purchase cost.
- In the first tariff order, KERC had directed the licensee to improve the management information system and undertake a thorough computerization effort immediately. The second tariff order mentions that the licensee did not bother to even respond to the RC's queries regarding the process of computerization and the RC was forced to conduct a public hearing on this issue. During the public hearing process, the slow

progress on this account was revealed and the licensee was forced to commit module-wise implementation dates.

- The case of MP is similar, with the utility failing to make available the data required by the RC. In its second order itself, the MPERC mentions, "The non-submission of the information by the Board gives rise to a doubt that there is a deliberate attempt to conceal the poor performance."
- The APERC tariff order (March 2001) devotes dozens of pages to analysing compliance with its directives and position of RC staff on these issues. APERC follows a practice of asking staff to make independent analysis and presentation on important issues. The issues raised by staff are also documented in the tariff order. This is a welcome approach. It is interesting to note that the staff has much stronger views on non-compliance than the RC. APERC conducts monthly meetings with the utilities to monitor the progress of directives.
- The case of the Grid Corporation of Orissa Ltd (GRIDCO), in Orissa, is very serious, as it involves submission of faulty calculations. GRIDCO is facing a severe financial crisis and is in the process of undergoing a major financial restructuring. It prepared a financial restructuring plan (FRP) to this effect and approached OERC for its approval. OERC's order dated 16th March 2001, noted that GRIDCO's FRP showed net receivables from the sale of power as negative after FY 06 and directed GRIDCO to recompute the figures based on this. That an FRP, which involves decisions regarding very large quantum of money, should contain such errors and negligence is shocking to say the least.
- The case of UP reveals a more pathetic state of affairs. Since the first tariff filing, the RC has been requesting data on billing, budgets etc. The RC also has reservations on the estimation of consumption of un-metered agricultural consumers and a large number of residential and commercial consumers. In its second order, the RC asked the utility to tally accounts kept centrally with that of its regional offices. It also pointed out that reconciliation of ledgers with actual collection was not being done by the utility. The

poor quality of even basic data such as the number of consumers indicates the callous attitude towards the management of huge resources. In the Annual Revenue Requirement (ARR) for the year 2001-02 the number of un-metered rural households shot up from 17 lakh to 31 lakh (i.e. nearly double) without any explanation. The UPPCL said that it had erroneously claimed only 17 lakh connections!

- The UPPCL did not submit the Power Purchase Agreement (PPA) signed with the generating company to UPERC, either with the first ARR or again at the time of the third ARR (earlier, the PPA was limited to only two years). The RC said in its September 2001 order that it was deliberately kept out of transactions so as to avoid closer scrutiny of the PPA between UPPCL and the National Thermal Power Corporation (NTPC) for the purchase of power from the Tanda plant (which was highly skewed in favour of NTPC). In response to a petition by UPPCL, the CERC has rationalized the terms of this contract.
- Delhi, probably because it is the capital, is the most glaring example of mismanagement in the power sector. When the Delhi Vidyut Board (DVB) came up for the first comprehensive tariff revision process, it could not submit audited financial reports for the previous eight years! It claimed that it had done the accounts and had submitted them to its auditor! It was also revealed that it could not submit a lot of critical information, including (1) information about demand forecast (2) asset register (3) how it calculated consumer contributions (4) segregated cost of generation, transmission and distribution (5) tariff slab wise consumption, number of consumers or their connected load. Moreover, DVB did not provide details of its method of revenue calculation, pleading inability on account of loss of electronic data! (DERC order dated 23rd May 2001, page 41.) Nothing can be more pathetic than this, when the turnover of DVB is about Rs 5,000 crore per year. In fact, it raises questions about the validity of any data that it submitted. Despite these glaring data gaps, the RC chose to go ahead with the tariff setting process, and thought fit to gather more data by asking DVB to provide supplementary data and

also relied on discussions with “senior officers” during the technical validation session!

4.3.2 Metering, Billing, and Energy Audit

- In the case of Karnataka, the utility’s performance in terms of compliance with KERC’s directives related to metering and energy audit, is very pathetic. In the first tariff order (dated 18th December 2002) KERC had directed the licensee to conduct a study within three months to identify possible alternatives to universal metering of single bulb connections. According to KERC’s second tariff order (dated 8th May 2002), the licensee failed to carry out such a study. Further, the licensee mentioned that as per the policy of the state government and the plan submitted to the Government of Karnataka, it is in the process of achieving a target of universal metering within three years. But, as noted in the KERC’s order, the progress in terms of meeting even the licensee’s own target of metering is abysmal. For example, as against a target of metering nearly 2.81 lakh agricultural pump sets, the actual achievement was only 3,288 (just about 1% of licensee’s own target). Similarly in case of metering of single bulb connections, the achievement was only 2% (i.e. 16,200) of the licensee’s own target.
- As per the Memorandum of Understanding (MOU) with the Government of India, UPSEB was to achieve 100% metering of all consumers by December 2001. But only 25% of residential consumers and 70% of commercial consumers have working meters (RC order September 2001). Similarly, UPPCL had given itself a target of regularizing 20 lakh connections by the end of 00-01, but a year later, it had achieved only 18% of this. UPERC notes that, even the easily achievable targets set by it were not achieved. For example, the 11 KV (Kilo Volt) meters are installed, but are not read (RC order September 2001).
- The UPPCL did not submit tariff slab-wise revenue. The RC emphasized the “need for the billing system to be streamlined”, in the first order. The private billing agents used non-standardized software, whereby their reports (which were only in hard copy) could not be

easily collated. The billing database was maintained only for two months. And “billing of large industries is still done manually. No copy of billing database is maintained at the divisions or even centrally”, observed the RC. As per the MOU with the Indian government the UPPCL was to complete “on-line billing in 20 selected towns through computerization by March 31, 2001”. But, again, in the second tariff filing, the RC is pained to say that “progress has been extremely slow, with no tangible results”. The RC initiated a study of several zones, and discussed its findings with the utility. The RC concludes that “failure to comply with the simple directions related to data management, where no controversial or prickly issues ... are involved, does not augur well for the reform process.” In the third ARR by UPPCL (filed in April 2002), the sales figures were based on the billing information for one billing cycle in the year 2000-01! The RC had sought data for four billing cycles (in 2001-02). The utility could not comply with this but submitted only category-wise revenue, which was substantially different from the values assumed in the ARR (submitted just a few weeks before). Looking at these and other such gaps, the RC had to return the ARR to the utility (i.e. halt the process of tariff revision).

4.3.3 Capital Expenditure and Investments

- Inadequate information, and very poor compliance with RC directives regarding capital works programmes and investment, is a major issue in the case of Karnataka. Tariff orders of KERC highlight the absolute lack of any financial discipline and prudent project management on the part of the licensee. For example, the first tariff order points out that capital expenditure estimates of systems improvement schemes in the Bangalore region revealed major lacunae such as, estimates were based on 1997 costs, cost of transformer with same capacity and description varied widely, and interest during construction had been completely ignored. To overcome such major lacunae in an area, which had a major impact on overall efficiency and economy (with capital expenditure being to the tune of Rs 1000 crore per year.), the RC had given several directives aimed at ensuring

realistic estimates, effective benchmarking and adequate analysis and planning. But the licensee does not appear to have implemented these directives in earnest. The second tariff order mentions that the licensee submitted an investment programme for FY 01-02 in February 2002, i.e. when the year was nearly over, making it a *fait accompli*, and making a mockery of the process.

- In the first tariff order the UPERC says that UPPCL had not submitted any details of even “work in progress”, nor confirmed that assets created were productive and useful. In the second order the RC says, UPPCL did not submit the technical and financial viability of investment plans (for augmentation of distribution and construction of new lines). In the order on the third ARR, the RC again says that it has not received “details of fixed assets and works-in-progress in the format prescribed by the Commission”. The seriousness of this charge is heightened when the UPPCL itself has to admit that “...lot of mis-investment has taken place and it is difficult to stop this practice effectively.” In fact, the UPPCL has not even given information on the money it has received in the preceding year from the PFC and World Bank, and whether the government is paying the subsidy as per its promise.
- The APERC and the MERC also complain about the utility’s non-cooperation in terms of regulation/review of investments.

In our survey, four RCs are on record saying that the utility is simply not allowing regulatory scrutiny of their investments.

4.3.4 Procedural and Legal Non-compliance Issues

Apart from non-compliance with performance related directives, many utilities as well as governments have not complied with even procedural or legal requirements of the regulatory process and this section highlights some important instances in this regard.

- In the case of Karnataka, the licensee changed the tariff for wheeling of energy without the approval of the RC. In another instance, it announced a scheme of waiver of interest

without the approval of the RC. The RC took strong objection to this and directed the licensee to stop the scheme immediately as it favoured defaulters at the cost of prompt payers.

- The UPPCL first submitted the ARR (for the year 2000-01) requiring a tariff increase of 48% (Rs 3028 crore). But on the directions of the government, it resubmitted the proposal with a target of 5% reduction in T&D loss and 5% increase in collection efficiency. The government gave a subsidy of Rs 800 crore. All resulting in reduced need for tariff increase of 25% (Rs 1500 crore). The revised ARR submission was initiated just before the date set for a public hearing, presumably to avoid going to the public with such a large tariff increase. It was clear that this was not an internal target and the T&D losses did not decline, and the collection efficiency actually dropped.
- In Maharashtra, in brazen disregard for the Electricity Regulatory Commission (ERC) Act, the MSEB signed or amended nearly a dozen PPAs even after MERC was established in August 1999. These included PPAs for sugar cogeneration projects as well as a large Independent Power Producer (IPP). In response to a petition filed by Prayas, MERC declared these amendments as of “doubtful legal validity” and directed MSEB to take prior approval of MERC for any power purchase related contracts.
- UP is a special case, where the UPERC mentions that the bill realization from government departments has been as low as 41% (whereas it is over 80% in case of non-government consumers). This is said to be due to lack of funds, and has not been corrected by the state government. Moreover, the RC points out that the government departments themselves engage in theft of power and by-pass meters!

The analysis in this sub-section clearly indicates that the scourge of non-compliance of RCs’ directives is not only widespread, but also has grave implications for efficacy of the new institution.

4.4 *Suo motu* Petitions and Orders by the RC

In order to assess how pro-active the commissions have been in their functioning, we had asked RCs to provide information regarding the *suo motu* actions they had taken, or the petitions they had initiated by themselves. It was revealed that, out of the 11 RCs, all except four (viz. WBERC, UPERC, DERC, and MERC), had to resort to *suo motu* action on certain issues. Table 7 lists the various issues on which RCs have initiated *suo motu* actions. The typical issues on which *suo motu* actions have been initiated include ‘quality of service’ issues such as accidents and breach of standard of service as well as certain policy issues such as third-party sale, and captive consumption. In the case of RERC, it initiated a *suo motu* action based on a newspaper item mentioning a new scheme by utilities to charge higher rates for giving agricultural connections under a special category. Similarly MPERC had to initiate action against tariff increase by MPSEB without coming to MPERC.

4.5 *Review and Appeals on Orders*

In all states, there are two routes for seeking redress for the parties aggrieved by decisions of the regulatory commissions. The first is to file a review petition before the commission itself, and the second is to file a case in the High Court of the state and, if needed, to move the Supreme Court (SC). The questionnaire sought information about the review petitions and court cases in the last three years.

All commissions have power to review their orders. Usually, this provision allows consideration of review application only on the limited grounds of “new information” or “error apparent” in the order. Usually, the appeal to the High Court could be made on substantive as well as procedural or legal grounds. However, in Orissa, Karnataka, AP, and Delhi, the state reform act allows appeal to the High Court only on the question of law.

Table 8 shows the number of review petitions and court cases in different states. This section does not include information about MERC. The MERC questionnaire was received very late and also had major data gaps. Within the time available, it was not possible to address these.

Table 7: *Suo motu* Actions Initiated by SERCs

Name of RC	Issues for <i>Suo motu</i> Actions
KERC	• Fatal Electrical Accidents
HPERC	• Violation of standards and benchmarks for various services to be provided to consumers by HPSEB
	• Non-compliance with various directives issued by the RC such as develop and implement comprehensive public interaction programmes.
GERC	• Parallel operation charges (in case of GEB)
	• FCA enhancement (in case of AEC)
APERC	• Definition of 'Captive Consumption' and 'Sister Concerns'
	• Banning the 'Third-Party-Sale' by Non-conventional power plants
	• Disallowing 'Third-Party-Sale' by mini power plant developers
OERC	• Interruption of power supply (2 times)
	• Improvement of power supply position
	• Failure to submit first information reports of the licensee (GRIDCO) in relation to major incidents (Super Cyclone)
	• Violation of commission's orders related to damages during super cyclone
	• Violation of commission's order (SOUTHCO and CESCO)
	• Violation of commission's tariff order (CESCO)
RERC	• Stay on the proposed release of agricultural connections to the farmers under a special category with higher tariff
MPERC	• Change in tariff rates (on the basis of newspaper reports)

Table 8: Review and Court Cases against the Orders of SERCs

Name of the SERC	No. of Review Petitions	No. of High Court Cases	No. of Supreme Court Cases
APERC	60	117	2
OERC	15	21	
MPERC	7	11	
WBERC	6	6	1
RERC	4	2	
GERC	2	2	
KERC	1	1	
DERC	1	8	
HPERC		1	

A large numbers of review petitions in AP (53 out of 60) were seeking permission to set up captive plants. Similarly, a large number of High Court cases in AP

were in relation to three issues: permission for non-conventional generation (48 cases), reduction in wheeling charges (46 cases), and permission for mini power plants (11 cases). These three issues prompted 105 High Court cases out of total of 117 in AP. Six orders of OERC have invoked 15 review petitions.

As expected, cases in the Supreme Court are rare. The next sub-section reviews the three types of cases in more detail.

4.5.1 Review Petitions: The number of review petitions varies considerably from state to state. The analysis shown in Table 9, categorizes the applicant as utility, industry (individual industry, commercial organization, their associations, or railway), and others (consumer groups, individuals and government bodies).

Table 9: Review of SERC Orders

Name of the State	No. of Petitions	No. of Petitions Pending	Orders Changed	Petitioner		
				Utility	Industry/Commerce	Others
AP	60	3	20		57#	3
Orissa	15	1	1	6	4	5
MP	7	4	2		6	1
West Bengal	6	1		4	1	1
Rajasthan	4		3		3	1
Gujarat	2		2	1	1	1@
Karnataka	1	1		1		
Delhi	1					1
TOTAL	96	10	28	11	73	13

Note #: Of the 57 review petitions, 53 were in relation to captive power plants.

@: One review petition is jointly filed by an industry and an agricultural association; hence the total does not match.

The industry and the utility are quite active in seeking review of orders. Regarding petitioners from the other categories, three cases were filed by various government agencies, two by individual consumers, and the rest (i.e. eight) by consumer groups. In Orissa, the four review petitions by a consumer group (all filed on the same day) were not pursued.

Table 10: Appeals against the SERC Orders

Appeals in HC	Karnataka	West Bengal	Rajasthan	A. P.	H. P.	Orissa	Gujarat	Delhi	M.P.	Total
Appeals by Utilities	1	4		1		6			1	13
Appeals by Industries/Businesses		2		115	1	6	1		3	128
Appeals by Consumers / Groups						6	1	4	1	12
Appeals by Individuals			2	1		3		3	6	15
Appeals by Unions								1		1
Total Number of Appeals	1	6	2	117	1	21	2	8	11	169
Pending Appeals		5	2	113		14	1	8	9	152
#No. of HC Interventions		1		2		7				10

Note #: Indicates that HC has either changed the RC order or asked the RC to reconsider the decision

Orders were changed in 28 cases. Of these, 20 were in AP and all 20 were in relation to captive power plants.

