# National Conference
# on
# Regulation and Electricity Service to the Poor

**New Delhi, August 7-8, 2009**

**Prayas, (Energy Group)** Pune

आरोग्य, ऊर्जा, शिक्षण आणि पालकत्व
या विषयांतील विशेष प्रयत्न

**Proceedings of the**
**National Conference on**
**'Regulation and Electricity Service to the Poor'**
New Delhi, August 7-8, 2009

**Organised by**

**Prayas (Energy Group) -** Pune

**Prayas** (Initiatives in Health, Energy, Learning and Parenthood) is a non-governmental, non-profit, public charitable trust based at Pune, India. Members of Prayas are professionals working to protect and promote public interest in general and interests of disadvantaged sections of society in particular.

**Prayas Energy Group** works on theoretical, conceptual and policy issues in Energy & Electricity Sectors. Activities cover research and intervention in policy and regulatory areas, as well as training, awareness, and support to civil society groups.

The conference was organised along with Dr. Navroz K Dubash (Senior Fellow, Centre for Policy Research, New Delhi), who has extensive research experience in infrastructure, political economy of natural resources and global governance.

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# Proceedings of the
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# Conference Report

# Report on the
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New Delhi, August 7-8, 2009

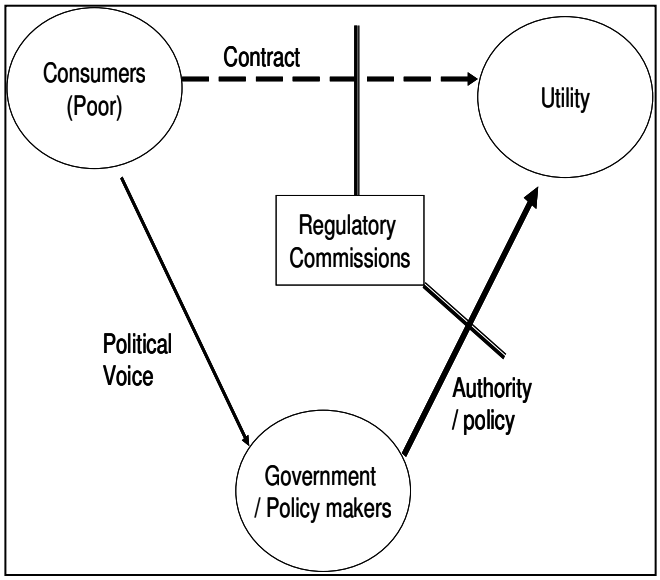
## 1. INTRODUCTION

Prayas Energy Group along with Dr. Navroz Dubash (Senior Fellow, Centre for Policy Research), organised a national conference on 'Regulation and Electricity Service to the Poor' on August 7-8, 2009 at New Delhi.

The ongoing reform has brought in many changes in the electricity sector. There have been major changes in policy, industry structure and ownership. But there is an overwhelming feeling amongst civil society that by and large, the issues of the poor have been neglected while there is disproportionate interest on some issues like captive power plants, open access, commercial viability and markets, which immediately benefit the large consumers. The pro-people and pro-consumer initiatives like Rajiv Gandhi Grameen Vidyutikaran Yojana (RGGVY, the rural electrification program), participatory processes by regulatory commissions, as well as regulations to monitor quality and equity of electricity services to poor get less attention.

The conference aimed to bring out the potential and limitations of the regulatory process to address issues of the poor. It also tried to elaborate on what the sector actors (utility, regulatory, state, and CSO) are doing and can do in the long term interest of the poor. The objectives of the conference were:

- Bring issues of poor in the focus
- Explore ways to improve services to the poor
- Understand linkages between policy, planning, regulation, and utility operation to improve services to the poor
- Learn from other sectors
- Evolve an action plan




The starting point was this: among the different actors in the electricity sector, who keeps the interests of the poor in mind and works towards these objectives? It is generally felt that the policy maker (influenced by the political set-up) is the one actor who keeps the interests of the poor in mind. Figure shows the different actors and their interactions. As shown in the figure, the poor have limited influence on the policy maker through political voice (elections, pressure through elected representatives). Utilities have a contract to provide service to all consumers, including the poor, but the influence of the poor on utilities is very limited. Regulatory institutions have the potential to enhance the influence of consumers on the utility as

well as the government. It was noted that the role of the regulatory institution and utility is not to be limited to techno-economic aspects, but should extend to socio-political aspects as well. Role of the regulatory institutions, which are expected to give equal attention to the interests of both the utilities and the consumers, in meeting these objectives, was a key focus of the conference.

