

About Prayas

- Research based, policy advocacy NGO
- Focused on protection of “Public Interest”
 - Long term sectoral perspective
 - Policy decisions and actions

■ Concerns from broader, public interest stand-point

30th May 01

Prayas Energy Group

1

But before I share our concerns about the Indian power sector and especially the regulatory process, let me first share with you the work we have done in the power sector and the perspective behind that.

Prayas is a group of professionals with engineering background working on power sector issues since 1991. We are basically a research based, policy advocacy NGO.

In early 1990s we developed a Least Cost Integrated resource Plan for the state of Maharashtra. This analysis revealed that focus on energy efficiency improvement and decentralised generation can reduce our dependence on conventional power sources by over 50 % and that too at much lesser cost. After this we worked on the issue of agricultural power consumption and subsidy in Maharashtra. In 1995, we carried out a detail analysis of the Dabhol PPA, which clearly indicated that the project was inappropriate for the power sector of Maharashtra and Maharashtra can not afford high cost of Dabhol Power. Since, 1997 we have focused our attention on the issues involved in the power sector reforms and especially the regulatory process. In 1997 we carried out a detail analysis of the regulatory aspects of reforms in Orissa. And, thankfully the OERC took notice of our analysis and made certain modifications in their regulations.

But apart from such research and analysis, we are also involved in constant dialogue with various actors and consumer groups interested in power sector issues. On one hand we have been discussing with the senior World Bank officials like the Executive Director and on the other hand we are also in constant touch with several NGOs and consumer groups. For example, during the first tariff revision process in Maharashtra, we held several meetings with farmers' groups, industry associations as well as consumer groups. In last December we organised a national level workshop on power sector reforms in which over 10 NGOs from as many states presented their experience and analysis of regulatory process and reforms.

So in today's presentation I would be sharing with you what are the fundamental concerns about the power sector from this broader, sectoral, public interest perspective. I will focus more on the policy level concerns rather than focusing on the concerns regarding “service quality” and “grievances”.

Preventing Regulatory Failure/ Sabotage: The Fundamental Concern



31st May 2001

by
Prayas, Energy Group
Pune

Forum of Indian Regulators (FOIR)

Prof. S. L Rao, Chairman, and other dignitaries, first of all let me thank FOIR for giving us this opportunity to share our concerns about the power sector with such august gathering. It is a welcome step that through this forum the regulators are interacting with several groups, out side the usual regulatory process. This type of open exchange of views will certainly important for a healthy debate essential for addressig the critical chanllenges facing the sector.

Major Challenges Before the Sector

- Growing burden of excess, high cost IPP power *Graph* 
- Poor metering, billing and high T&D losses
- Limited / no improvement in service quality
- **Rapid tariff increase** for domestic and agricultural consumers 

30th May 01

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3

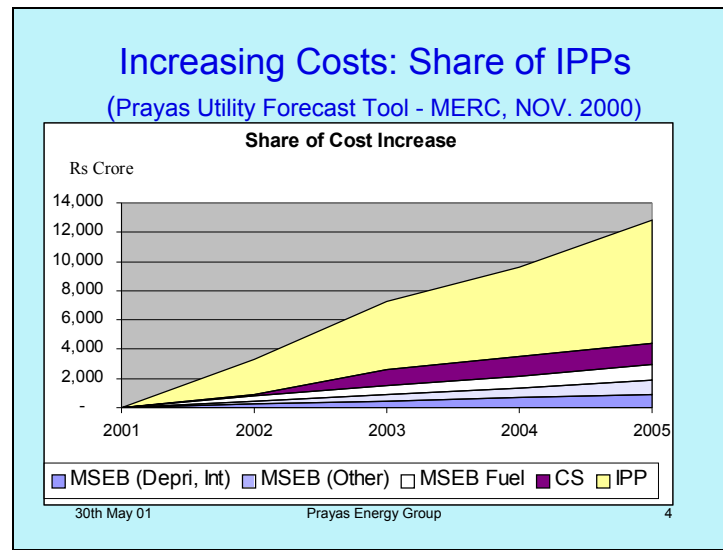
As we all know there are several major challenges before the sector today. For example, the high cost of IPP power, at times which is in excess of demand is a critical issue threatening the very viability of the utilities. As our analysis for Maharashtra, which was presented to the MERC in November last, demonstrates, in coming years, the IPP cost is going to be a single largest component responsible for increasing the cost of power. This graph shows that in case of Maharashtra, the cost of IPP would account for over 70% of the incremental cost of power in next four years. Though the situation in Maharashtra has undergone a sea change since this analysis eight months back, the situation is more or less similar in many other states.

Apart from this critical issue of IPP cost, the poor metering, billing and large T & D losses is also a major concern. Similarly, from the end user point of view there is zero or very limited improvement in the service quality.