4.5.2 Cases in the High Court. Approaching the RC with a review petition and going to the High Court are the two non-exclusive options to an aggrieved party. Table 10 shows that out of the 169 cases that went to the High Court, the court decided only 17 cases. But, as shown in Table 8, in 10 out of 17 cases, the High Court has modified the RC's order or has asked the RC to reconsider the decision.

In the case of AP, as mentioned earlier, most cases pertain to the three specific issues. If these cases are not considered, then all the three categories of actors—the utilities, industry, and consumer groups (including lawyers' associations)—seem to be equally active in invoking the High Court. The workers' unions have filed only one case.

In Orissa, the High Court asked the RC to reconsider its decisions on seven occasions. Four of these were on petitions initiated by utilities, while in three cases the petitioner was an industry. Two cases of High Court intervention were in Andhra Pradesh, both initiated by industry in relation to 'Third Party Sales'.

The appeal against the WBERC tariff order filed by the utility (CESC) before the West Bengal (Kolkatta) High Court is being discussed hotly. In its judgment the court restrained the RC from deciding the tariff of the utility or holding public hearings. The court also stipulated that even after enactment of the ERC

Act, 1998, the licensee is the sole authority (under Schedule VI of the ES Act, 1948) to determine the tariff. The only constraint is that it should be in accordance with the principles and guidelines of Schedule VI and those stipulated by the ERC. The court said that the ERC can look into the tariff only after the audited accounts for a particular year are finalized, and only on limited grounds of non-application of the principles of schedule VI, or any gross shortcomings in the audited accounts. The court also substantially curtailed the scope of a transparent and participatory regulatory process.

The WBERC and a few consumer/industry organizations appealed against this order in the Supreme Court. The judgment of the Supreme Court in this case is very important in the context of the regulatory process. The Supreme Court not only re-established the authority of the ERCs to determine tariff, it even held that ERCs can depart from the arbitration award of the CEA (in this case regarding the capital cost of the Budge-Budge project) for purposes of tariff, if the ERCs provide sufficient reasoning for such departure (this is because the CEA is not bound to consider either efficiency of the company or interest of consumers, which are the two crucial factors that ERCs are mandated to consider while fixing tariff).

The Supreme Court also held that consumers have a right to participate in the proceeding before the ERC and that the high court observations limiting/denying such participation were wrong. In this sense, this judgment of the Supreme Court is a watershed in the

Indian regulatory process and has substantially strengthened transparency and public participation. This judgment also has severe implications for the other crucial issue of cross-subsidy. In its judgment the Supreme Court also commented on the issue of cross-subsidy. The WBERC interpreted these comments as requiring RCs to eliminate the cross-subsidy in one go. In the second tariff order regarding CESC, the WBERC has fixed a uniform tariff for all consumer categories and has completely eliminated the cross-subsidy. This has forced the state government to take urgent note of the Supreme Court judgment. The situation is still very fluid and the final picture is yet to emerge.

An important observation regarding the above discussion is that none of the High court cases initiated by consumer groups or individuals was able to get the high court to intervene on their behalf.

4.5.3 Appeals to the Supreme Court: There have been only three cases in the Supreme Court (in relation to the ten SERCs under study). One case was filed by WBERC in relation to its tariff order of CESC, and two cases were filed from Andhra Pradesh. The first was filed by the Association of Industrial Electricity Users and others, challenging the validity of the tariff order for the year 2000-01. This case was dismissed. The second case was filed by AP Gas Power Co. Ltd. on the issue of requirement of a license to sell power to its member industries (and their sister concerns). This case is yet to be decided.

5. Commission Advisory Committee

The Commission Advisory Committee (CAC) is one of the important features of the regulatory process. The CAC, on one hand, helps the commission by providing views of various stakeholders and, on the other hand, it also makes the regulatory process more participatory and accountable. Except DERC and WBERC, all other SERCs have formed CACs.

Table 11 shows the composition of the CACs of different SERCs. In terms of representation on the CACs, industry is the most represented consumer category followed by domestic / commercial consumers. Two important stakeholders that are not adequately represented in CACs are the research / academic bodies and labour unions.

Unfortunately, except KERC, no other SERC has conducted even the minimum number of CAC meetings – that are mandated by the Act or regulations—in the financial year 2001-02. We asked SERCs whether they prepare any Action Taken Report on the issues raised and recommendations made by the CACs. Only a few RCs (like MPERC, RERC and MERC) reported that such a report is prepared. All RCs have a standard practice of preparing minutes of the meetings. One notable observation in this regard is the practice by APERC to specifically record in the minutes of meetings the collective recommendations of the CAC and, at times, response (i.e. either acceptance or rejection) of the commission to it. MPERC notes the actions taken on the CAC's recommendations in the minutes of the meetings.

Table 11: Representation of Various Stakeholders on SERCs' CACs

Category	KERC	WBERC#	RERC	APERC	UPERC	HPERC	OERC	GERC	MPERC	MERC
Agriculture	2	1	1	1	1	1	1	1	1	1
Industry	5	3	3	1	2	6	3	9	4	9
Domestic	3	3	1	2	2		4			\$
Commercial				1	3	1			1	1
Research Bodies		1	2			3		1	1	5
Political Parties			2							
Labour Unions	2	1	1	2		1	1	2	1	
Media										
Other	3	6	11	10	7	4	13	3	7	7
Total	15	15	21	17	15	16	22	16	15	23

Notes: # - CAC is not yet formed and the numbers indicate representation proposed by the WBERC. \$ - Though MERC's response mention that there are no 'domestic' category representatives on the CAC, Prayas is a member of the MERC CAC, and as per our information MERC has couple of representatives of 'domestic' category also. The category of 'Others' include ex-officio members

Regarding the role of CAC, nearly all the RCs agreed that CACs are useful in terms of bringing outside views before the commissions and, at times they also help the commissions to understand wider public reactions and opinions. One RC also mentioned that the quality of inputs from CAC needed to be improved if the process was to be more effective. The list of typical issues discussed in the CAC meetings is given in Annexure 2.

6. Transparency

This section of the questionnaire covered several aspects relating to transparency in the functioning of the commission.

6.1 Library or Reading Room

In terms of facilitating flow of information about their functioning to members of the public, the SERCs seem to have made little progress. For example, three SERCs (HPERC, DERC and MPERC) mentioned that they do not have even a library/reading room, where people can easily access all non-confidential information available with the commissions. Except WBERC and APERC, all other SERCs mentioned that they have not prepared a detailed classified index of all available documents (such as petitions and rejoinders), which is a necessary mechanism for facilitating transparency⁶. Similarly, except for WBERC, no other RC has issued any press-statement or notice to inform the general public about the availability of such a library/reading room. As a result of this lack of knowledge and facilitating mechanisms, only about 10-20 people visited the RC libraries in a whole year. The number of people seeking inspection of documents (apart from utilities tariff filings) or copies of the same is very small.

6.2 Confidential Documents

The 'Conduct of Business Regulations' (CBRs) of all SERCs specify that all documents in the possession of the RCs will be open to the public and, if the RC desires any document to be kept confidential, then it has to specifically mention this by giving reasons for

6 We had asked RCs to attach a copy of library / reading room index to assess the information available in such index. WBERC did not attach a copy of the index but mentioned that it is available in the form of a register. The APERC's index is mainly the index of library books and does not contain information about consultants' reports or petitions and other documents filed before the commission.

the same⁷. Except GERC and APERC, all SERCs that responded to our questionnaire mentioned that until then, they had not declared any document as confidential and all documents in the possession of the commissions were public. GERC did not attach a copy of the confidentiality order, whereas the copy attached by APERC indicated that it had kept confidential certain information regarding correspondence between a lawyer and his client, a very reasonable ground for confidentiality. Similarly, all RCs mentioned that they have not rejected (or not replied) to any request for documents from the general public⁸.

6.3 RC Orders Making Data/PPA Public

We had also asked RCs to highlight important orders directing utilities to publish any information (e.g. PPAs), which was not in the public domain earlier. Five SERCs (viz. WBERC, GERC, DERC, RERC and MPERC) mentioned that they have not issued any such order. Two RCs (viz. OERC, and KERC) mentioned that they had directed utilities to publish **newly entered** PPAs and had also held public hearings before approving the same. HPERC mentioned that they had asked utilities to submit to commission copies of all PPAs already entered into by the utility. APERC mentioned that they directed a utility to make available PPAs that were **signed before the RC was established**, in a data room (maintained by the utility), for inspection by the general public. The utility has complied with this directive. UPERC replied in the affirmative to this question but did not provide any details. MERC, through its various orders, directed the state utility (MSEB) to make public some very crucial data and information⁹. For example, on a petition filed by

7 Karnataka Electricity Reform Act is an exception to this, as it requires the RC to keep any information confidential if the person submitting information requests so.

8 Though APERC also mentioned that they have not rejected any request for documents, information provided to Prayas by 'People's Monitoring Group on Electricity Regulation' from Hyderabad, AP indicates that their request for copies of documents was not fulfilled by APERC. In the absence of adequate contacts with NGOs and other organizations in other states, we could not ascertain if such incidences have occurred in other states also.

9 The issue of confidentiality was discussed at length in a MERC case filed by Prayas, seeking copies of all contracts of all IPPs. In its order on this case, MERC quotes from the order of the Supreme Court in the case of 'State of U.P. vs. Raj Narain, (Mathew, J SCC p.453, para 7)

"The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one

Prayas, MERC directed MSEB to make public over 10,000 pages of key documents, which include not only all PPAs signed by MSEB, but also other related contracts of these IPPs such as financing agreements and construction contracts. Apart from this, during procedure on the tariff revision petitions, MERC also directed MSEB to make available actual meter readings of over 2000 agricultural feeders (used for estimation of T&D losses) and hourly data about load and generation from various power plants.

Based on these responses, it appears that except in the case of Maharashtra, major additional information made available through the SERCs to the public is only available in the tariff filing made by the utilities. Other important information and documents such as PPAs and other contracts signed before the formation of the RCs are still not available even for inspection.

6.4 Other Issues

Another simple measure for enhancing transparency is to put up all orders of the commissions on their websites. In this regard, three SERCs (viz. WBERC, GERC, and MPERC) mentioned that they are not making all orders available on their websites. GERC is making only tariff orders available on its website, whereas WBERC has yet to establish a full-fledged website. Some other SERCs said that they are trying to put all the orders on the web. All the commissions were following the procedure of issuing advertisements/notices inviting objections in the newspaper after accepting the tariff filing/revision petition from utilities. DERC also mentioned that they provide information on such proceedings to groups and individuals on the commission's mailing list.

7. Public Participation

7.1 Public Hearings

As mentioned above, inviting public objections and conducting public hearings during the tariff revision

process has become the norm for all SERCs. Except OERC, WBERC, and DERC, all the RCs conduct public hearings at multiple locations in their respective states. Except for UPERC and HPERC, the number of objectors requesting personal hearings during tariff revision cases is more than 100. In the case of KERC, during the last tariff revision case, nearly 9000 objections were received, most of them requesting personal hearings. Due to practical considerations and the fact that many petitions were of a similar nature, actually only 243 individuals were given personal hearings. Similarly, in the case of GERC, during the tariff revision case of the Surat Electric Company, over 17,000 objections were received. Except for these odd incidences, all SERCs were able to accede to requests for personal hearings. Thus, in terms of numbers, the public participation in the tariff revision process seems to be reasonable and growing.

7.2 Technical Validation Sessions and Other Proceedings

Typically, RCs conduct several proceedings apart from the full-fledged tariff related public hearings. These proceedings are very crucial, as decisions on many important issues are taken in these proceedings, such as admission of the petition, directives for submission of additional data, the approach for deliberation or disposing-off the petition (e.g. whether to conduct public hearings or not). According to the regulations, all proceedings are open to the public. To ascertain public participation in such proceedings, we had asked for specific information on this issue. Responses from the RCs indicate that, apart from KERC and MERC, no other RC has established a system of informing the general public about such proceedings. As a result, public participation in these proceedings is miniscule. KERC indicated that it informs the public about such proceedings through press briefings, and the results of technical validation sessions are also included in documents available to the general public.

MERC has established a system whereby all notices of hearings and proceedings are sent to the four recognized consumer representatives at the same time that they are served on the petitioners and respondents. This approach has encouraged significant public participation in the regulatory process, resulting in attendance of consumer representatives

wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy the common routine business is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption."

Box 2: Transparency in Power Sector Governance: Highlights of the Maharashtra Experience

After the establishment of the regulatory commission in Maharashtra, substantial information and data is now available in the public domain and important precedents regarding transparency have been established. This box highlights some salient features of this process, which appears to be largely absent in other states.

Soon after MERC was established in August 1999, several civil society organizations such as Prayas, Mumbai Grahak Panchayat, and Akhil Bharatiya Grahak Panchayat as well as individuals such as Mr Pradumnya Kaul, Mr Pratap Hogade and Mr. S.R. Paranjpe actively participated in the regulatory process. They filed about a dozen independent petitions before the MERC and actively pursued the same. They also actively participated in various other proceedings before the MERC. These efforts, though unsuccessful at times, have resulted in forcing MSEB to make public substantial data as described below.

- i) **Hourly load and plant-wise generation data:** Power purchase is a significant part of annual revenue requirement of power utilities. For assessing reasonableness of this cost, it is essential to analyse hourly load and generation pattern. MSEB was forced to make this data available in the soft form as part of its tariff revision proposal, and is also required to put it up on its website. Similarly, MSEB is also required to put up daily status of various generation plants and demand on its website.
- ii) **Data regarding fuel consumption and fuel contracts:** MSEB is now required to put up a quarterly report of fuel consumption, fuel cost and power purchase parameters (cost and quantity) on its website as a pre-requisite for fuel and other costs adjustment (FOCA) formula. Contracts with fuel supplies are also a part of the tariff revision application of MSEB.
- iii) **Metering data of sample agricultural consumption feeders:** Considering the importance of correct estimation of agricultural consumption, MSEB was required to make available actual metering data

(monthly meter readings) of about 2000 agricultural feeders it is monitoring as part of its tariff revision proposal, and the same is also available on the MSEB website.

- iv) **Energy audit:** An energy audit is one of the important steps in curbing the menace of power theft. MSEB is required to submit monthly reports of energy audits (consisting of energy input, metered sales, assessed sales and losses) of all express feeders, Industrial areas and over 100 divisions. This data is easily available in the soft form from the RC and will soon be available on the website of the utility.
- v) **IPP and related contracts:** In response to yearlong proceedings on a petition filed by Prayas, MSEB was forced to make public important contracts relating to all IPPs in Maharashtra. These contracts include not only power purchase agreements but also other related contracts such as financing agreements, construction contracts, operation and maintenance contracts of over three large and several small IPPs in Maharashtra. This is some 10,000 pages of data. MERC's order dated 31st July 2001 in this case, sets an important precedent, which establishes that consumers, who are ultimately paying for all these contracts and assets, have a right to know what they contain.

As the above list indicates, some very important and hitherto unavailable data has come into the public domain through the regulatory process. Concerted efforts by a number of active civil society groups and individuals, with strategic use of legal space provided by the ERC Act 1998, and MERC regulations, supported by a positive response from MERC as well as MSEB, has resulted in such enhanced transparency. Effective analysis and use of this data for exposing and then curtailing various inefficiencies in the sector is a challenge and is also a continuous effort. One significant lacuna in this process has been the failure to force private utilities (viz. Tata Power and BSES) to be transparent in a similar manner. A petition filed by Prayas, seeking filing of Annual Revenue Requirement and Expected Revenue Requirement statements by Tata Power and BSES was unfortunately rejected by MERC with a decision to look into only fuel adjustment charges.

in nearly all important proceedings and technical validation sessions before the MERC. Apart from such exceptions, lack of adequate public participation in proceedings other than tariff revision proceedings is a crucial lacuna and needs to be overcome with concerted efforts.