With this perspective, the conference approach was to analyse the roles of all actors - utility, regulator, policy maker and civil society - to ensure quality affordable access of electricity to the poor and ensure the participation of the poor in sector governance. The idea was to explore opportunities to push the envelope for all actors, by looking at what is being done and what can be done. This approach is summarised in the table below.

| **Conference Approach** | | |
|---|---|---|
| **Broad objective** | **Analyse the roles of** | **Towards ensuring** |
| Implementation of pro-poor measures | - Utility<br>- Regulator<br>- State (planning & policy)<br>- CSO<br>(what: is being done, can be done) | - Access<br>- Affordability<br>- Quality<br>- Participation |

The conference was organized around Eight discussion sessions. Broad theme for each session was - what is being done and what can be done to further interests of the poor. An additional Ninth session was held on Day -2 to discuss the new draft Regulation Bill.

The next section briefly describes the preparatory work for the conference and presents an overview. Section 3 is a consolidation of suggestions to improve electricity service to the poor. Annexure has the detailed report of discussions and the background material. Report of discussions is organized in 7 subsections – overview, role of utility, role of regulation, role of policy, role of civil society, lessons from other sectors, and the new draft regulatory bill. Background material includes the Invitation letter, Agenda & Agenda note, List of participants & panellists, Introductory presentations (by the organisers) and Panellist presentations.

## 2. PREPARATION AND OVERVIEW

### Preparation

The conference was planned around panel discussion sessions. Therefore, participation of reflective practitioners representing distribution companies, regulatory commissions, policy bodies, civil society organizations and academic was very critical for the success of the event. The plan was to have 3-4 panellists for each session and panellists were contacted in February – March 2009. Invitations were sent to around 100 participants in June. In addition to direct invitation to many, nominations were requested from the Electricity Regulatory Commissions, distribution companies, Civil Society Organisations (CSOs), Media, Academic, Ministry of Power, Rural Electrification Corporation, Planning Commission, funding agencies and consultants.

In July 2009, a 6-page Agenda note was sent to all panellists and confirmed participants. This note outlined the objectives of the conference, listed few key issues/questions for each session and had a draft agenda,. The Ninth additional session on the proposed Regulatory Bill was planned based on the suggestion of Sri.JL Bajaj. In addition to the conference participants, invitations were sent to a few only for this session. A day before the conference, 53 participants

(including panellists and organizers) had confirmed. We were encouraged to note that many panellists had planned to stay for both days of the conference.