So, such grotesque inefficiencies on one hand coupled with increasing focus on reduction in cross- subsidy, is resulting in exposing the domestic and agricultural consumers to regime of a very rapid tariff increase.

This are some of the challenges before the sector but, there is one fundamental challenge before sector and core concern of consumers and public. Though, this concern is not often well articulated, is reflected in the distrust and lack of understanding of the regulatory process among various NGOs and consumer groups.

Slide 4



Slide 5

Why Should We Guard Against Regulatory Failure /Sabotage

- History of Governance failure / sabotage
- Weaknesses in process of formation of RCs, & imbalance in accountability and authority of RCs
- Increasing role of private sector

30th May 01 Prayas Energy Group 5

This concern is regarding the role and efficacy of the regulatory institutions. That is how the regulatory commissions will be different from earlier government institutions? and how to prevent “Regulatory Sabotage or Failure”? This concern arises from several factors. If we see the history of governance or regulation, it is replete with several examples of how a handful of vested interests sabotaged the process for their own benefit at the cost of public interest. The recent report of the Godbole committee is a testimony to this sabotage and failure.

On this backdrop of history of regulatory or governance failure, the process in which many regulatory commissions are formed, their composition and inadequate provisions to ensure accountability of these institutions raises this concern about how to prevent the regulatory sabotage?

There was little debate or public participation in the process of legislative changes which established the Regulatory Commissions. Typically, the regulatory commissions are selected by a selection committee consisting of many members from government or related institutions, and the process of selection is also not very transparent. In many cases the regulatory commissions consist of former officials from the state government or the SEB.

Further, at least by law these commissions have significant authority over the sector as well as large discretion about the economic as well as procedural aspects of the regulatory function.

The fear of regulatory sabotage is enhanced due to increasing role of the private sector.

Preventing The Regulatory....., Prayas, May 2001

All these factors lead to this concern about the efficacy of the regulatory commissions and how to prevent regulatory sabotage? In our opinion, in this period when new institutions such as the regulatory commissions are being established, one of the primary responsibility on the initial commissions is to ensure that appropriate processes and mechanisms are developed so as to re-establish public faith in the governance institutions. We feel that many of the commissions and individual commissioners have realized this responsibility and have taken several action to meet this challenge, and have also demonstrated willingness to address the concerns being expressed by several groups in this regards. This is a very welcome approach and to further this process of developing the process and mechanisms to enhance the credibility and legitimacy of the commissions, in public eye, we want to share with you some of the aspects on which we fell improvements are needed.

lide 6

**TAP - for Preventing Failure /
Sabotage**

Transparency,
Accountability and
Participation

30th May 01 Prayas Energy Group 6

We often articulate the major building blocks of this process of regaining public confidence as Transparency, Accountability and Public Participation, or TAP for short. We would agree that if there were mandatory provisions and mechanisms to ensure transparency and participation in the earlier structure, several of the grotesque inefficiencies we are saddled with today, like IPPs and and huge T & D losses would not have attained such proportion. With creation of regulatory commissions several improvements have taken place on these accounts like public hearings and speaking orders. In some cases these improvements have shown remarkable benefits for public. But, in order to meet the challenge of on one hand increasing role of private sector and highly concentrated decision making process and structure and on the other hand the challenge of sustaining this effectiveness in the longer term, in our opinion improvements on several accounts are needed. In the remaining part of this presentation, I want share with you some of our suggestions in this regards.

Responsibility of Ensuring TAP

- Government - central as well state
- **Regulatory commissions**

Co-operation from

- Utilities &
- Consumers

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7

The primary responsibility of ensuring, transparency, accountability and participation lies with the government, both central as well as state level and the regulatory commissions. Off course, unless utilities, consumer groups and other civil society groups respond to these initiatives the efficacy of the same will be limited. Since I am talking to this august gathering of regulators in this presentation I will focus on what the regulatory commissions can and ought to do to improve the regulatory process on these accounts of TAP.

What RCs should do to improve TAP?

1. Operationalise “Transparency”
2. Facilitate meaningful public participation
3. Performance monitoring systems (to make utilities “transparent” and “accountable”)

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8

Here I want to share with you what the regulatory commissions should do to improve TAP. For the sake of convenience I grouped these actions in three broad categories of one operationalising transparency, two facilitating meaningful public participation and three performance monitoring systems to make utilities transparent and accountable.