7.3 Other Efforts by RCs to Enhance Public Participation

Some questions in the questionnaire were designed to assess the extent of the RCs' efforts to enhance public participation in the regulatory process. Unfortunately, except for KERC and OERC, no other commission appears to have made significant efforts to enhance public participation in the process.

They have not prepared any informative literature such as brochures or information packs (apart from the regulations and practice directions, which are legal documents) to communicate various procedures and issues to consumers. Nor have they supported any workshop or training courses for consumers or representatives of civil society organizations.

KERC brings out *Consumer Power*, a bi-lingual monthly newsletter for creating awareness among consumers. It has also published a compendium of cases decided in consumer forums (related to the power sector) for the benefit of the public. The commission has also supported four workshops for consumer awareness and has arranged a briefing session for consumers by a civil society organization active in the power sector (viz. Prayas), after publishing a notice inviting objections on licensees' tariff petition. OERC has also published and widely distributed several information packs, a booklet on 'Frequently Asked Questions (FAQs)' and newsletters relating to the regulatory process. It also conducts a series of Consumer Interface Programmes in different parts of the state. Similarly, the GERC conducted "consumer contact programmes" at half a dozen places during the tariff revision process. UPERC also brings out two newsletters – 'Economic Diary' and 'Power Diary'. These are available on its website.

7.4 Institutional Structure for Enhancing Consumer Participation

Apart from the above questions, we had also asked for information regarding any institutional structure such as a Consumer Advocate or 'Consumer Representatives' evolved by the RCs. Only KERC has established a post of 'Consumer Advocate' to enhance consumer participation. HPERC mentioned that it had asked for a post of Deputy Director (Consumer Assistance), but the government did not approve the same. During the GEB's tariff revision case, GERC had appointed a counsel under Sec 26 of ERC Act, to look after the interest of the consumers and he had argued the case on behalf of consumers.

In the case of KERC, the Consumer Advocate has conducted workshops, facilitated the establishment of a consumer network, and brought out a monthly newsletter, *Consumer Power*. He has also handled about 400 consumer grievances. OERC has also

established a post of Public Affairs Officer, who deals with and monitors consumers' complaints. It has also established a Grievance Redressal Forum to address consumers' complaints through conciliation. Though MPERC did not mention this in its response, information available on its website indicates that it has appointed nine consumer/industry organizations as consumers' representatives according to the provisions of the MP Electricity Reforms Act. As mentioned earlier, MERC has also recognized four organizations as consumer representatives as per the provisions of Section 26 of the ERC Act 1998, and has instituted a system of regularly informing them of all proceedings before the commission. Thus, only five out of 11 SERCs have adopted any institutional approach for enhancing consumer participation.

7.5 Efforts by the State Government and Other Agencies

In response to a specific question, only four SERCs (viz. KERC, RERC, APERC, and OERC) informed that multilateral or bilateral agencies are conducting activities aimed at enhancing participation and building capabilities of consumers. In the case of Karnataka, PPIAF, a trust managed by the World Bank, has provided financial resources for establishing an Electricity Consumers Network (ECON). In the case of Rajasthan, USAID has been facilitating a few workshops in the area of power sector reforms and demand-side-management. In Orissa, DFID has provided substantial support for conducting a sustained public education campaign through measures such as hoardings, advertisements, street-theatre campaigns, information booklets, newsletters, and telecast of short films through cable networks. DFID is providing substantial support for such a public campaign and publicity activities in Andhra Pradesh also. It is discouraging to note that none of the governments (either state or central) have taken any substantial initiative to enhance public capability or participation.

7.6 Documents in Local Language

For enhancing public participation in the regulatory process, it is essential to make available as many documents in the local language as possible. This is crucial in the case of the electricity sector, which is, anyway, perceived as a very technical and complex subject by many consumers' groups. It is interesting to note that in the case of Karnataka, according to

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the State Language Policy, it is mandatory to publish all orders in the local language. As a result, KERC has published a large number of documents in the local language, which includes documents such as the Annual Report, Tariff Order, Guidelines for Preparation of Load Forecast, and Power Purchase Plan, as well as many regulations and codes. In response to the Draft Report, the RERC also reported that it publishes all documents in the local language (i.e. Hindi). Except for WBERC and MERC, other RCs have also published a number of documents in the local language even if there is no such legal or policy requirement. Typical documents that are published in local languages by RCs are regulations and tariff philosophy papers. A list of local language documents prepared by different RCs is given in Annexure 3.

7.7 Survey of Commission Websites

Websites are a low-cost and excellent means of communication with a wide range of audience. It is good to see that, except for WBERC, all other RCs under the study have websites. Web based systems can be used effectively for a number of objectives, important amongst them being to enhance transparency and to stimulate public participation and capability building.

Details of the survey of RC websites are given in Annex 5. The survey revealed that commissions have taken some major steps to achieve transparency and easy access to key documents. At the same time, in several instances one can identify simple steps that can ensure transparency in terms of commission actions / procedures (such as uploading list of pending cases, petitions register, or all notices and records of hearing).

The RCs are using the websites mainly as a tool for putting easily available information in the public domain. Considering the urgent need for ensuring stringent but user-friendly procedures for enhancing transparency, a fundamentally different approach for web based information disclosure needs to be adopted. RCs need to ensure that the websites are updated in a time-bound manner and reflect a true and complete picture of information available with them. It would be highly desirable if RCs adopt and declare “standards of performance” regarding the kind of information available on the websites, timely

updating and its completeness. Some of the desirable features from this perspective are described in the box in Annex 5.

It is unfortunate that despite substantial attempts by Prayas (especially in relation to MERC), no commission has adopted this approach. There is a history of key letters and files reported missing during crucial investigations by several government departments, and a mandatory web based information system, on the lines described in the annex, should be seen as a key test of RCs’ willingness to be transparent. In this context it is important to note that, recently, OERC has announced that it will be the first commission in India to make extensive use of a website for purposes such as accepting petitions, declaring petition status etc.

7.8 Discussion Papers

Several RCs have also issued discussion papers or similar documents for public comment. These include tariff issue papers, tariff philosophy papers as well as codes or regulations related to issues such as distribution code and complaint handling procedures. Typically, RCs have received less than 50 comments on such documents. Annexure 4 gives a detailed list of such documents prepared by RCs and the number of comments received on them.

8. Role and Actions of Governments

This section covers some important aspects of the regulatory process in which the state governments have a role to play. It attempts to see how the state governments—which were the most powerful actors in the sector in the pre-reform era—are responding to this new institutional mechanism.

8.1 Policy Directives and Affidavits by the Government

Except West Bengal and Orissa, all other state governments in this survey have participated in the regulatory process, either by issuing policy directives or through filing of affidavits or petitions before the commission. Table 12A and Table 12B respectively list the issues in the policy directives and affidavits filed by various state governments. Government policy directives as well as affidavits are mostly related to tariff as well as subsidy to agriculture and domestic consumers. In the case of DERC and KERC, policy directives by the state governments

were also challenged. As mentioned in section 9, DERC questioned the validity of the Delhi government's policy directive on ATC (aggregate technical and commercial) losses, and referred it back to the government. The government reaffirmed the validity of this directive and sent it back to DERC. Three petitions were also filed before DERC challenging the Delhi government's policy directive regarding ATC losses, which were rejected by DERC.

The KERC took a serious view of the policy directive issued by the government, which directed the utility to charge a lower tariff to certain agricultural consumers. KERC ordered the utility in question not to act on the directive since it interfered with the functioning of the commission and was against the provisions of the Karnataka Electricity Reforms Act.

In this context, as mentioned in section 9, it is interesting to note that the Advocate General of Maharashtra affirmed before MERC, that the government's policy directives would be only one of the factor to be considered by the RC and are not binding on the commission.

Table 12 A: Policy Directives Filed by Various State Governments

Name of RC	Issues in the Policy Directives by Governments
KERC	<ul style="list-style-type: none"> Tariff of Irrigation Pump Sets (IPS)
HPERC	<ul style="list-style-type: none"> Roll Back of domestic tariff hike
DERC	<ul style="list-style-type: none"> 'Aggregate Technical & Commercial' losses: Fixation of opening levels & threshold achievement in the next five years
APERC	<ul style="list-style-type: none"> To reduce the tariff for domestic, agriculture, local bodies, Co-operatives and cottage industries. Confirming that subsidy will be paid to offset reduction (3 times)
RERC	<ul style="list-style-type: none"> Power purchase from non-conventional sources at a level of 10% of state's installed capacity Wheeling charges of 2% of energy fed into system by non-conventional energy sources
UPERC	<ul style="list-style-type: none"> For allocation of subsidy to agriculture

Table 12 B: Affidavits Filed by Various State Governments

Name of RC	Issues in the Affidavits Filed by Governments
KERC	<ul style="list-style-type: none"> Subsidy to KPTCL
GERC	<ul style="list-style-type: none"> Issue of subsidy to agricultural consumers of GEB Waiver of minimum charges to earthquake affected areas Exempting consumers of riot affected areas from payments of minimum charges Revised HP based tariff for the agricultural consumers of GEB (for postponement of introduction)
RERC	<ul style="list-style-type: none"> To revise tariff for public street lighting
MPERC	<ul style="list-style-type: none"> Petition for cancellation of licence of rural electric co-operative
MERC	<ul style="list-style-type: none"> Affidavits during MSEB's tariff revision proposal Affidavits regarding subsidy payable to MSEB Affidavits regarding small hydro projects and sugar co-generation projects

8.2 Subsidy Payments and Compliance of RC Directives by State Governments

HPERC reported that the state government has not abided by the RC directives. It also mentioned that the government rolled back the tariff increase to the domestic sector (that was ordered by HPERC) without informing or consulting the RC. RERC also reported that the government has provided only a fraction of the subsidy that is required to be paid. Most other responding SERCs reported that the state governments had fulfilled subsidy obligations and had also abided by the directives issued by the RCs, though only four RCs mentioned any directives issued to the state government. But these responses do not reflect the picture that emerges from the orders of the RCs. The study of the RCs' orders indicates that several state governments have not paid the promised subsidy in time.

8.3 Assembly Discussion on Annual Report of RCs

To assess the interest of legislature in the functioning of the SERC, we had asked for information on discussions in the state legislative assembly on the RCs' annual report. In Karnataka, MP, and Rajasthan, the annual reports of the commission were placed before the state assembly. In some cases

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(such as OERC, HPERC, DERC, MERC and APERC), the annual reports have still not been prepared. Unfortunately, not a single RC reported any knowledge of any discussion in the legislative assembly regarding the annual report of the commission. APERC mentioned that, as per the AP Reform Act, the Activity Report of the RC does not need to be placed before the assembly.

This shows that, though the electricity sector is considered to be a highly politicised sector, and though there have been several instances of agitations on RCs' decisions, the legislatures have not bothered to even ensure that RCs submit their annual reports in time, let alone having any debate on the same. This again is indicative of the lack of concern or interest on the part of the public representatives in ensuring proper functioning of the regulatory commissions they have been instrumental in creating.

9. Dynamics of Interactions among RCs, Utilities, and Governments

In the preceding section we have presented some observations about the interactions between the government and RCs, based on official responses to the questionnaire. It is very difficult, and usually impossible, to throw light on behind-the-curtain actions and interplay between various institutional actors such as state governments, RCs, and utilities. But, a quick review of tariff orders and other important orders of the RCs, points to some clearly emerging and often unfortunate trends, certainly with some rare bright spots. This section presents some such instances appearing in the RC orders. This discussion is aimed at facilitating an understanding of the dynamics of interactions between these actors and its implications.

Karnataka

- In its first tariff order, the KERC had given several directives to the licensee aimed at improving the latter's performance and efficiency. But the licensee preferred an appeal in the High Court. During the initial hearing on the petition, the licensee secured a stay on implementation of the directives only, but the tariff revision was made effective. The difficulty in implementation was one of the important objections raised by the licensee. Finally, the

High Court disposed off the petition without changing the order but asked the utility to file a review petition before the RC if it felt implementation was not feasible. The licensee chose not to raise this contention before the RC.

Another interesting aspect of this process was the licensee changing its stand on the issue of unmet revenue gap. In the High Court petition, the licensee had strongly objected that the RC had left an unmet gap of about Rs 524 crore in the tariff order. But the RC pointed out that in the second tariff revision proposal, the licensee had itself left an unmet gap of over Rs 2000 crore, even after accounting for the government subsidy and the proposed tariff increase.

- The case of Tanir Bavi IPP in Karnataka is very peculiar. A dispute regarding the computation of fixed charges payable to Tanir Bavi emerged between the licensee and the IPP. Rather than adopting the dispute resolution processes stipulated in the PPA (such as expert and arbitration), the project promoters approached the Karnataka government to settle the issue. The government directed the licensee to accept the claims made by the promoters. During the tariff revision process, it was revealed by the RC that the additional burden due to this government directive to the licensee was to the tune of Rs 163 crore for the year 2002-03 alone. The licensee attempted to justify this government directive on various grounds such as that the government was the owner of the licensee and that it had approved the PPA and also tried to portray that there was no dispute. But, the RC took strong objection to the method in which the government was allowed to interfere in the operations of the licensee and for not following the dispute resolution procedure stipulated in the PPA. It directed the licensee not to take further action on the claims made by the Tanner Bavi promoters without going through the dispute resolution procedures set out in the PPA, and also disallowed the increased burden while approving the annual revenue requirement.

Subsequently, from the KERC order dated 2nd August 2002, it appears that the matter precipitated further and the licensee changed the

approach once again. It refused to pay Tanir Bavi as per their claims, and when Tanir Bavi sought to activate the escrow account, the licensee sought intervention from the KERC. But, since it was a concluded PPA and as per the specific provision in the Karnataka Reforms Act 1999, all concluded PPAs have to be treated as approved by the KERC, the KERC rejected this petition. In this order the KERC described the licensee's approach as locking the stable door after the horse has bolted.

- The Karnataka government has contemplated privatisation of the un-bundled distribution companies in the near future. To enable this, the government has also contemplated a multi-year tariff regime on the principles of "Distribution Margin". In order to create an enabling legal framework for adoption of this approach, the government is also planning to amend the Karnataka Electricity Reform Act, 1999. Some of the recommendations of the consultants appointed for working out the necessary changes in the legal framework are quite disturbing, as adopting them would substantially reverse the process of independent regulation. For example, the consultants' report recommends that the commissioners should hold office only at the pleasure of the Governor. Further, in the context of powers of the state government to issue policy directives, it recommends removing the provision that the policy directives should not adversely affect or interfere with the functioning of the regulatory commission, including the function of determining the tariff. Instead of this provision, it seeks to strengthen the government's authority in issuing policy directives by making it more explicit, non-appealable and binding on all concerned. The recommendations also intend to allow the government control over many important aspects including the tariff and standards of performance to be observed by the licensee during the transition period, which itself has to be decided by the government. In effect, the suggested changes in the Karnataka Electricity Reform Act will relegate the regulatory commission to the position of a government department with little independence and authority.