## Overview

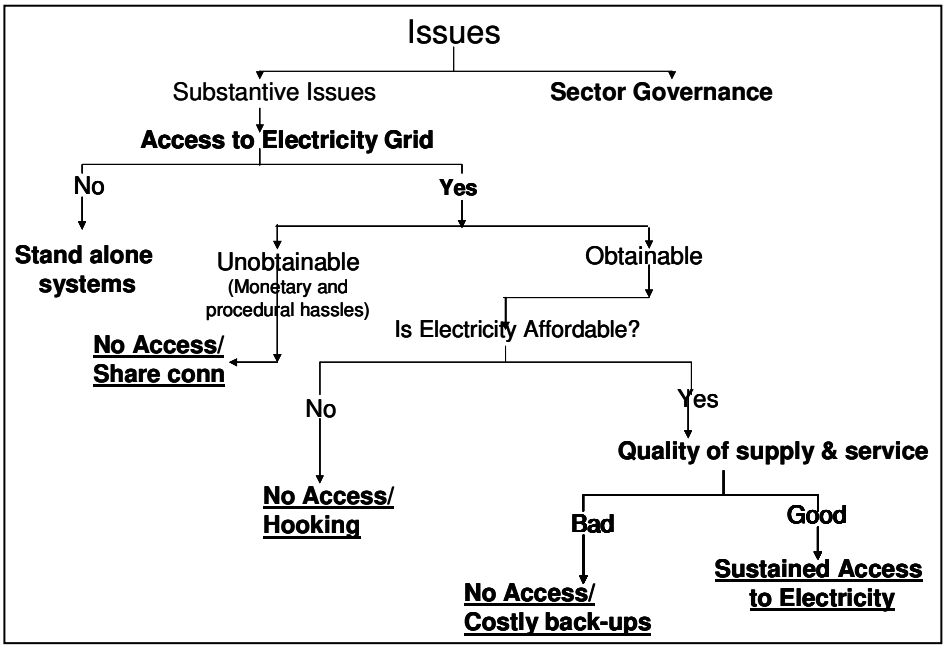
There were 47 registered participants in the conference. They represented all stake holders in the sector and came from 12 States. Twenty of them made panellist presentations and this included RV Shahi (Former Secretary – Power), Gireesh Pradhan (Additional Secretary – Ministry of Power), Pramod Deo (Chairperson – CERC), TL Sankar (Hon. Professor, ASCI), JL Bajaj (Distinguished Fellow, TERI), DK Roy (Former Chairman – OERC), JL Bose (Chairman – MPERC), K Venugopal (Member – DERC), Kapil Mohan (Director – Ministry of Power), Kwawu Gaba (Lead Energy Specialist, World Bank), Sunil Jain (Columnist- Business Standard), Sudha Mahalingam (Member- Petroleum and Natural Gas Regulatory Board), Geeta Gouri, (Member- Competition Commission), Sachin Warghade (Prayas –Resources & Livelihoods group ), Shailesh Gandhi (Member, Central Information Commission), Prabir Purkayastha (Delhi Science Forum), Haribandhu Panda (Director- HDF School of Management), Gobardhan Pradhan (Gram Vikas), Nandikesh Siva (Citizen consumer and civic Action Group - CAG) and K.Rajendra Reddy (Rashtriya Raithu Seva Samithi).

The opening session laid out issues of the poor. The next 4 sessions covered the roles of utility, regulator, policy maker and civil society. Each session began with an opening presentation by the organizers, and was followed by panellist presentations and discussion. The break-out session was organized in two groups – one covering the implementation aspects and the second covering policy & planning aspects. The session on other sectors covered water, gas, telecom sectors and the competition commission.

The objective of this session was to learn from experiences of these sectors in terms of process and innovative pro-poor practice. Institutional issues were presented in the concluding session, which also discussed the way forward. The additional session on the regulatory bill brought out many problems with the proposed bill, which has a uniform centralized approach to regulate 12 diverse sectors.

The correlation between availability of electricity and improvement of Human Development Index is well known. A small quantity of electricity supply can make a big difference in the quality of life and economic status of the poor. This is through meeting the social needs (lighting, drinking water supply etc) and economic needs (agriculture water pumping, shops, cottage industry etc). Even though the initial reform process did not have a pro-poor focus, in the last few years, there has been substantive resource allocation and attention to address issues of the poor. This is reflected in many national/State polices and programs – the national policies (National Electrification Policy, National Rural Electrification Policy, Guidelines for Decentralised Distributed Generation), national programs (RGGVY, Re-structured Accelerated Power Development and Reforms) State programs like Biju Grama Jyoti Yojana, and State regulatory provisions (Public hearings, Standards of Performance regulations, Grievance Forums). If these opportunities are well utilised, a large number of the poor can get the benefits of electricity – through grid or stand alone systems. Opportunities do exist, but the challenges to address these issues are also many. A single model does not fit all, since the ground situation differs across the country in many aspects – technical, geographic, climatic, cultural, political and livelihood options. Well intentioned legal, policy and program initiatives are only the first step towards solving the problem. For example, it is now clear that the RGGVY household targets will not be met by 2012 and franchisees have not taken off, though RGGVY was launched in 2005. The current approach of RGGVY could be termed as target driven, short term mission mode. There is

a single minded focus on creating the physical infrastructure with little attention to creating institutional mechanisms and supporting livelihood options, both of which are essential to sustain the electrification. Limiting the focus to only creating physical infrastructure can be counter productive, since laying wires without proper supply could mean de-electrification after a few years (as happened in few States like Bihar). A long term approach where local institutions are strengthened and electrification caters to increasing the purchasing power is essential to ensure sustained electricity use by rural and the poor. It is also disturbing to note that stand-alone systems, which have potential to address the needs of the poor in remote areas, still continue to remain at the margins.