RCs & TAP: Operationalising
Transparency 1

- ALL proceedings should be open
- ♥ IPP contracts, clearances and tariff models
- ♥ Consulting process, ToRs, reports
- Information disclosure systems
 - Information needs to be structured
 - Well defined and simple process for accessing the information
 - Structure & process should be known to all

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9

Coming to the first set of issues that is operationalising transparency there are several areas where improvements are needed. Typically we tend to view transparency means making all documents public and inviting public comments and holding public hearing. But apart from public hearings there are several areas where transparency needs to be made effective. For example, many regulations stipulate that all proceedings of the commissions will be open. But in reality many times people are not even aware of this provision. Or they are not aware of the technical sessions planned with utilities. So in order to solicit participation commissions should make the schedule of such proceedings also available to the public. Transparency regarding IPPs another crucial area. In many states even PPAs are not effectively public. But PPA is just one document. There are several other documents such as fuel supply and transportation contracts, financing agreements etc. which greatly affect the tariff. Unless all these documents along with the relevant clearances etc. are made public transparency will have little meaning. Similarly, it is essential that mathematical, computerised tariff models of these IPPs should also be made public. We can not really expect general public to prepare their own tariff models for every PPA, without which it's really not possible to properly analyze PPA.

Consultants play a very important role in the functioning of the commissions, and increasing transparency in this regards is also inevitable. The commissions should make consultancy tenders, evaluation criterion, terms of reference as well as consultants reports public.

So, there are several such areas where transparency needs to be enhanced. But another crucial requirement in this regards is to have a proper information disclosure systems. For example, just saying that all documents are public would not be sufficient. Like, you may know that a particular library has a very good collection of say physics books. But, if these books are not properly indexed and stored it would be very difficult to get the book one wants, and the task becomes nearly impossible if one really do not know what information he would be interested in. And this is case for many regulatory commissions as well as consumer groups. For example even after the first tariff case in Maharashtra in which over 400 groups submitted comments, people are not aware of their rights regarding transparency. When MSEB submitted it's second tariff revision application to the commission, many people, including large industries called us to know if they can get more details about the proposal. When we told them they can get whatever information they want about the proposal from the regulatory commission, they were surprised. To overcome such problems it is essential that the information is properly structured and a well articulated but simple system for accessing this information is developed. Further both this structure and system should be widely publicised.

RCs & TAP: Operationalising Transparency 2

- Public information center / library
- Use of web site and e-mail (News-groups):
 - List of all petitions, submissions etc.
 - Schedule and summary of hearings
 - Email news group - all notices and orders
- ♥ Timely updates is the key
- Newsletters

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10

This can be achieved with several actions and systems. But I just want to share with you some of our ideas in this regards, which do not demand great resources of efforts by the commission. For example, many commissions still do not have a public information center or a library, where all documents of the commission (except routine correspondence) will be made available for public. In the absence of this facility anybody walking in the commissions office find it difficult to access information - he doesn't know whom to ask and what is the procedure. A small area in the office should be designated as library. There should be a system of properly indexed documents and mandatory procedure that one copy of all documents, such as petitions, rejoinders, utility filings, consultant reports would be available in this library within one working day of their receipt would greatly enhance the information access, and the legal requirement of "transparency" can be operationalised.

The advances and low cost nature of the information technology should also be used effectively to operationalise transparency. For example, though many RC's have web sites where orders are available, many other documents and information should also be made available through the web-site. For example, all petitions received by the commission should be listed on the web. Typical one page Form II which gives the gist of the petition and which petitioners are required to file along with the petition should be made available through the web. Similarly, schedule of all meetings of the commission, short one para summary of hearings as well as all notices and orders should be made available through the web. This information can also be made available through the email newsgroups. There are plenty of free email newsgroup services like yahoogroups are available. The commissions just need to establish one such group which can be done within half an hour, and then it's just a matter of sending email to one particular address, which will be circulate to everybody registered in the group. People can register with such a service on their own without eating on to commissions time. But in all this web and email based information disclosure timely update is crucial - because the entire effort would go west if there is delay in updating the information. People will lose confidence in such systems.

But ofcourse, the reach of internet is still very limited in India. To overcome this limitation the commissions need to start a newsletter or bulletin. Whereby anybody interested in regulatory process can register with the commission, pay requisite fees and get monthly updates of regulatory process through such newsletter.

The essential point I want to make is that in order to ensure transparency the commissions need to have proper systems aimed simplifying access and creating a confidence about the open-ness of the regulatory commissions. It is a responsibility of the regulatory commissions, especially in the initial period of its existence to demonstrate their commitment to transparency and encourage people to take advantage of the same.

I do not want to name the commission, but when recently we asked one of the commission to make available to us copies of their "Tariff Filing Requirements" by utility, to our utter surprise, we got a written reply that these documents can not be made available as they are "internal communication with the licensee" I don't want to say that the commission actually wanted to make such vital information away from public, because otherwise there is little meaning to public hearing etc. But, this might have happened inadvertently*** or due to old mindset of people on deputation from the government departments. But this just highlights the need for such systems and institutionalizing the principle of transparency.