Delhi

- The DERC passed its first tariff order on January 2001 to rationalize the tariff for some categories. During this process, the RC did not go into the depth of costs and revenue of the utility. Among other prayers, the DVB wanted to expand the applicability of the Fuel Cost Adjustment (FCA) charge to agricultural and domestic consumers. Agricultural consumers are not charged FCA thanks to a resolution passed by the Delhi Electricity Supply Committee in 1995. Hence, the RC interpreted it as a policy matter and referred it to the Delhi government. The government preferred it not to be charged separately for the current year. The RC agreed and exempted even residential consumers from this charge. It argued that the DVB was soon coming up with a comprehensive tariff proposal, when the matter could be taken up. But, interestingly, it said that the government should pay for this, and asked the DVB to work out the required subsidy from the Delhi government. In the same month, the DVB approached the RC with a comprehensive tariff proposal. In less than four months, the RC gave its order. As mentioned earlier, very serious data gaps were revealed and the RC tolerated these. The RC directed that with the next tariff filing (of DVB) it should submit all the requisite data. But the next submission came along with a policy directive from the Delhi government (requiring the RC to decide the tariff based on Aggregate Technical and Commercial Loss. The RC thought that this was not a policy matter, but the government reaffirmed that it was. And the next proceedings and the order are based on the available data. So Delhi has seen three tariff orders in slightly over one year.

Rajasthan

- Before the RC came into being, the utility used to estimate T&D loss assuming pump operation hours of 2622 hr/yr. During the first tariff proposal, the utility reworked its T&D loss calculation. This time, the agricultural consumption estimation was worked out in reverse, i.e. on the assumption that the agricultural flat rate connections would earn 70 paise/unit at the proposed rate of Rs 60/Horse-power/month! This was equivalent to pump running of 1379 hr/yr. The RC increased the assumed agricultural

energy usage by about 9%. The basis for the RC's conclusions is not clear. As in other states, the RERC has also given a directive to all utilities to carry out a detailed study of agricultural consumption and T&D losses. But the difference is that the study is expected to be a three-year ongoing study, with a sample size of not less than 1% of all consumers. This is striking considering that several commissions are directing 100% metering of all consumers in a similar time frame. As in other states, the utilities are not able to submit the asset registers or had not finalized the PPA with the generation company. TRANSCO chose to revise the proposal when the RC sought more data. But the extent of revision is not clear from the RC order. In fact, the RC orders are not all that transparent in terms of data and assumptions.

Maharashtra

- During the first tariff revision process of MSEB, the Energy Minister announced concessions to power-loom consumers. The Mumbai Grahak Panchayat (a consumer organization) filed a case against the minister with MERC. MERC took strong objection to this announcement. Subsequently, the government was forced to file an affidavit before MERC regarding the subsidy that it would pay for any concessions in tariff announced, and the government was required to pay the subsidy. During the second tariff revision process, the government filed an affidavit on the last day of the public hearing and sought more time. Subsequently, it filed an affidavit and proposed tariffs for various categories of consumers. MERC was required to conduct another public hearing on the basis of the government affidavit. In this process the issue of the government's authority to issue policy directives was debated thoroughly and the government was directed to file a legal opinion. The state advocate general opined that the state government's policy directives should be treated only as a guiding factor (amongst other factors), and it would not be binding on the commission. The whole interaction is one of the rare instances where the RC was able to limit government interference in due processes. The government of Maharashtra has generally been paying the required subsidy to MSEB. Here it also needs to be noted that

compared to other utilities MSEB appears to be more responsive to MERC directives and the regulatory process, especially in terms of sharing data as mentioned in Box. 2.

- Tata Power (TPC) and Bombay Suburban Electricity Supply (BSES) are two privately owned licensees operating in Mumbai. MSEB supplies stand-by power to Mumbai to maintain reliable supply (and is allowed to charge Rs 396 crore for the FY 01-02 as per MERC's order for this facility). Though the validity and amount of this payment to MSEB is not questioned by either TPC or BSES, there is a bitter dispute about sharing of these charges. Initially, the government of Maharashtra attempted to intervene in the matter and held meetings with the utilities, but the outcome was not agreeable to these utilities. The state government then decided to hand over the matter to MERC. It enlarged MERC's authority for this purpose and granted it power of dispute resolution (under Section 22.2 [n] of the ERC Act, 1998). As one of the most rare and unfortunate instances in the regulatory process, MERC's order in this case (order dt. 7 Dec. 2001 in case 7/2000) has a dissent note by the chairman. In this note the chairman records: "I am afraid that I was not informed of any of the meetings that my colleagues had with the consultants, nor was I advised of any minutes of the said meetings – till the draft order was circulated." The chairman then further analyses and arrives at a computation according to which the difference in sharing of standby charges is about Rs 7 crore (out of total amount of Rs 473 crore) when compared with the majority order of two members. But, even the order of MERC was not accepted by these utilities and, interestingly, both have filed separate appeals against the MERC order in the Mumbai High Court. The High Court's decision is still awaited. Recently, both utilities have filed more cases before MERC on the issue of standby charges and interpretation of licence in relation to competition for large consumers. The hearing in this case has been in progress before MERC for more than six months, with several last minute postponements and exchanges of bulky affidavits.

In a petition filed before MERC in August 2002, Prayas made a prayer to initiate a review of the tariff charged by TPC and BSES to Mumbai consumers, which has not been reviewed by MERC since its inception in 1999. Unfortunately, MERC limited the scope of its review only to the extent of fuel cost adjustment (FCA) charges. A pending appeal of TPC and BSES against the MERC order before the High Court on standby charges was cited as one of the reasons for restricting the scope of review only to the extent of FCA. Though MERC's regulations stipulate that licensees should submit annual financial statements (e.g. revenue requirement), MERC has not yet specified formats for such statements. Hence, private licensees are not required to file Annual Revenue Requirement (ARR) and Expected Revenue from Charges statements before MERC and the public. In short, since the establishment of MERC in August 1999, till today, neither TPC nor BSES has been required to submit any detailed financial statement to MERC. As a result, the tariff charged by these private licensees has not been reviewed.

Gujarat

- The first tariff revision process of the Gujarat State Electricity Board is also interesting as it throws light on the dynamics between the government, the utility and the RC. GEB had put up an initial application for tariff revision in September '99 for the financial year 1999-2000. But, during the process of technical validation of the proposal, the entire proposal underwent substantial changes many times. Ultimately, the tariff order was passed on 10th October 2000 for the financial year 2000-01. GEB's first ARR (for FY 2000-01) had indicated a revenue gap of over Rs 3000 crore. But subsequently, on two occasions, GEB itself reduced the revenue gap by about Rs 2000 crore! Interestingly, the revision in revenue gap was carried out after the public hearings. In the first instance, the items of reduction in ARR were decided in a meeting with the state finance minister, and included items such as reduction in fuel cost and employee cost, improvement in plant load factor and reduction in T&D losses. Also, in utter disregard of prudent financial management, it

was decided that the GEB would defer recovery of depreciation and Return (on assets) for the year. Through these measures the revenue gap was reduced by about Rs 1,800 crore.

As if this was not sufficient, on the second occasion, the Gujarat government directly wrote to the commission mentioning that the ARR has been further reduced by Rs 300 crore through items such as further reduction in fuel cost and T&D losses. Because of such drastic changes in the proposal, the RC had to conduct public hearings three times before issuing the first tariff order. Another significant aspect of this process was the utility's refusal to propose revised consumer category-wise tariff. In spite of the RC's repeated requests the utility did not submit proposed tariff rates and left it to the RC to design the revised tariff structure. Another peculiar aspect we noticed about the tariff revision process in Gujarat is that the RC itself stayed the implementation of the tariff order for about 15 days, in response to review petitions filed by several consumer groups and industry associations. In response to these petitions, the original tariff order was modified with a slight reduction in tariff applicable to several categories, though the overall impact of these changes on the finances of GEB was mentioned as minimal.

Uttar Pradesh

- The UPERC's orders on UPPCL are a glaring example of the frustration faced by the regulator. It appears that realizing the bad state of affairs of the UP power sector; the RC tolerated a lot of data gaps, inconsistencies and contradictions. It gave directions to the UPPCL to improve data management among other issues. By the time the utility came up for a second tariff hike, the RC had a better understanding of the situation through studies it had initiated. The utility was nowhere close to achieving the target it had set for itself, the collection efficiency had dropped, and T&D losses had not decreased. Still, the RC only gave serious warnings, and urged the utility to implement the simple but key directives. The RC has also analysed the likely reasons for non-performance of the utility. Despite this, the UPPCL came back to the RC with an ARR that

had glaring data gaps. The RC requested additional data (which was part of the directives it had been giving in the last two orders). The UPPCL could not furnish it, and the RC had to finally take the strong step of returning the ARR. The RC declared in its order of 26th June 2002, that the “licensee has not been taking the orders and directions of the commission seriously and has been acting in most casual manner”.

During this process, the government has not been fulfilling its promise of subsidy disbursement. This has adversely affected the financial situation of the utility. The government has taken little action in improving the finances of UPPCL, but keeps interfering in its operations. The RC says: “Though incorporated under the Companies Act, like their parent (UPSEB) they have been functioning as administrations fulfilling the Political and Administrative agenda of the State Government.... The State Government continues to approve major investments ... and even decides on the location of substations and employment policies, including influencing transfers and promotions of even junior staff. In such an environment there is little incentive for management to pursue efficiency as the goal. The result is that there is no accountability or motivation.” The RC suggests that the “... system has to be replaced by a transparent and accountable system that is subjected to social audit.”

Andhra Pradesh

- In Andhra Pradesh, during the tariff revision for the year 2000-01, the Andhra Pradesh Electricity Regulatory Commission (APERC) had reduced domestic slabs from 6 to 4 by merging higher slabs. During the hearing on next year’s tariff proposal, the government of Andhra Pradesh, through the principal secretary, energy, argued for reverting back to the six-slab structure. Somewhat reluctantly, APERC reverted back to the six-slab structure.
- While approving the demand forecast, APERC did not hold any public hearing. It is essential to note that demand forecast is the key variable deciding need for capacity addition (usually private IPPs). Similarly, APERC introduced a

formula for charging of Fuel Cost Adjustment in the tariff regulations. This is quite different from the process adopted by many other ERCs (e.g. MERC and MPERC) whereby the utilities are required to submit a proper petition before the commission and orders are issued after inviting public comments and holding a public hearing.

- The case of reduction in tariff of Ferro alloy industries in Andhra Pradesh presents another important dynamic of the regulatory process in the state. Ferro alloy units in AP used to get direct supply from the unallocated share of NPTC. In early 2002, APERC substantially enhanced wheeling charges and the same were made applicable to Ferro alloy industries also. As a result, the power cost for these power intensive units increased by more than 50% and nearly all units closed down operation. They approached APERC for a special reduced tariff. The state government also pleaded for concessions for the power intensive industry. But the state government did not commit to providing a subsidy for reducing the tariff. APTRANSCO also supported this reduction in tariff, and one of the distribution companies, though it initially opposed the reduction, later on supported it. Finally, APERC agreed to this demand and substantially reduced the tariff for these companies and also asked the companies to source all power from Andhra Pradesh utilities only. It is interesting to note that, in this order dated 26th September 02, APERC justified this differential treatment to some industries on the basis of legal provisions which permitted it to differentiate tariff on factors such as affordability and need for cross-subsidy!

Madhya Pradesh

- The process before the first tariff case of MP is also an eye-opener. The Madhya Pradesh Electricity Regulatory Commission (MPERC) was constituted on 20th August 1998 under the ERC Act 1998. The chairman and members were appointed on 30th January 1999, and the chairman took oath of office on 10th February 1999 whereas other members took oath on 9th March 1999 and 1st April 1999. The appointment of the chairman and two members was done through the same notification. Thus, the commission was

legally constituted in August 1998, but all members took oath only by April 1999. In the meanwhile, without any approval of MPERC, the SEB revised the tariff and implemented it from 1st March 1999. This tariff revision was obviously challenged by many groups before the MPERC. During the proceedings, the SEB took the view that since the two members had taken oath only after 9th March 1999, any tariff revision before that need not be approved by the MPERC, even though it was constituted much earlier. During the course of the case the state government also claimed in an affidavit that the tariff proposal was approved by the state legislature. But, when the RC asked the state to produce a document to that effect, only a copy of the cabinet decision was produced, and the RC concluded that it was a mis-statement made in an affidavit!

After carefully analysing various legal issues raised in the case, MPERC ordered that the tariff revision effected by the SEB, without approval of the RC was not proper and stayed its implementation. But the utility appealed against this order in the high court and the court stayed the RC order, pending final hearing of the case and continued the tariff revision effected by the utility on 1st March 1999. The court also allowed the utility to approach the RC for any tariff changes in the intermediate period. After this, the utility petitioned the RC on issue of free supply to agriculture and single light point connections and asked for the RC's concurrence. The RC took strong objection to this and pointed out that it was not a rubber stamp. It rejected the proposal. Subsequently, the utility filed a case before the RC for revision of tariff for only railway and coal mines. The RC turned down this proposal saying that tariff revision cannot be done on such a category-wise basis and a comprehensive evaluation needs to be adopted. Subsequently the MP government introduced the Electricity Reform Act, which made a specific provision to legalize the tariff effected by the board on 1st March 1999. After making a mockery of the process, the utility filed a comprehensive tariff revision proposal on 7th April 2001 and the MPERC issued its first tariff order in September 2001.

Apart from these difficulties arising out of the utility's and state's disregard and disrespect for the law and statutory institutions, the MPERC faced several difficulties in terms of lack of infrastructure and staff. After narrating these difficulties in its first tariff order, the MP commission has made a very important observation in the context of the objectives of this report, which is reproduced below.

“The commission is a quasi-judicial body. The judiciary imparts justice to others, but itself suffers injustice at times. It has no platform. It is bound by discipline and the strict judicial norms. It functions on the strength of public faith and confidence.”

The analysis in this section depicts many disturbing trends that would make any concerned citizen sit up. These include highly deplorable activities in which some utilities and state governments indulge in order to avoid public scrutiny of their governance. In doing so, they are flouting with impunity not only all norms, but even legal obligations, demonstrating complete disregard and disrespect for many things that governments are expected to hold dear. The most deplorable is the attempt by the Karnataka government to clip the wings of the RC, possibly because the RC is trying to stop—while performing its duty—government functionaries from avoiding public scrutiny and causing harm to the public interest.

As is evident in the above analysis, private utilities have resorted to equally deplorable tactics. As in the case of the Tanir Bavi plant in Karnataka, where the private company seems to be using its leverage with the government to protect its own interests at a heavy cost to consumers. In this, the private company and the government seem to be partners. As evident in Maharashtra, private parties have used the regulatory process in legal battles to protect their financial interests.

One of the unfortunate trends is the failure of the regulatory process when it comes to making private utilities open themselves to public scrutiny. The regulatory process in Maharashtra certainly laid down some exemplary milestones of transparency and accountability until the target was the public-

owned MSEB. However, as discussed in the above sub-section, it failed to rise to the same standards when civil society institutions tried to bring under public scrutiny the affairs of the private utilities. The rare dissent note in the case of a private utility in Maharashtra is certainly a bad omen for the future.

In sum, the dynamics seem to be working against the RCs who try to protect public interest by disciplining utilities and governments. This is because political interests are against RCs and because one set of actors on the scene—the public and civil society organizations representing them—are still dormant. This dormancy on the part of the citizenry—which allowed vested interests to take control of the governance of the sector in the pre-reform era—continues even in the era of reform, despite the availability of the institutional instrument of RCs. Unless this situation is changed, the dynamics is going to work against the well-meaning RCs. The challenge is in making the dormant public aware, capable, and effective. Once this is achieved, the public will be a strong ally for the RCs in their efforts to discharge their ordained duty. Moreover, it would also act as an equally strong deterrent against the possible failures of RCs, when it comes to protecting public interest. In this context, it would be appropriate to reiterate what is said by the MPERC in the above-mentioned quote. The RCs can function only “on the strength of public faith and confidence.”