**Affordable quality electricity access – a bumpy long journey**

As shown in the figure, it is a bumpy long journey, especially for the poor to get affordable quality electricity access. As per a rough analysis by Prayas, majority of the consumers are poor – only 25-30% of the households pay an electricity bill of Rs.150/- or more! Leaving aside sector governance issues (like bad power purchase contracts, bad investment, theft etc – which impact the poor more), the ordinary consumer faces many road blocks on this journey. Where grid connectivity is possible, high cost of connection or procedural problems is often a problem, leading to shared connection or no connection. After getting a legal connection, if the tariff is high, consumers do not pay on time, leading to disconnection and then sometimes to hooking. Poor quality of supply (low voltage, frequent interruptions) forces the use of costly back- ups. Poor quality of service (wrong billing, harassment etc) leads to disconnection and/or hooking. It is only when all these conditions are met that the consumer get sustained access to electricity.

The issues of electricity service to the poor are many and complex. Improvement of the situation requires understanding of different perspectives and action by different actors. This conference provided a unique opportunity, where senior reflective practitioners from different areas of specialization and different parts of the country participated and exchanged views. Many suggestions also emerged, which are captured in the next section.

# 3. SUGGESTIONS

This section summarises the suggestions for improving electricity service to the poor, which evolved during the conference – during discussions after panel sessions, during the break-out session and the concluding session. There are action ideas for different actors – utility, regulator, policy maker, civil society and academic. Some are immediate action ideas, which could be implemented without much difficulty (for example: already successfully implemented by some, do not require high resource allocation, do not have to overcome strong barriers) and some are medium/long term action ideas, which require further discussion/planning.

**Suggestions are organised in 7 sub-sections, namely**:

1. Sharing good practices
2. Improving the implementation of existing programs
3. Awareness & capacity building
4. Increasing participation of the poor in regulatory/policy process
5. Increasing transparency in the sector operation and planning
6. Increasing accountability of service provider and policy maker
7. New pro-poor policy & regulatory initiatives

The following section gives details of the suggestions.

## 3.1 Sharing good practices

Detailed report of discussions, given in the Annexure lists many good practices reported during the conference. They could be adopted by many more States, perhaps with support from the catalysing role of the Forum of Regulators. A few are mentioned below.

### 3.1.1 Rationalising BPL Tariff category

Many States have a separate category for small residential consumers (based on low monthly consumption) with tariff equal to 30-50% of the cost of supply. Very often, due to occasional high consumption (due to a function or festival) or due to wrong meter reading, consumers are taken out of this category. Regulatory Commissions could rationalise the norm for assigning low tariff slab (BPL tariff slab) for domestic consumer, by using the annual consumption limit and not the monthly limit, as done by MERC. They could also direct utilities to regularly meter these consumers, and not use average readings.

Few states have low tariff for livelihood activities of the poor: domestic consumers in Delhi slums carrying out small businesses like tailor shop are charged at domestic rates; Cottage industries and Dhobi ghats in AP have tariff close to the lowest domestic tariff slab; village water supply schemes have low tariff in AP (20p/unit), Uttar Pradesh, Maharashtra etc; agriculture tariff is low in most States. These practices could be shared across States, by adapting to the specific situation.

### 3.1.2 Public review of load shedding

Load shedding is a problem in most States today and perhaps for years to come. The procedure for deciding load shedding (in terms of duration, area etc) could be made more transparent. This could be done through public hearing organised by the regulatory commissions. DISCOMs implementing automatic metering of all 11 kV feeders and making the data available on the website will also help to monitor the implementation of load shedding. Both these have been done in Maharashtra.

3.1.3 Audit of Metering & Billing

After load shedding, the next major problem area for consumers is metering and billing. SERCs could initiate third party audit of metering and billing systems, as reported from Uttarakhand and Delhi. An innovative initiative started by Maharashtra Discom is photo metering, where every bill has a photo of the meter, which shows the meter reading. This prevents manipulation of meter readings to a large extent.