RCs & TAP: Facilitate Participation

- Information packs
 - How to file a petition / reply (affidavits, formats, payments, evidence etc.)
 - How to access information
 - Road-map of proceedings (e.g. Tariff Revision)
- Training courses
- Intervention assistance cell
 - Preparation of petitions, obtaining data etc.
- Medium-term forecast: tariff & options



30th May 01
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11

The scenario about the public participation is also not very different. To carry on earlier example of second application by MSEB, several people asked us when they can get copies of the proposal at various offices of the MSEB, which was done last time and what is the last date of submitting comments. We had to explain them that stage of public hearings is yet to come. The commission will first held technical validation sessions, in which the proposal will be scrutinised for data consistency etc. and after that the commission will issue public notice. I am sure there would be similar lack of awareness in other states also, may be more because some RCs have even hold in-camera public hearings. In order to facilitate meaning full public participation the commissions will have to undertake several actions. For example the commissions should come out with small information booklet or pack to explain in simple terms various aspects of the regulatory process like how to make a petition ? Or what are the typical steps in tariff revision process? Etc. Though conduct of business regulations articulate many such aspects, it is essential that these be made available to common public in non-legal simple manner. For example, if the commission comes out with a booklet on say filing petitions or rejoinder which explains that the commissions can not reply on just newspaper reports or speech by some official, for it's decisions, and need more concrete evidence then people will be encouraged to collect such evidence at the time of filing the petition itself. This can smoothen the public process.

Going one step ahead the commissions can start training courses and intervention assistance cells to educate small consumers and general public about the regulatory process. This can also be done in association with some consumer groups or academic institutions.

One more important thing commissions need to do for facilitating participation is to prepare and make public medium term forecast of utilities revenue requirement and tariff. This can be an indicative forecast aimed at bringing out what are the key cost drivers and factors / decisions affecting the consumer tariff. This will enable the consumers to know the implications of various actions and decisions made today. For example, in the absence of such forecast neither the commission nor the consumer can really understand the implication of say removing cross-subsidy in 5 years or not taking any remedial action to limit IPP costs. Though this might appear as a very complex exercise, with appropriate simplification and assumptions it is possible to develop a simple excel based worksheet. Such a model can be useful for carrying out several what if ? kind of analysis.

RCs & TAP: Performance Monitoring Systems

- Investment and expenditure evaluation
 - Table 
- T&D loss and metering and billing
- Service quality (load shedding, connections, billing complaint rectification etc.)
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30th May 01 Prayas Energy Group 12

Apart from these two issues of operationalising transparency and facilitating meaningful participation, the commissions also need to ensure that utilities operate in a transparent manner. For this the commissions can direct utilities to follow performance monitoring and evaluation systems. For example, the commissions can direct utilities to fill up a simple form for all investments above a particular value say Rs. 5 Cr. This form would consist of simple yes no type questions aimed at capturing *****

Investment and Expenditure Evaluation

Item / Work	Item XYZ 1	Item XYZ 2
Category (R&M / Capital)		
Sector (Gen/Trans/Distribution)		
Brief Description of Item		
Date of sanctioning item		
Estimated Amount (Rs Crore)		
Date of Tender Advertisement		
Tender Closing Date		
Number of valid bids received		
Lowest Valid Bid (Rs Crore)		
Contract awarded to the lowest bidder (Y/N)		
Reasons for the same if answer is "No"		
Post of Authority Accepting the Bid		
Contract award / Purchase order (PO) date		
Contract / PO amount (Rs. Crore)		
Details if any changes in closing date/ scope / specifications from the original tender notice		
Actual Amount Paid (Rs Crore)		

30th May 01 Prayas Energy Group 13

Metering and Billing Performance

Periodic billing unit-wise reports to contain following for different tariff categories

- | | |
|--|--|
| i) Number of bills issued | vii) Fixed Charge (Rs.) |
| ii) Energy Consumption | viii) FCA (Rs.) |
| iii) Billed & Contract Demand, MD (for HT users) | ix) Delayed Payment Charges |
| iv) Connected load (for LT users) | x) Other Charges (Rs.) |
| v) Energy Charge (Rs.) | xi) Adjustments to past bills |
| vi) Demand Charge (Rs.) | xii) Actual amount received each month |
| | xiii) Bill-adjustments |

Consumers billed by metered units to be separated from others (including un-metered consumers)

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14

Feasibility and Advantages

- One time effort - designing and implementing the systems
- Low cost
- External inputs feasible / desirable - academics, NGOs, consultants
- Reduce burden in the long term
- Smoothen the regulatory process

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15

☀️ TAP can **Strengthen** the Commissions and the Process by

- ▶ Improving credibility and legitimacy
- ▶ Reducing social conflict
- ▶ Helping it address major challenges - that require bold decisions