10. Summary of Findings

This section presents a summary of the findings of the above discussion, which is relevant for the basic concern behind this exercise, viz. improving efficacy of the RCs. The findings as well as discussion on the same is arranged in four major sub-sections in four categories of issues, viz. (i) Resources and Autonomy, (ii) Transparency and Public Participation, (iii) RCs Annual Reports and CAC Meetings, and (iv) Role of Governments and Utilities. Table 13 presents key findings in a tabular form. However, before we go into this section, it is worthwhile to see what changes the RCs themselves desire in order to improve their effectiveness.

10.1 Expectations and Suggestions of RCs

In the survey, we had asked the opinions of RCs about the effectiveness of the commissions and what

changes are needed in the legal framework and what limitations they are facing. SERCs responses are summarized in Table 14.

SERCs such as UPERC mentioned the specific need for effective penalty mechanisms for government-owned entities for non-compliance. APERC and RERC felt that no legal changes are required at present.

10.2 Resources and Autonomy

Most ERCs are dependent on the government for financial resources. Except in the cases of WBERC and UPERC, any fees or charges received from the petitioners are to be deposited with the government and RCs cannot use the same for supporting their own expenditure. Out of the 12 ERCs responding to the survey, seven ERCs received less than 70% of the budget proposed by them in at least one of the last two years. The cases of HPERC and MPERC are especially critical as they have received only 17% and 38% respectively of the budget proposed by them in the last two years.

Lack of adequate financial freedom is likely to hamper severely the autonomy and effectiveness of the commissions. In the absence of authority to change the commissioners at will, governments might be tempted to use this financial dependence to cripple the ERCs. Hence, in order to avoid such dependence, avenues to ensure financial autonomy of the commissions need to be found out. There are several options to ensure financial freedom. For example, SERCs could be allowed to charge a very small surcharge. Based on existing range of RC budgets and energy sales in the state, a surcharge of the order of 0.15 to 0.5 paise/unit sold, would be sufficient to cover expenses of RCs.

Another crucial issue that needs to be addressed immediately is the availability of trained manpower. Except for four ERCs, no other ERC that responded to our questionnaire has any permanent staff for performing crucial technical, financial/economic, and legal functions. The main reason for lack of permanent staff is the policy of governments/RCs to appoint staff only on deputation or contract. Considering the need for developing an institutional memory, and for ensuring consistency in decisions and regulatory approach, it is essential to have at

Table 13: Summary of Key Findings

No	Parameter	KERC	WBERC	RERC	APERC	UPERC	HPERC	OERC	GERC	DERC	MPERC	MERC	CERC
1	No. of full financial years of operation (upto March 02)	2	3	2	3	3	1	5	3	3	3	2	3
2	No. of annual reports published	3	?	2	0	3	0	0	2	0	3	0	3
3	No. of permanent staff in technical, economic/finance, legal category	0	0	0	8	0	3	12	0	0	0	1	0
4	No. of CAC meetings held is as per required by law/regulations	✓	NA	NA					NA				NA
5	No. of agricultural representatives in CAC	2	1	1	1	1	1	1	1	NA	1	1	0
6	No. of research body/academic representatives on the CAC	0	1	2	0	0	3	0	1	NA	1	5	11
7	All orders are on the website	✓		✓		✓				✓		✓	✓
8	There is library/reading room with index (of petitions etc.)		✓										✓
9	RCs Inform public of technical validation sessions, non-public hearing proceedings	✓				✓			✓			✓	✓
10	RCs produced any brochures/information packs for consumer awareness	✓						✓					
11	RCs have done any expenditure on consumer education etc.	✓							✓				
12	Presence of institutional mechanism such as Consumer Advocate/Representatives	✓						✓	✓		✓	✓	
13	RCs have ordered for publication of old PPAs and other key data				✓	✓						✓	NA
14	Documents published in local language			#									
	Regulations/Codes	✓				✓	✓		✓	✓	✓		✓
	Annual reports	✓							✓		✓		✓
	Tariff orders	✓											
	Discussion papers				✓	✓							
	Other Documents							✓				✓	✓
15	State government made any public awareness efforts about regulatory process												
16	No. of posts (Commissioner/Secretary) remaining vacant for > 6 months	1	1					3	2	2			2
17	Any discussion on annual report in the assembly				NA								
18	Efforts by multilateral/bilateral agencies for public awareness	✓		✓	✓			✓					
19	Availed services of consultants funded by multilateral or bilateral agencies				✓	✓	N	✓	✓				✓
20	RCs initiated any suo-motu action or petition	✓		✓	✓		✓	✓	✓				✓

Note: # In response to the Draft Report, the Rajasthan RC reported that it has published all documents in the local language (i.e. Hindi) but no list was made available.

Table 14: SERCs Suggestions for More Effective Regulatory Process

Name of RC	Government Support & Commitment	Lack of Public Awareness	Need for Financial Autonomy	Utility should be Responsive	Other
KERC	✓			✓	
RERC	✓	✓			
OERC					Authority for ex-parte, interim order
DERC			✓	✓	Safeguard against frivolous litigation, Norms for public process
UPERC				✓	
WBERC					Delegation of sec. 22.2 powers
HPERC	✓		✓		

least a few permanent staff for performing these crucial functions. The temporary nature of staff appointments also raises issues of accountability and independence of the staff. Further, temporary staff members are more likely to toe the commissioners' line, instead of providing independent inputs. In order to attract and retain capable staff, it is also essential to ensure that the pay scales and other facilities are reasonable.

10.3 Transparency and Public Participation

All the responding ERCs informed that all proceedings before them are open to the public, and that essentially they have ensured full transparency in the functioning and have very rarely exercised their powers to keep a document confidential. But, in terms of 'operationalizing' transparency in practice, few commissions seem to have taken adequate steps. Salient features in this regard are discussed below.

- Except a couple of RCs, no other RC has a library or a reading room with a classified index of all documents (such as petitions and rejoinders) and other filings by utilities.
- Only a few RCs have a proper system of informing the general public of proceedings, other than the public hearing process, which is a standard feature of petitions such as tariff revisions. Considering the importance of other proceedings such as technical validation, it is essential to institute a proper and elaborate system for regularly informing the general public of such

proceedings. The example of MERC, which informs the recognized consumers' representatives of all proceedings before it, and, at times, also directs petitioners to submit petitions and other documents to all recognized consumer representatives, is worth replicating by other RCs.

- Though many commissions have put up information such as regulations and key orders on their websites, about half the ERCs surveyed mentioned that not all orders are available on their websites. Such partial use of websites severely affects the usability of the website, and users are not sure that they have seen all the relevant orders.
- Another crucial shortcoming in this context is the lack of availability of key documents such as tariff orders and discussion papers in local languages. Availability of information in local languages would significantly enhance meaningful public participation in the process, as it allows many more people to understand various issues and decisions. This is especially important in the context of addressing issues pertaining to the agricultural and domestic sectors, which face the largest financial brunt of commission orders.
- Out of 12 ERCs that responded to our survey, only five - KERC, GERC, OERC, MERC and MPERC - have any institutional mechanism for enhancing consumer participation. With consumer organizations and other civil society

groups facing a severe shortage of resources and capabilities—such as information, finance, and analytical capabilities— institutional mechanisms such as an ‘Office of Public Advocate’ and ‘Recognized Consumer Representatives’ are essential to encourage meaningful public participation in the process.

- In terms of representation on the commissions’ advisory committees, two categories, viz. agriculture and research/academic bodies are poorly represented.
- Except KERC and GERC, no RC reported any expenditure on activities for enhancing public participation such as workshops and training courses. Similarly, except KERC and OERC, no other ERC reported publication of any information packs/brochures or newsletters aimed at informing the general public about issues such as the role of the RC, procedure for filing of petitions and hearings, and information disclosure policy and procedure. UPERC also brings out two newsletters – ‘Economic Diary’ and ‘Power Diary’, which contains interesting and informative discussion about important issues before the sector. These are available on its website.
- The state governments have also done little to enhance public participation in the regulatory process. However, in some states, multilateral/bilateral agencies have conducted and sponsored some processes. In the case of Karnataka, the World Bank has supported the establishment of a consumer network, and in Rajasthan, USAID has conducted workshops. But, apart from these two cases, government or multilateral/bilateral agencies has either not made any specific efforts or have only engaged in large-scale promotional campaigns like the one in Orissa. In a nutshell, though the legal structure of the RCs is conducive to transparency and public participation, more efforts are needed to ensure meaningful and wider public participation.

10.4 Annual Reports of RC and CAC Meetings

One of the most unfortunate findings of the survey was regarding lack of adherence by RCs to simple procedural requirements, such as timely publication of annual reports and periodicity of Commission

Advisory Committee (CAC) meetings. Of the 13 ERCs under the survey, five SERCs have still not published a single annual report. About half a dozen SERCs have failed to conduct the minimum number of CAC meetings stipulated by acts or regulations. Non-adherence to such simple procedural requirements does not bode well for the credibility of RCs and their acceptance by the public. This is ironic considering that RCs expect licensees to submit full and accurate data and to comply with all directives.

The quality of the annual reports is another issue. Annual reports of GERC are of eight pages each. Reports of MPERC and RERC do not offer much insight, whereas reports of KERC are highly informative and useful.

10.5 The Crucial Role of Four Main Actors

The power sector is too large and complex for anyone to expect that any one institution can set right all the ills plaguing the sector. Apart from ERCs, governments and utilities have to respond with equal commitment if significant changes are to be expected in the functioning of the sector. Unfortunately, the survey provides ample indications that there is still distinct lack of commitment on the part of these two important actors to play their due role in this new institutional set-up.

The implementation of RC orders is the key to effectiveness of the regulation process. Most of the utilities governed by ERCs are publicly owned utilities. The study indicates that in terms of number of directives followed, the implementation is fair. But submission of data and information to the RC and regulation of investment are the recurring areas of conflict. In sum, the utilities resort to tactics such as non-submission of data, refusal to undertake studies, and delays in implementing key performance monitoring and evaluation systems in order to restrict public scrutiny of their performance. Legal litigation is another mechanism used by utilities to oppose or at least delay crucial regulatory investigations. It is clear that the utilities are not willing to allow RCs to scrutinize their functioning.

There are many counts on which a large number of state governments could be faulted too. These include laxity in timely appointments of new commissioners, inadequate financial support, autonomy

Prayas, Pune

of RCs, and lack of significant effort to ensure meaningful public participation and awareness. As far as the role of government is concerned, an attempt to clip the powers of the RCs is another worrying trend. In sum, it is apparent from the discussion in the previous section, that state governments are still not reconciled to the process of independent regulation. When RCs attempt to go against the wishes of the government, and threaten vested interests and strong lobbies, different routes are adopted to circumvent or subvert such RC directives and actions. Some of these routes, documented in the RC orders and survey responses, are to reduce financial resources of the commission, engage in legal battles (through utilities) and, at times, resort to legislative authority to change the legal structure.

Discussion in the previous sections also shows that, at times, RCs have mutely witnessed, endured, and condoned various tactics adopted by powerful vested interests in the government and private or public utilities. Sometimes, even blatant violations of law have been condoned on limited grounds such as the need for ‘regulatory certainty’ for encouraging investment, or the relatively nascent stage of the regulatory process.

Even in this gloomy scenario, some regulatory commissions have attempted to overcome these hurdles and move towards the objective of efficiency and economy. The RCs’ efforts in this direction range from typical measures such as disallowance, penalty (on utility) for non-compliance, to legal measures such as issuing show-cause notices to utilities and individual officers, and using its legal authority in approving the PPA and tariff determination to limit the financial burden on consumers arising out of irrational decisions and acts of vested interests. Sometimes, RCs have also attempted the use of innovative measures of public hearing on important issues of non-compliance (KEREC) or tariff signals (e.g. T&D loss charge of MERC) to create public pressure on utilities.

However, many of these attempts by RCs seem to be ineffective against more wily actors. It needs to be mentioned that, until now, RCs have not resorted to extreme measures such as using their judicial powers, even though a number of instances of brazen

breach of law or disregard for due processes has been witnessed.

To a certain extent, this reluctance of RCs to invoke judicial powers betrays their sense of helplessness and their relative isolation. In this context, strong support from the citizenry, and particularly civil society institutions, to well-meaning RCs would prove instrumental in putting pressure on utilities and governments to work for an independent and effective regulatory process. This again brings us to the crucial issue of need and importance of strong and vigilant civil society groups for effective regulatory process. If RCs are expected to address the ills of the governance crisis plaguing the power sector, then strong public support to RCs, and public pressure on the utilities and governments, is a paramount necessity. In the absence of such active public participation, vested interests will find it very easy to sabotage this newly created institutional mechanism.

This presents a significant challenge to civil society groups. They will have to make extra efforts to gain knowledge of various technical-economic-legal aspects of the regulatory process and of the power sector. This survey confirms that, with a few exceptions, civil society groups have by and large been unable to effectively intervene in the regulatory process.

Diverse civil society institutions—including research and academic bodies and funding agencies—will have to make concerted and focused efforts to encourage strong and effective public intervention in the regulatory process. They will also have to reach out to people at large and make them aware of the stakes involved in the success of independent regulatory institutions. This will create a groundswell of support for well-meaning RCs, and deter those who try to jeopardize the public interest.

11. Ideas for Enhancing Public Participation and Independence of Commissions

In the preceding sections we have analysed and discussed various issues regarding the three important aspects of the regulatory process covered in this report. This section presents some suggestions to improve the situation. These are classified in the following two categories: (i) Autonomy and Inde-

pendence of the Commissions and (ii) Transparency and public participation.

11.1. Autonomy and Independence of the Commission

- a) **Selection Procedures:** The procedure for selection and appointment of commissioners needs to be improved to ensure timely appointments, sufficiently long tenures, and enhanced transparency, in order to ensure that better people are selected. To this end, the Acts should specify a time limit within which governments have to act on the recommendations of the selection committees. Second, measures such as tabling the report of the selection committee before the legislature, publication and invitation of objections on the short listed candidates should be considered to enhance the transparency of the process. Finally, the tenure of all commissioners should be fixed and the Acts should specify maximum age at the time of appointment rather than specifying maximum age to hold the office.
- b) **Financial Autonomy:** The Acts should provide for a small surcharge (about 0.15 to 0.5 paise) on each unit sold in the state to fund the expenses of the commissions. This fund should be fully at the disposal of the commissions.
- c) **Code of Conduct for RCs:** After consultation with different stakeholders, the central government (or agencies such as the Forum of Regulators) should develop a Code of Conduct for regulators and the regulatory process. Adoption of such a code should be voluntary, but a sub-committee of regulators (or judges from the Supreme Court)—to be appointed by the same agency preparing this code—should be entrusted with reviewing any complaints about any breach of the code by regulators. This is essentially on the lines of self-regulation of professional bodies like chartered accountants. The code of conduct should include aspects such as protocol for government-RC interactions and policy and procedures for disclosure of documentation and information. If regulators and civil society institutions endorse such a Code of Conduct then it can also act as another measure to pressurize governments and utilities to respect the indepen-

dent regulatory process. To make the Code of Conduct more effective, periodic evaluations of regulators', utilities' as well as governments' compliance with the code must be carried out.