**3.2 Improving the implementation of existing programs**

3.2.1 Rajiv Gandhi Yojana

Many suggestions were given to improve the implementation of RGGVY, so that the poor and rural areas get electricity connection and quality supply.

Rural electrification plans will be successful if there is pressure from the CSOs. There should be demand for discussion and debates on rural electrification plans prepared by the States. There should also be demand social audit of RGGVY at village/district levels. For example: there are many doubts about the validity of BPL lists and whether all deserving poor are getting free connections; there are delays etc. CSOs can work on such issues. Utilities could take up connection drives by organising camps at different localities and simplifying the procedure of getting a legal connection. There was a suggestion to start a drive to target 100% electrification of all households which are within 100 meters of an existing electricity line (named as "100 x 100" drive).

SERCs could organise a public review of the program and the State's rural electrification plan. As per the national rural electrification policy, regulatory commissions are expected to review rural electrification plans prepared by state. SERCs could link return on equity with services delivered to poor; set targets for increasing electrification and improving service delivery to poor while setting targets for cross-subsidy reduction etc; develop special dispensation for capital investment and O&M in poor / rural areas.

There has to be a comprehensive review of rural electrification programs. Rural electrification should not be treated only a technological issue (of installing transformers and lines), institutional issues are equally important and hence require due integration.

3.2.2 Implementation of Standards of Performance of DISCOMs

All SERCs have made regulations on DISCOM Standards of Performance, Consumer Grievance Redressal Forum and Electricity Ombudsman. These are expected to provide time-bound resolution of complaints, failing which the consumer is to be compensated. Thus, these measures are expected to mount pressure on DISCOMs to improve the quality of supply and service. Even though five (or more) years have passed after preparing these regulations, implantation of this has been poor.

Utilities could take several steps to improve the quality of service. Building consumer confidence through easier access (substation level regular meetings, village level sabhas etc) is very important. Wide publicity to the provisions in the Supply code and Standard of Performance guidelines (through posters, pamphlets, information on bills or advertisement in media in local language) will bring pressure on field staff to improve the quality of service. Providing a common

toll free number to give complaints and automatic recording of complaints is another provision. Consumer Grievance Forum could be strengthened with timely appointments (including the consumer representative), providing necessary resources and taking up pro-active steps (like holding complaint camps at different locations, media campaigns etc).

SERCs could take several steps could be taken to improve the reporting of standards of performance compliance by utilities. Compensation could be made automatic (for most violations) and charged to the employee (if it is his mistake) and not to the ARR. Category/geography segregated reporting, tightening the performance benchmarks based on actual performance, third party audit of utility reports etc would help. Ombudsman is an institution set up by the SERC. They could be strengthened with appointment of independent Ombudsman (not SERC staff), adequate resources and awareness creation.

3.2.3 Regulatory Public Hearings

Public hearings held by SERCs do attract attention in most states, especially during the tariff fixation process. These could be improved by having public hearing in multiple locations (already done in some States), reserving time for NGOs (done in MP etc), making the summary of tariff submissions available in local languages, holding special hearing on issues of the poor, encouraging participation of pro-poor groups etc.

### 3.3 Awareness & capacity building

Informed participation by a wide cross section of consumers is key requirement to solve the issues. Massive efforts are needed to create awareness, especially among those who represent interests of the poor and rural consumers.

Some SERCs and CSOs have taken up awareness and consumer capacity building measures. KERC hosts the Electricity Consumer Network, which publishes awareness material and conducts workshops/meetings. Orissa commission has prepared and distributed Oriya booklets on consumer issues. MPERC has distributed 8 lakh leaflets on Standards of Performance and bought out a small booklet on consumer rights, in simple Hindi. 120 NGOs are registered with MPERC and conferences have been conducted to expose them to the issues of power sector. Many commissions prepare key documents in local languages. CSOs in Maharashtra, AP, Orissa, Tamil Nadu, Karnataka, UP, Rajasthan etc have prepared awareness material and conducted workshops/meetings on issues of the poor. These measures could be taken up in all States and strengthened. Media, audio-visual tools etc could also be employed.