11.2 Transparency and Public Participation

- a) **Institutional Structure for Enhancing Public Participation:** The relevant laws should provide for creation of new institutional structures on the lines of the Office of Public Advocate. The main functions and powers of this office should be part of the Act itself. These powers and functions would include: making available copies of all petitions and documents filed with the commission to this office; acting as a party in all cases by default; powers to cross-question petitioners and respondents on behalf of the consumers. The Office of Public Advocate could also be made responsible for representing and protecting interests of all consumers and especially those from unrepresented categories. It would also be responsible for creating consumer awareness, supporting consumers in filing petitions and arguments, as well as for conducting studies and data analysis. Similarly, in order to ensure autonomy and independence of this office, the selection process and funding pattern of the office should be decided on the lines of RCs as described above.
- b) **Mechanisms for Supporting Development of Capable Consumer Groups:** Government agencies such as the Ministry of Consumer Affairs and/or Rural Development should be required to develop specific programmes for supporting consumer groups, to enable meaningful public participation. These ministries or similar ministries at the state level should institute programmes aimed at awareness creation, capability building and training, along with funding support.
- c) **Nodal Agency:** A nodal agency—possibly hired on contract basis, and chosen and regulated through strict performance and review criteria—should be appointed to develop co-ordination and networking amongst civil society institutions (CSI). The main tasks of such an agency should be to act as the central information clearinghouse and as a forum for regular interactions and for

experience sharing among various interested CSIs.

- d) Encouraging Academia to Participate in the Regulatory Process:** Effective intervention in the regulatory process often requires understanding of complex techno-economic and legal issues, which is difficult to gain for many CSIs. To fill this vacuum, academic institutions should be encouraged to help interested CSIs and also to contribute to the regulatory process. For these purposes, agencies such as the University Grants Commission and the Planning Commission should develop special funding programmes for research and intervention related to the regulatory processes by academic institutions.
- e) Academic Courses:** The emergence of the regulatory process in many states (and sectors also) and the possibility of a significant increase in the number of cases as well as the complexity of issues, requires specially trained manpower resources, both within and outside the regulatory commission. One of the ways to meet this demand would be to institute academic courses ranging from two-year postgraduate degree level to short term diploma and certificate courses. A dedicated quota within these courses could also be considered for candidates sponsored by various civil society groups.
- f) Emphasis on Local Language Documents:** In order to reach a large number of people it is essential to make extra efforts and produce as many documents in the local language as possible. The example of Karnataka, which has explicit state policy of publishing all orders in local language, is worth replicating in other states.
- g) Operationalizing Transparency:** One of the most essential requirements to enhance transparency and public participation is to make operational the legal mandate of transparency in the actual regulatory process. It would require a well-maintained, user-friendly system of classification, indexing, and retrieval of documents. Other examples of such measures and mechanisms would include monthly/weekly newsletters (that provide listing of all documents

received by the RC and all orders/notices issued by the RC), publication of all notices of the RC at a particular place in pre-selected newspapers, and measures for web-based information systems discussed in Annex 5.

- h) Citizens' Coalition on Electricity Regulation:** Considering the long tradition of civil society activism in India, various CSIs will have to take up the burden of making this new institutional innovation successful and 'public-friendly'. Because of the historical state centeredness of the sector in the pre-reform era, civil society efforts in the sector were primarily focused on lobbying and influencing the state machinery. As a result, there has been dismal participation of CSIs in the regulatory process in the initial stages of the reform era. However, at the same time, many CSIs have been making efforts in this direction and an increasing number are realizing the need to get involved in the affairs of the electricity sector. As the first step to make this a shared endeavour, the CSIs that are already active in the regulatory process should join hands to form a loose citizens' coalition. This coalition could host joint efforts by its members to create awareness among the public and other CSIs as well as building its own capabilities.

In our opinion, the suggestions listed above are crucial, though not exhaustive. It is essential to further develop and fine-tune such ideas aimed at enhancing transparency and meaningful public participation in the regulatory process through discussions with, and contributions from, various experts, social scientists, and CSIs. The above suggestions might give an impression that such systems and processes would increase the complexity as well as costs in terms of time and money. But it needs to be remembered that such systems and processes are aimed at improving the sorry state of governance of the sector, which is at the root of the crisis in the sector. Improvements in governance will not come easily or cheaply, and will be a difficult and possibly a long-term process. It also needs to be noted that even if the industry structure and ownership might undergo some changes, the need for better governance cannot be obviated and, hence, there is no alternative but to develop a strong and

vigilant civil society. The above suggestions can move us in that direction.

12. ERCs in India: Good Beginning but Challenges Galore

The Backdrop for the New Institutions

Realizing its vital role in economic development as well as social progress in developing countries, development of the electricity sector has been accorded a high priority since independence. Governments at both the central and the state level created institutional mechanisms and designed policies in the sector to meet this social obligation. This resulted in phenomenal growth and exemplary progress in the sector.

Unfortunately, like many other sectors, the power sector also gradually succumbed to the changing social and political milieu and became victim to pressures and tactics of economically and politically strong vested interests. The situation degraded to such an extent that, gradually, coalitions of vested interests—from sections of consumers, politicians, bureaucrats, employees, and private sector—virtually took over the governance of the power sector. This was achieved by bypassing or subverting the weak and non-mandatory provisions relating to transparency, accountability, and public participation.

As a result, the governance of the sector was distorted to serve these coalitions of vested interests instead of the ‘public interest,’ which was the paramount objective for development of the sector. This situation could be aptly described as a ‘governance crisis’, and one of its most visible symptoms was the increasing financial crisis, and the performance crisis, which, in turn, had many manifestations. These included, for example, poor quality and inadequate electricity supply, which started taking a heavy toll on the economic development of the country.

To address these crises before the power sector, two important approaches were adopted in the 1990s. First, the generation sector was thrown open for private sector investment and ownership. This process commonly known as the Independent Power Producers (IPP) policy, has, to put it mildly, further aggravated the financial crisis rather than helping reduce its severity. Failure to address the ‘govern-

nance crisis’ which was at the root of the financial and performance crises faced by the sector is the primary reason for the failure of the IPP process.

The second approach that is being adopted to address the crises before the sector is the ‘reform’ approach, which essentially means fundamental restructuring of the power sector. This approach comprises three main elements - unbundling, privatization, and independent regulation. With strong pressure from by the World Bank as well as with its active sponsorship and close involvement in design and implementation, the ‘reform’ model was first tested in the state of Orissa.

A Good Beginning

Several elements of the ‘reforms’ (e.g., privatisation, unbundling and ‘single-buyer model’) have become very controversial and highly debated. However, one key element, viz. independent regulation, is being perceived as a very essential institutional innovation desirable for addressing the ills plaguing the sector. Even as other components of the Orissa model of reforms were being debated, the central government as well as several state governments established regulatory commissions within a short span of two to three years.

Many actors and stakeholders—viewing it from different perspectives—have welcomed the establishment of the independent regulatory commissions. For example, while some in the government argue that independent regulation is one of the most crucial requirements for attracting investors in the sector, some consumers groups see it as a mechanism for protecting consumers’ interests. However, some actors also perceive regulatory commissions as the by-product of the model forced by the World Bank for ensuring privatization of ‘national assets’ and, hence, they oppose these institutions with large concentration of authority. One of the main factors for such opposition is the non-transparent and non-participatory manner in which these institutions were established, and which bred suspicion.

In this context, the present survey looked at some crucial aspects that would contribute to making these commissions truly independent and autonomous, viz., financial autonomy, transparency, and public participation. The response to the survey from

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various commissions presents a mixed picture. Following the legal requirement, the commissions have ensured transparency in many of their procedures and processes. This is especially true in the tariff revision process. The tariff revision process has resulted in unearthing of data, which hitherto was shielded from public scrutiny. More importantly, this has been instrumental in making various sections of society aware of the gravity of the situation in the sector and has helped pinpoint the symptoms and sources of the crisis plaguing the sector.

Challenges Galore

At the same time, as the survey reveals, the commissions seem to have made very limited efforts for ‘operationalizing’ the principles of transparency and public participation. Most commissions have done little to put in place a user-friendly system for accessing documents and information, which would encourage active use of various data and information available with the commissions. Also, with a few exceptions, no commission has taken any initiative to institutionalise public participation by establishing mechanisms such as the Office of Public Advocate, which is a very well known mechanism in many countries. Most commissions have not established processes for facilitating public participation either, such as informing recognized consumer representatives of all proceedings before the commission. As a result, the public participation in the regulatory process is restricted only to the public hearings conducted during the tariff revision process.

The operationalizing of the principles of transparency, accountability, and participation in the regulatory process is especially important in the context of the ‘governance crisis’, which itself was the result of the failure of mechanisms of transparency, accountability, and participation. Further, those who are suspicious of the intentions of the World Bank and the other mainstream actors, see RCs as ‘investor-friendly’ in structure. Thus, there is an urgent need to make these commissions truly autonomous and independent, financially as well as functionally, in order to avoid political interference and regulatory capture by vested interests.

It is often said that probably the vested interests controlling governments and some other mainstream institutions did not envisage the possible threat this

new institution might pose to their interests. Thus, out of miscalculation, or because of external pressures, these mighty interests allowed the commissions to be established. However, once the RCs were established and started functioning, the same vested interests have been attempting to curb them.

Like many other institutions, the functioning of RCs in the first few years will be very critical. To a large extent, it will decide the standing of these institutions in the eyes of society and determine the degree of public confidence they will enjoy in the long term. This is especially true, considering the complex, dynamic, and evolving nature of the sector as well as lack of any ‘set’ path and precedents which these commissions could follow. Further, this new institution is faced with several challenges and will have to make several decisions that many strong actors in the sector will find unpleasant. As a result, many economic and political vested interests from many quarters will put obstacles in the effective functioning of regulatory commissions and will try to prevent them from acting as custodians of the public interest. Considering the all-pervading governance crisis, the commissions are not going to get full cooperation from government agencies or utilities. This has become amply clear in the two long sections in this report, which are based on the analysis of the RC orders. In this scenario, these infant institutions will have to rely heavily on support from the general public, and this can only come if the public has confidence in them. In a nutshell, the fate of not only the commissions, but to a certain extent also of the power sector, will depend on whether the commissions are able to win the respect and confidence of the general public.

In this context, the non-compliance of commissions in meeting even basic procedural requirements related to public participation or transparency becomes more worrisome. For example, several commissions have not conducted the minimum number of meetings of the Commission Advisory Committees in a year, or have not published their annual reports regularly. Such laxity in following even basic procedures certainly does not bode well for the future of the sector, especially in the context of the large authority and responsibility bestowed onto these commissions. One wonders how, then,

they can ensure timely submission of crucial data and implementation of directives by the utilities.

The issue of autonomy and public confidence will become more crucial when the commissions start dealing increasingly with private utilities. With the entry of private utilities, the commissions will become more susceptible to the dangers of direct regulatory capture. Equally dangerous will be the efforts for indirect regulatory subversion. This can be done, for example, through long-drawn-out and complex legal battles to avoid implementing the commission's directives or facing public scrutiny of financial or performance data. It needs to be mentioned that, in many places, there already are signs of such attempts, leading to regulatory softening, if not capture, as yet.

In a nutshell, the survey shows that the institution of regulatory commissions in the power sector has

made a good beginning in terms of bringing in more transparency and public participation in the governance of the sector. But, the commissions will have to proactively make efforts to ensure more meaningful public participation in their functioning, and to put in place a stringent but user-friendly system aimed at ensuring full transparency in their own functioning. Without this, it will be difficult for the commissions to gain public confidence and respect, which is extremely crucial if they are to be effective and successfully tackle the various challenges they face. Support from other actors such as government, utilities and consumers is very essential for effectively addressing these challenges. However, the commissions cannot afford to wait for miracles and will have to be proactive and reach out to the consumers and public, especially in the initial years. In a sense, they need to view this as their duty towards the nation and society.

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Annexure 1:**Consultancy support provided by multilateral and bi-lateral agencies to SERCs**

RC Name	Name of the Consultant	Responsibilities/Tasks	Duration (months)	Fees Paid	Funded by
APERC	NERA, Washington DC	<ol style="list-style-type: none"> 1. Assisted Govt. of Andhra Pradesh to establish the APERC 2. Review & comment on APERC organisational structure detailing job & personnel qualifications of the staff & selection procedures. 3. Review & comment on Budget matrix and accounting procedures for the APERC & uniform accounts practice for the licensees 4. Review & comment on internal operating procedures and office manual for APERC 5. Review & comment on Draft Licences & performance standards 6. Provide initial training and support for the APERC 7. Recommend suitable Draft tariff methodology and guidelines for submission of revenue requirements and amendment of tariffs and help the commission in detailed analysis and finalising the ARR and Tariff proposals (during 1999-2000 ARR and Tariff filings) 	11	British Pounds 895,392 plus Indian Rupees 91,00,593. Total Rupees 6.5 Crores	World Bank
	PWC	<ol style="list-style-type: none"> 1. Institutional strengthening 2. Licensing of Distribution Companies 3. Reviewing PPAs before giving consent in terms of section 21 of APER Act, 1998. 4. Reviewing the tariff applications of the licensees and assisting the Commission in finalising of tariffs 5. Assisting the APERC in Distribution Privatisation process 6. Advising on legal issues. 	31	Entire expenditure borne by DFID as grant	DFID
UPERC	MERCADOZ Argentina	Multi Year Tariff	6		
OERC	MECON Ltd., Ranchi	Development of Rims (Regulatory Information Management system)	15	Rupees 25 lakhs	DFID
	USEA, Washington DC	Training of Officers & Exchange of visits with Washington DC & Colorado Regulatory Commissions under Energy Partnership Programme	- N.A. -	- N. A -	USAID
	NERA, Washington DC	Regulatory Training Programme			World Bank
	PWC, UK	Pilot Loss Study Project, Multiyear Tariff Strategy, Multimedia Consumer Awareness Campaign		Rupees 40 lakhs	DFID
GERC	PA Consultant	Helping GERC on various regulatory issues	12		ADB

Annexure 2: Typical Issues Discussed in the Meetings of CACs of SERCs'

Sr. No.	SERC	Issues
1	APERC	<ul style="list-style-type: none"> - Draft Complaint Handling procedure to be followed by licensees - Draft Code of Practice concerning the Payment of Bills by consumers and for disconnecting the Electricity supply for Non-Payment - Draft Consumer Rights Statement - Discussion on ARR and Tariff Proposals for the FY: 2002-2003
2	HPERC	<ul style="list-style-type: none"> - Guidelines for Revenue and Tariff Filing - HPERC (Conduct of Business) Regulations, and other regulations - Tariff Petition by HPSEB - Draft Guidelines for Power Purchase Agreements up to 5 Mega Watt - Concept Paper on retail supply tariff - Concept Paper on Bulk Supply and Transmission Tariff - Guidelines for Load Forecast, Resource Planning and Power Procurement
3	KERC	<ul style="list-style-type: none"> - Discussion on KERC papers on Tariff Policy and Captive Generation Consents - Discussion on Regulations relating to Disclosure of Information u/s 35 of the Act & Complaint Handling & Redressal Standards relating to Distribution and Supply of Power. - Tariff Order, 2000 dt 18.12.2000 - Implementation of directives issued in the Tariff Order, 2001/Observations of the Hon'ble High Court on the MFA 865/2001. - Report on the action taken with regard to disclosure of information under Section 35 of the Act, complaint handling and redressal standards relating to distribution and supply of power. - Discussion on Privatisation Strategy paper and KERC's recommendations thereon to the Government - Secretary placed before CAC 2nd Annual Report of the Commission for 2000-01 and Approved and Audited Accounts of the Commission, along with the Report of CAG, for the year 2000-01. - Discussion on the Concept of Distribution Margin (DM). - Discussion on the Tariff Revision Proposal of KPTCL.

Annexure 3:

Documents Published in Local Language by SERCs

Sr. No.	SERC	Local Language Document
1	APERC	<ul style="list-style-type: none">- Tariff Philosophy- Long term Tariff Principles
2	HPERC	<ul style="list-style-type: none">- Conduct of Business Regulations, 2001- Appointment of Consultants Regulations, 2001
3	GERC	<ul style="list-style-type: none">- Annual Reports, Conduct of Business Regulations, GERC staff service regulations.
4	KERC	<ul style="list-style-type: none">- Guidelines for preparation of load forecast, power procurement plan, and power procurement procedure- Several Regulations e.g. Electricity Supply & Distribution Code, Tariff, Licensing- Consumer Complaint Handling Procedure & KERC (consumers Right to Information) Regulations, 2000-01- Grievance Handling procedure for the Commission- Annual Report 1999-2000- Power Tariff Order, 2000
5	UPERC	<ul style="list-style-type: none">- Tariff Issues- Tariff Consultative Paper- Distribution Code- All Regulations
6	DERC	<ul style="list-style-type: none">- Several regulations e.g. Conduct of Business, Grant of Consent for Captive Power Plants
7	OERC	<ul style="list-style-type: none">- Frequently Ask Questions (FAQ) (Electricity)- Brochure of OERC
8	MPERC	<ul style="list-style-type: none">- Annual Reports- Various Regulations
9	MERC	<ul style="list-style-type: none">- Summary of order regarding Transmission and Distribution Loss charge
10	RERC	<ul style="list-style-type: none">- As informed by RERC in response to the Draft report, all documents are published in Hindi.

Annexure 4: Discussion Papers Brought out by SERCs

Name of RC	Document	No. of Comments Received
KERC	- KERC (Electricity Supply & Distribution Code) 2000-01	30
	- Amendment to KERC (Electricity Supply & Distribution Code) 2000-01	40
	- Complaint Handling and Redressal Standards relating to Distribution and Supply of Power	22
	- KERC (Consumers Right to Information) Regulation, 2001	18
DERC	- Concept paper on tariff	16
	- Delhi Electricity Regulatory Commission (Performance Standard-Metering & Billing) Regulations, 2001	66
	- DERC (Grant of Consent for Captive Power Plants) regulations, 2002	32
APERC	- Policy on Captive Power Plants	38
	- Tariff Philosophy	14
	- Regulations relating to Standards of Performance relating to supply of electricity to consumers and Consumer's Right to Information	5
	- Complaint handling procedure relating to Distribution and Retail supply licence	8
	- Code of practice on payment of electricity bills	22
	- Long Term Tariff Principles	32
UPERC	- Tariff Issues	Many
	- Distribution code	40
	- Consultative paper on tariff	3
	- Captive policy	30

Annexure 5:

Survey of SERCs' Websites

The website is a low cost and excellent means of communication with a wide-ranging audience. It is good to see that, except WBERC all other RCs under the study have websites. Web based systems can be used effectively for a number of objectives, important amongst them being to enhance transparency, and to stimulate public participation and capability building.

Transparency

For any organization like the RC, the reform Act (or ERC Act), related rules and regulations form the foundation of its working. Most commissions have put up such information on their websites. But there is no way to find out whether all the regulations have been put on the web. All commissions have put their tariff orders on their websites. Most commissions have also put many other orders on the web. It is surprising to note that half of the SERCs said (in the questionnaire) that not **all** of their orders are on the website. It is difficult to find out which orders of the RC are not on the website and then to obtain copies of these. We see no reason why all the RC orders should not be on the web.

All commissions under the survey have said that all their papers are public (except very limited cases where the RC has applied restrictions through written orders). Even the proceedings of RCs are open to the public. But the key lies in operationizing these principles. One essential aspect of this is to let people know what proceedings are before the RC. If the "register of petitions" and the "schedule for hearings" (with hearing date, subject matter, and parties to the petition) are put on the web, it will remove this difficulty. Unfortunately, except GERC and UPERC, no other SERC publishes their "schedule of future hearing". The HPERC has a link but it is under construction. No RC has put "register of petitions" on the website. MPERC has listed several

petitions (at times with orders) but this is not a complete list (as expected in a register of petitions). Some RCs have shown the past hearing schedules, which has limited use.

Some RCs give other related acts and rules (such as Transparency in Public Procurement Act, Right to Information Act, Anti-theft Act, Transfer Scheme, or the Environment related Acts) on the website. This is a good step. Several SERCs have put up their annual reports, copies of utility licences, and discussion papers on their websites.

To sum up, then, the commissions have taken some major steps to achieve transparency and easy access to key documents. At the same time, simple steps that can ensure transparency in terms of actions/procedures have not been taken. These include: list of pending cases, ensuring that the hearing schedule is updated well in time, giving a statement that "all information will be updated in, say, two weeks' time" and "all orders and regulations are on the website".

Prayas had made a presentation on desirable web based information systems, at the Forum of Indian Regulators (FOIR) in May 2001 and also at a seminar at Administrative Staff College of India (Hyderabad) in front of several RC members in June 2001. Prayas followed this up with MERC through a CAC meeting, several visits to MERC, designing web formats and meeting MERC's web consultant. But it has failed to get MERC or any other commission to implement this suggestion¹⁰. Box in Annexure 5 describes the key features of a desirable web based information system that could enhance transparency.

10 Though MERC has recently started making available some additional information such as schedule of hearings on its website.

Public Participation

A website is useful because it is low cost and allows the public easy access to information (eliminating the geographic distance). It can therefore enhance the capability of consumers and increase their participation. It seems that RCs do not view websites from this perspective. Only KERC has a separate section for consumers. No RC has given information in the format of FAQs (Frequently asked questions) from the consumer point of view nor put up any document that answers how consumers can participate. Only one RC has given clear guidelines on what complaints the RC will entertain and how to make a complaint.

Some RCs have included a facility for lodging complaints on-line. But it is not clear if this is legally valid and in what time frame consumers can expect a reply. It is worth noting that UPERC's public notice on PPAs said that RCs would accept objections on e-mail and fax. Two commissions have newsletters for common consumers. The UPERC's Economic Diary and Power Diary have relatively advanced discussions, whereas the Karnataka Consumer newsletter is more tuned to common consumers. Both these are a useful resource for consumers.

Four RCs (KERC, GERC, APERC and OERC) have a link that shows applicable tariff schedule. Only UPERC and KERC have key data about utilities on their website. This is useful for customers wanting to get involved in the commission's proceedings. Four SERC sites (of APERC, HPERC, OERC, and KERC) have links to complaint and/or grievance handling procedure. The OERC site, although not easy to navigate, has useful regulations such as Consumer Rights statement, and 'Consumer right to Information and Standard of Performance', and a calendar of tariff proceedings.

The table below gives a summary of our survey of websites. It is clear from the survey that the RCs have taken the initiative to enhance transparency, but a lot more can be done with little cost or effort. In terms of consumer awareness and increasing participation, most RCs have not done much work. More effective use of websites for this purpose needs to be attempted.

Contents of SERC Websites

Contents of Website	No of RCs
CBR/General & Conduct of Proceedings Regulations	10
Tariff order on website	9
Reform/ERC Act	8
Advisory Committee Regulations	8
Grid/Distribution Code/Standards of performance	6
Discussion papers/Tariff philosophy	6
Utility Licences	5
Accepts complaints on the web	5
Other Related Acts/Transfer Scheme	4
Annual Reports	4
Complaint/Grievance handling procedure	4
Applicable Tariff (tariff schedule)	4
Schedule of Commission hearings (in past)	3
Schedule of Commission hearings (in future)	2
Newsletter	2
Compiled Power Data	2
List of Pending Petitions	1
High court cases (related to RC order)	1
Separate Section for Consumers	1
Information about Commission Library	1
Petition Register (with order)	0
How to obtain copies of RC documents	0

In a nutshell, the survey reveals that RCs are using the websites mainly as a tool for putting easily available information in the public domain. Considering the urgent need for ensuring stringent but user-friendly procedures for enhancing transparency, a fundamentally different approach for web based information disclosure needs to be adopted. RCs need to ensure that the websites are updated in a time-bound manner and reflect a true and complete picture of the information available with them. It would be highly desirable if RCs adopt and declare "standards of performance" regarding kinds of information available on their websites, timely updating and completeness. Some of the desirable features from this perspective are described in the box below. There is a history of key letters and files reported missing during crucial investigations by several government departments, and a mandatory web based information system on the lines described above should be seen as a key test of RCs' willingness to be transparent.

Box 3: Desirable Features of a Web based Information System to Enhance Transparency

RCs are using computers extensively now; hence using web based information systems more effectively is easily possible, with relatively simple changes in administrative processes.

From the consumer perspective, the following information is of crucial importance.

(1) *Details of petitions filled with an RC*: Their status, information filed under the case, schedule of hearing/ technical validation session, who are the respondents, outcome of proceedings and final order (2) *Consultancy reports*: Considering the limited manpower of RCs, a lot of work is being carried out through consultants. Their reports form an important source of information for consumers, (3) *Other proceedings of the RC*: Such as agenda and minutes of advisory committee meetings or commission meetings (4) *Procedural information*: How to obtain hard copies of documents with the commission.

This information can easily be uploaded on the web in a user-friendly manner. As an example, this can be under the following sections. The items with # should have a link showing the document:

- RC hearings: date, case number, issue/agenda#, and record of hearing#.
- Petition Register: case number, filing date, petitioner, respondents, and subject matter.

- Case-wise Details (for each case): date, filing number, name of petitioner, issue, and number of pages of filing. (Summary of prayer, notice of hearing, and record of hearing should be linked to this page).
- Utility submissions: date, order/regulation of RC under which this submission is done, nature of submission, and number of pages.
- RC meetings/SAC meetings: date, meeting number, agenda#, and minutes of the meeting#.
- Ordering copies of RC documents: downloadable form to order copies of RC documents, with details of how to pay the money, name/designation of the concerned officer, and photocopying charges per page.
- Email News-group: Any update of website in the above sections can be intimated to persons that choose to register to this e-mail news group. The additional information can be included in the e-mail. This is a common feature of several commercial websites and is a very limited additional effort that can yield rich dividends.

For capability building of consumers, RCs should add a note on (1) 'How to file a petition/affidavit' (2) 'Road-map' of regulatory process (3) 'How to use RC library and disclosure systems'. Similarly, if the RC website has a programme that calculates the electricity bill (after taking inputs of meter reading, consumer category, etc.) and compares it with the bill under the last applicable tariff, it will be a great help to many consumers. It can clearly tell them how much increase in billing they should expect and also alleviate their fears that utility bill calculation is erratic.

Annexure 6:**Operationalizing Transparency**

(Extract from Prayas' comments on Draft Conduct of Business Regulations of CERC in 1999)

As discussed in Annex II, we feel that CERC should take steps to operationalize 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 operationalizing 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 realize that this cost is not high. We believe it is possible to identify other similar issues and device a workable system for operationalizing 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 and time disproportionate to what the officer has to spend, which acts as disincentive 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.

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 organization, after payment of a fee. The PIO should send monthly updates of the register by registered post to each of these organizations. 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 entered 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 websites of utilities from the CERC website, 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 per year, 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 organization 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 organizations, 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

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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) Organizations, 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 organizations / 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 newspaper advertisement is meant for persons who do not visualize 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 newspapers. 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 newspaper 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 newspapers with the largest circulation (or the names of the newspapers can be specified).

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

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Part IV

Comments by Regulatory Commissions

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION KEONTHAL COMMERCIAL COMPLEX, KHALINI, SHIMLA-171 002
No. HPERC/BSB/399/RKG-2003- Dated:

To

M/s PRAYAS,
4,0m Krishna Kunj Society,
Gangagote Path, Opp., Kamala Nehru Park,
Erandavane,
PUNE-411 004.

Kind Attention: Sh.Girish Sant.

Fax: (020) 567 3118.

Subject: Final Draft of Prayas Report on the ERC's in India.

Dear Sirs,

Please refer to your letter dated 7th February, 2002 seeking comments on the final draft of the Prayas Report on the ERC's in India. Our comments are as under:

1. Thorough knowledge and understanding of the power sector and exposure to better working utilities is essential/desirable for the regulators to formulate long term visions for the future of the sector they regulate. However, from the data furnished in the report, it is observed that the count of the professionals appointed as chairpersons of the ERCs is only 14 percent. Also the majority of the chairpersons and members taken together is that of the non- professionals, which is not a healthy trend for the future development of the power sector.
2. The qualifications laid down in the ERC Act for the selecting the members of the SERC's are such that do not call for any specific experience of the sector and thus legally, the SERCs established under this Act may consist of persons having no meaningful understanding of the power sector. On the other hand the state specific legislation for setting up the regulatory commissions have been more responsive in this respect and do provide that at least one member of the commission shall be an engineer with experience of generation, transmission, distribution or supply of electricity. The loose criteria set in the ERC Act can lead to politicising the SERCs by appointment of politically convenient persons thus making a mockery of the very objects and reasons of the Act.
3. The regulators should serve long enough to put in the experience gained by them for the institutional development and to make meaningful contribution to the development of the sector they regulate. This is all the more necessary considering that majority of the chairpersons and members of the commission are non - professionals. However, from the data in the report, it is seen that 47% of the chairpersons have a tenure of five years, whereas for chairpersons and members taken together the percentage is still less viz. 34%. The law must provide for chairpersons/members a minimum term of three years. Towards this effect it may be desirable to raise the age limit of members of the commission also to 65 years as is provided for the chairpersons. Alternatively as suggested under item 11.1 of the Report, the tenure of the commissioners should be fixed and the Act should specify maximum age at the time of appointment rather than specifying maximum age to hold the office.
4. The ERC Act requires the government to appoint a committee for selection of the chairperson/ members of the ERC's six month before the incumbent's term ends. Further, it requires that the selection committee finalize the selection of

the chairperson and the members within one month from the date on which the reference is made to. The case of CERC appointments (given in box 1) is reflective of the fact that despite the above provisions, inadequacies still exist in the act which can be exploited to delay appointment of the chairperson and members of the ERC's. The lacuna in the Act needs to be removed to ensure the new chairperson or the member is named two months before the previous one demists office. Alternatively, the senior most member of the multi- member commission should be appointed as the chairperson in the event of government failing to appoint the chairperson two months before the expiry of the term of the existing chairperson. This is very important as non-appointment of the chairperson leads to non-addressal of the important issues besides risk of giving the impression that the government is not really serious about having an independent, autonomous and strong regulatory agency. Such an impression not only discourages the investors but also sends a wrong message the regulatory utilities that they do not have to worry about the regulatory scrutiny.

5. Regulatory Agency effectiveness is determined largely by adequacy of the resources, both human and financial. The best of talent is therefore required in the various fields such as economics, finance, law, and engineering for which purpose the commission must have the powers to recruit outsiders at better-than government salaries. This is also otherwise required for attracting and retaining well qualified staff as well as for limiting the representation of government departments. HPERC however, does not subscribe to the view point that the crucial issue would be as to how to ensure commitment and accountability of the staff appointed on temporary basis or brought in on deputation from the large bureaucracies or that the temporary nature of the appointments tend to compromise the independence of the RC staff. The best option as suggested would be to maintain to careful balance between permanent staff and the staff on temporary/deputation basis.
6. The base date with reference to which the time period of 30 months and 17 months in respect of WBERC and HPERC respectively as indicated

in item 2.1 of the report is not mentioned. This may please be checked and incorporated if deemed suitable.