### 3.4 Increasing participation of the poor in regulatory / policy process

Opportunities exist in the regulatory and policy processes to provide ground level feedback on issues of the poor and address them. But the participation of the poor in these processes is low in most States (Maharashtra, AP may be exceptions). Considering the complex nature of the sector, SERC could identify and promote pro-poor groups (through workshops, awareness material, dedicating staff for hand holding, and extending financial support over a period of 3-5 years) so that they can effectively participate in the regulatory process. Initiatives by some States in this direction are welcome. For example, in MPERC public hearings on annual tariff revision, one day was set aside for NGOs. Maharashtra commission involves 3 consumer groups for technical validation, when draft regulations/orders etc are prepared.

Regulatory Commissions and Policy makers should initiate special studies to study the impact of the programs on the poor. The planning process should become democratic and participatory, so that the poor can meaningfully contribute, and not remain passive spectators – either as victims or grateful beneficiaries.

### 3.5 Increasing transparency in sector operation and planning

Regulatory process has indeed increased the level of transparency in the sector. Websites, discussion papers and detailed tariff orders are examples for this. But even now, there is limited transparency in review of capital investment, capacity planning, load forecasting or load shedding. Information on T&D loss has improved, but there can be improvement in the estimation of non-metered consumption, like agriculture. Some commissions and DISCOMs publicly display details of arrears, which help to bring pressure on the defaulters. Cost effective websites can be better utilised for easy availability of information.

### 3.6 Increasing accountability of service provider and policy maker

Measures should be taken to enhance the accountability of DISCOMs and policy makers to the poor consumers.

DISCOMs could appoint a Chief Engineer/Director level person with adequate staff and resources to exclusively handle issues of the poor. Credible data of the quality of supply to rural consumers is not available. Initiatives like Electricity supply monitoring initiative (ESMI) to record consumer level voltage and interruptions for a selected sample, bulk metering of un-metered consumers ect could be taken up.

SERCs and CSOs could take up several steps to build accountability pressure. This includes periodic consumer satisfaction surveys (as done in States like Karnataka, Delhi, UP, Orissa) and preparation of reports on utility performance (Orissa, AP). Measures like third party audit of metering & billing, SoP reports have already been mentioned. CSOs can participate in third party audit of meter reading, billing, reporting of standards of performance etc. Taking this up even for a small sample will help to bring out the ground realities, and make a framework for bigger efforts.

Calculation of Cost of Supply has a major impact on assessing the amount of subsidy to small consumers. Many SERCs use average cost of supply for all consumer categories, which hides the differences like poor quality of service to rural consumers, provision of electricity to agriculture only during non-peak hours etc. Method used in States like Delhi and AP is detailed and gives a more realistic estimate of cost of supply. They use the cost of generation, cost of distribution network, cost of customer service, coincidence of load with system peak etc to calculate cost of supply for each consumer category.

CSOs could use RTI tools to get required information. For example, they could demand that all corporate agreements with the government should be made available for public scrutiny. As pointed out by Sri. Shailesh Gandhi, CSOs should also be ready to subject themselves to RTI for greater transparency and accountability.

### 3.7 New pro-poor policy & regulatory initiatives

Many ideas on new pro-poor policy & regulatory initiatives for improving the framework for electricity service to the poor were discussed.

There was a discussion on how the stand alone systems have remained at the margins. As noted by Sri. Shahi, while summarising the discussion, there is a need to evolve a comprehensive national policy on small generation options (say, of capacity less than 1000 kW), which may have the option of connecting to grid. This effort should involve all relevant ministries – Power, New & Renewable Energy, Rural Development, Panchayati Raj etc.

Since the total power demand of the poor is not very high, it is easily possible to make cheap power available to the poor through mechanisms like: reserving an Ultra Mega Power Project for poor; allocating cheap coal for a power plant for the poor; allocating central power capacity/free power quota for the poor etc. The details could be worked out along the lines of the 'Peoples power model', proposed by Sri.TL Sankar in 2002.