7. The position regarding non-implementation of HPERC directives slightly differ from the information furnished to PRAYAS vide our letter of even file no. 5648 dated 16/7/2002 and No. 442 dated 29/1/2003. The first para of item 4.2 of the report may therefore be substituted with the following, namely;

“Effective implementation of the RC directives is a key requirement for successful regulatory process. The commissions seem to have a mixed opinion on this issue. RERC, OERC and DERC seem to be largely comfortable about the implementation of their directives, whereas, the HPERC has very strong words to offer about non-implementation of its orders. Show cause notices were issued to the SEB for non-implementation of directives, creating mistrust between the HPERC, the government and the utility. The commission states: “Due to lack of administrative and financial support the commission is not able to discharge its functions effectively”.
8. The Commission in reply to item F (11) of the Questionnaire had stated that directions were issued to Board to publish notices in the local dailies inviting stakeholders to file objections to Model PPA and draft of grid/supply/distribution codes. However, in item 6.3 of the report it is mentioned that three RCs (viz. OERC, KERC and HPERC) had directed utilities to publish **newly-entered** PPAs and also held **public dealing before approving the same**. The position as given in the report in respect of HPERC is therefore not in conformity with the reply to the questionnaire. This may please be taken note of. HPERC however, had asked the utilities to submit to the commission copies of all PPAs already entered into by the utility.
9. In view of the position stated in item 8 above, item 15 of table 13 of the report may please be corrected and shown as blank.

Prayas, Pune

10. It is mentioned in item 8.3 of the report that not a single RC reported any knowledge of any discussion in the legislative assembly regarding the activities of the commission. However, please note that the questionnaire did not call for any such information.

11. The electric power sector is a core component of the Indian infrastructure. However, years of debilitating low tariffs and unconscionably populist policies have made the state electricity boards bankrupt and the quality of service is constantly declining. During the past ten years alone, the annual losses of all the state electricity boards together have increased from round Rs. 3 billion in 1990-91 to Rs. 260 billion in 2000-01. As per the MAIT finding, about Rs 20 billion is lost each year due to poor quality of power. However, the public is now becoming increasingly aware of the adverse effects of the populist measures in this sector and in recent past has demonstrated their political verdict in no uncertain terms in the states of Andhra Pradesh to the party supporting power sector reforms and in Punjab against the policy of free power made available to the farmers for almost two years. The biggest task of the SERCs being to restore the commercial viability of the of the state electricity boards, they need the full support of

the state governments towards their financial and administrative independence and also to discipline the government part of the sector which normally is hesitant to reforms. The central Government also needs to act more positively to ensure independence of the ERCs from political and government influences by plugging loopholes in the relevant provisions of the ERC Act and taking all safeguards as may be deemed necessary including ensuring that the grant under the ARDRP programme and scheme for one time settlement of the outstanding dues of the central sector power undertakings is liberally extended to the states who show better performance in the implementation of the reform policies. Consumers being the focal point of reforms, their active involvement needs to be promoted by the ERCs to ensure transparency and success of the reform process. It is also very important for the commissions to build the capacity of the consumer bodies to represent consumer interests. No effort should be spared in this direction, as it doesn't only help in gaining support and establishing credibility but also enhance the quality of decision making.

Yours faithfully,
Sd/-
Executive Director (TA)

**CENTRAL ELECTRICITY REGULATORY
COMMISSION**

Core-3, 7th Floor, Scope Complex,
Lodhi Road, New Delhi 110 003.
(Tel.24361051/Fax.24360010)
No.20/5(7)/2000-CERC

February 24, 2003

To

Shri Girish Sant,
PRAYAS
4, Om Krishnakunj Society, Ganagote Path,
Opp.Kamala Nehru Park, Erandavane,
Pune - 411 004.

Sub: Comments on Final Draft of Electricity Regula-
tory Commissions in India.

Sir,

In continuation to D.O.letter of even number dated
21st February 2003. the following comments on the
Final Draft Report on the Electricity Regulatory
Commissions in India is sent herewith for your
further action at your end:

1) It has been reported in box 2 that the Central
Electricity Regulatory Commission (CERC) does not
have a consumer representative. The CERC is
dealing with the bulk power tariff and transmission
charges for inter-state transmission services. The
Respondents in these Petitions are various State
Electricity Boards and their successor entities. In
view of this there was no direct participation by the
ultimate consumers in the cases before CERC. With
a view to improve participation by the States, the
Commission had already written to the Chief Secre-
taries of various States for improving the level of
participation in various cases before the CERC. The
CERC is further making efforts to fill up the post in
the category of Deputy Chief (Consumer & Public
Relations) so that the consumer issues are taken care
of.

2) Box 2 also raised the issue of resistance to imple-
mentation of the key orders of the CERC. In this
context it is pointed out that the Commission is to
harmonise the interest of various stake holders in a
transparent manner, Section 16 of the ERC Act
provides for appeal by an aggrieved party and the
Regulations of CERC provides for review of an
order by the Commission in the light of the provi-
sions of CPC. Any appeal or review by an aggrieved

party will have to be seen in this context.

3) The CERC would welcome detailed analysis of its
orders by Prayas as indicated in Box 2 and would
look forward to closer interaction on this subject.

4) Page 13 of the report bring out the practice of
APEREC with regard to independent analysis by the
staff and presentation by the staff on important
issues as well as its documentation in the tariff order.
Similar practice with regard to presentation by the
staff is being followed in CERC as well.

5) Table 13 in Page 37 indicates the status regarding
various items. SI.No.9 deals with the Regulatory
Commissions informing public of technical valida-
tion sessions etc. All the hearing schedules of CERC
are published in the website. Important hearings like
IEGC, ABT etc. were published in the newspapers as
well. Further, Annual Reports covered by item 14 of
this table is, published both in English and Hindi.
This may be please be suitably indicated.

6) Para 10.5 deals with the roles of various stake
holders, It will be pertinent to discuss in this para the
non-availability of reliable data from regulated
utilities, level of participation by the Respondents
etc. which cause additional burdens on the Commis-
sions as well as restricting their ability to take
reasoned decisions.

7) Para 11.1(c) deals with code of conduct for
Regulatory Commissions. Code of conduct may be
applicable in case of professionals like Chartered
Accounts, Registered Medical Practitioners etc. as
they are not public servants. The Regulators are
appointed by various Governments and are governed
by the terms and conditions of appointment in
particular and other Government Rules in general. In
the light of this, the necessity of code of conduct to
Regulatory Commissions may please be reviewed.

These comments may please be kept in view while
finalising the Report.

Thanking you,

Yours faithfully,
-sd-
(K. Venugopal)
Secretary

Important Websites relating to the Indian Power Sector

S. No. Organisation Website

1	Andhra Pradesh Electricity Regulatory Commission	www.ercap.org
2	Delhi Electricity Regulatory Commission	www.dercind.org
3	Gujarat Electricity Regulatory Commission	www.Gercin.org
4	Himachal Pradesh Electricity Regulatory Commission	www.hperc.nic.in
5	Haryana Electricity Regulatory Commission	www.herc.nic.in
6	Karnataka Electricity Regulatory Commission	www.kerc.org
7	Madhya Pradesh Electricity Regulatory Commission	www.mperc.org
8	Maharashtra Electricity Regulatory Commission	www.mercindia.com
9	Orissa Electricity Regulatory Commission	www.orierc.org
10	Rajasthan Electricity Regulatory Commission	www.rerc.gov.in
11	Tamil Nadu Electricity Regulatory Commission	www.tnerc.tn.nic.in
12	Uttar Pradesh Electricity Regulatory Commission	www.uperc.org
13	West Bengal Electricity Regulatory Commission	www.wb.nic.in
14	Central Electricity Authority	www.cea.nic.in
15	Ministry of Power	www.powermin.nic.in
16	National thermal power corporation	www.ntpcindia.com
17	Power Finance Corporation of India	www.pfcindia.com
18	BSES Ltd.	www.bses.com
19	Power Grid Corporation of India Ltd.	www.powergridindia.com
20	Maharashtra State Electricity Board	www.msebindia.com
21	Central electricity Regulatory Commission	www.cercind.org
22	World Bank	www.worldbank.org.in
23	Gujrat State Electricity Board	www.gseb.com/
24	Himachal Pradesh State Electricity board	www.hpseb.com/
25	Delhi Transco Ltd. (Delhi Power Supply Co. Ltd.)	www.delhividut.com/
26	Tamil Nadu Electricity Board	www.tneb.org/
27	West Bengal State Electricity Board	www.wbseb.org/

Important publication of Prayas, Energy Group

1. “Least-Cost Power Planning: Case Study of Maharashtra State” - Energy For Sustainable Development, The Journal of International Energy Initiative, Vol. IV, No 1, June 2000.
2. “Power from Sardar Sarovar: An Inefficient Plan” - Amulya Kumar N. Reddy and Girish Sant, The Hindu Survey of the Environment 1994.
3. “Power Purchase Agreement (PPA) Between Dabhol Power Company and Maharashtra State Electricity Board: Structure and Implications” - Economic and Political Weekly, June 17, 1995.
4. “The Enron Controversy: Techno-Economic Analysis and Policy Implications” - Prayas Monograph
5. “Beneficiaries of IPS Subsidy and Impact of Tariff Hike” - Economic and Political Weekly, December 21, 1996.
6. “How Reliable are Agricultural Power Use Data?” - Economic and Political Weekly, April 12, 1997.
7. “Agricultural Pumping Efficiency in India: The Role of Standards” - Energy for Sustainable Development, the Journal of the International Energy initiative, Volume III, No.1, May 1996.
8. “The Enron Story: Controversial Issues and the Struggle” - Prayas Monograph
9. “WB-Orissa Model of Power Sector Reforms: Cure Worse Than Disease” - Economic and Political Weekly, April 25- May 1, 1998.
10. “Regaining Rationality through Democratisation: A Critical Review of Multilateral Development Banks’ (MDBs’) Power Sector Activities in India” - May 1999.
11. “The Real Challenge in Power Sector Restructuring: Instilling Public Control through TAP” - Prayas Energy Group, Energy for Sustainable Development, September 2001.
12. “Questionable Economics of LNG-based Power Generation: Need for Rigorous Analysis” - Economic and Political Weekly Vol. XXXVI, No. 20, May 19, 2001.
13. “Lessons of the Enron Disaster: Democratization through TAPing of Governance as the Remedy” - (An edited version of this article has been published in Infrastructure Report 2002, 3i Network)
14. “The Reforms Process and Regulatory Commissions in the Electricity Sector: Developments in Different States of India” - A Compilation of selected papers on status of reforms in different states, presented during a workshop organised by Prayas in December 2000.
15. “India Power Sector Reforms Update- various issues “ Update of power sector reforms in Andhra Pradesh, Uttar Pradesh and Orissa
16. “HT Energy Audit: The Crucial Starting Point for Curbing Revenue Loss” - Prayas Occasional Report 1/2002, February 2002.
17. Privatisation or Democratisation - The Key to the Crises in the Electricity Sector; The Case of Maharashtra - March 2001.
18. Bujagali Power Purchase Agreement -An Independent Review - A study of techno-economic aspects of power purchase agreement of the Bujagali project in Uganda - November 2002.

About the Panel

The Panel of Eminent Persons that oversaw the survey process and provided comments, consisted of three distinguished individuals from the Indian power sector who have been closely associated with the new regulatory system in the sector.

Dr. Madhav Godbole: Dr. Madhav Godbole has masters and doctoral degrees in economics from India and the USA. After an illustrious career of over three decades in the Indian Administrative Service (IAS), he took voluntary retirement in March 1993 when he was the Union Home Secretary. He has worked as Secretary in Urban Development as well as Petroleum and Natural Gas ministries of the Government of India, Finance ministry of Government of Maharashtra, and Chairman, Maharashtra State Electricity Board. He worked in the Asian Development Bank during 1980-85. After retirement, he has been Chairman of government committees such as co-operative sugar factories, the Enron power project, power sector reforms, making state budget transparent and user-friendly, and good governance. He has written extensively in journals and newspapers on issues relating to economy, power sector and governance. He has written nine books. He is a recipient of Chinmulgund Public Administration Award and Dr. Visvesvaraya Memorial Lifetime Achievement Award.

Dr. E.A.S. Sarma: Dr. E.A.S. Sarma has master's degree in Nuclear Physics and Public Administration from India, the Netherlands, and USA. He has a doctorate from Indian Institute of Technology, Delhi. During his illustrious career in the IAS he has held many important posts including Adviser (Energy) of the Planning Commission, Secretary ministry of Power as well as Finance, of Government of India. Currently, he is working as the Principal, Administrative Staff College of India, Hyderabad. Dr. Sarma has carried out significant work in the areas of Energy Policy Analysis, Modelling, and Economics. Dr Sarma was closely associated, as a Consultant, with the Asian and Pacific Development Centre, Kuala Lumpur since 1983, collaborating in various studies relating to energy. He was closely associated in processing the legislation for the constitution of regulatory authorities in electricity, telecommunications and insurance sectors. He headed the expert committee that drafted the Fiscal Responsibility and Budget Management Bill that is presently under consideration of the Parliament.

Prof. S.L. Rao: Prof. S.L. Rao has M.A. in Economics from Delhi School of Economics. He was Director-General, National Council of Applied Economic Research, Delhi from 1990 to 1996. He was the first Chairman of Central Electricity Regulatory Commission until January 2001. He is on the boards of a number of organisations including Tata Honeywell Limited, Indian Institute of Management, Bangalore; and Consumer Education & Research Centre, Ahmedabad. He has written extensively on issues relating to management, economics, and power sector. He has written seven books as well as a number of research papers and articles. He has also edited two books. He has extensive teaching experience also. He was awarded the Ravi J Mathai National Fellowship for 2000-2001 (for contribution to management and management education) by the Association of Indian Management Schools.

Over the past several decades the Indian power sector has been plagued by financial, performance, and governance crises, all of which has been bad for the health of society, the economy and government finances. To overcome the financial crisis governments have been engaged in a process of reform with the help of international agencies. Independent regulatory commissions are among the most crucial elements of these reforms, and have been given the important functions such as tariff setting and approval of power purchase in the various states. In the last three / four years, a number of commissions have been set-up and have started functioning.

Prayas carried out a detailed survey of 12 such commissions to study the resources available, and the extent of transparency and public participation in their operations. This document contains Prayas' Report based on the analysis of the survey data as well as 'Comments and Observations' of specially constituted panel of eminent persons, who have been closely associated with the Indian power sector and especially with the regulatory process, namely, Dr. Madhav Godbole, Prof. S.L. Rao, and Dr. E.A.S. Sarma.

This first-of-its-kind study finds that in the initial stage of the regulatory process, the commissions helped increase transparency and expose grotesque inefficiencies. However, with a few exceptions, they have done little to enhance transparency and meaningful public participation in their functioning, two elements that are crucial for the credibility and acceptance of the commissions as well as for improving the sector. On the other side, the survey found that many state governments and utilities have not responded to the commissions in a positive manner; in fact, at times, they have attempted to either 'manage' the process, or curtail the commissions' authority and independence.

Thus, a key conclusion of the report is that civil society institutions need to participate more actively and capably in the regulatory process and put pressure on governments and utilities (as well as commissions) to ensure that this new mechanism is used to protect and further the public interest. The commissions also need to respond positively and proactively to these efforts.

If governments, commissions, and financing agencies take note of the important suggestions made in the Prayas report, as well as in the Panel's report, a credible regulatory process can be put in place to reverse the decline of the power sector.

A Good Beginning but Challenges Galore

Prayas, Energy Group, Pune, India – February 2003

For Private Circulation – Requested Contribution Rs. 50 /-



आरोग्य, ऊर्जा, शिक्षण आणि पालकत्व
या विषयातील विशेष प्रयत्न