It was suggested by many (Sri. DK Roy, Sri. TL Sankar, Sri. Padamjit Singh etc) that there has to be a re-look at the reform approach especially on issues like reducing subsidy and providing electricity service to the poor. This would involve giving the merit good status to electricity. Ideas like Sri. TL Sankar's People's plan (reserving cheap power for small consumers), Pune model (providing reliable power to all, by collecting higher tariff from the non-poor) needs to be examined in today's context. Since one model will not work in all cases, various options need to be examined.

Centralised large utility may not be best suited to manage small rural distribution systems. Innovative community managed alternatives, supported by the government and utilities may be the better option (as suggested by Sri.Panda, Sri. Sankar, Sri. Rahul, Smt. Veena Joshi etc). This could be self help groups, existing user associations, elected local government organisations (like Panchayats or cooperatives, which also have legitimacy and accountability through the election process). They should also be involved in rural electrification programs. There was also a suggestion that rural distribution could be handed over to a separate company.

Sri. Bajaj had pointed out that the total deficit of all the DISCOMs in the country is to the tune of Rs. 50,000 crore. The situation varies from state to state, but under such circumstance, how can the DISCOM be effective? It is important to take up a study of the finances of utilities.

Considering the supply shortages, all utilities should take up energy efficiency measures. There could be tariff incentives/disincentives for energy efficiency/use of renewables. The generation capacity planning process should be strengthened through measures like integrated resource planning.

As highlighted by Sri.Rajendra Reddy, electricity accident is a major problem in rural areas – due to poor wiring, erratic supply (supply during night hours and frequent interruptions) and low awareness. Steps to improve the rural distribution should be taken up as a medium/long term measure, but there has to be improvement in the compensation process. There are delays in payment, wide difference in the compensation paid to department staff and farmer, problems in formalities etc. A national level policy on accident compensation should be worked out in consultation with all.

Regulatory institutions have a key role to play in ensuring quality affordable electricity service to the poor. They have to be strengthened at national, State and local levels. They have to be provided with sufficient resources, people and political support so that they have credibility. Utilities could increase their participation in these forums to make them more effective. Discussion during the session on 'Regulation and Governance issues in other Sectors (Water,

Telecom, Petroleum)' had highlighted some regulatory failures and challenges in these sectors. In comparison, electricity sector seems to have fared better in terms of transparency, accountability and participatory provisions and practice. There is a need to take lessons from each other to improve regulatory governance. Session on the draft regulatory bill had raised doubts about the plan to have a centralised approach to prepare regulatory provisions for 12 diverse sectors. Before introducing major regulatory changes, it is necessary to ensure detailed participatory discussions on regulatory and governance framework, which would ensure quality service to the poor. These discussions may have to go beyond the conventional models of independent regulation at State/Central levels.

# ANNEXURES

**ANNEXURE - 1**

# REPORT OF DISCUSSIONS

Conference was organized around 9 discussion sessions. The opening session laid out issues of the poor. The next 4 sessions covered the roles of utility, regulator, policy maker and civil society. Each session began with an opening presentation by the organizers, and was followed by panellist presentations and discussion. The break-out session was organized in two groups – one covering the implementation aspects and the second covering policy & planning aspects. The session on other sectors covered water, gas, telecom sectors and the competition commission. The objective of this session was to learn from experiences of these sectors in terms of process and innovative pro-poor practice. Institutional issues were presented in the concluding session, which also discussed the way forward. The additional session on the regulatory bill brought out many problems with the proposed bill, which has a u`niform centralized approach to regulate 12 diverse sectors.

This report captures the presentations and discussions during the conference. It is not a session-wise or chronological report, but rather an organization of ideas under 7 subsections namely – overview, role of utility, role of regulation, role of policy, role of civil society, lessons from other sectors, and the new draft regulatory bill.

## 1. OVERVIEW OF ISSUES OF ELECTRICITY SERVICE DELIVERY TO THE POOR

### Major issues

Major issues of electricity service to the poor were discussed throughout the conference – overview session; sessions on utility, regulator, policy and CSO; break-out session and the concluding session. There are many options to present these discussions – as a running list of issues; organised from the user perspective (as done in the Prayas publication: 'Awareness and action for better electricity service'; or organised for those who need to address them. Since the conference aimed to push the envelope for all actors towards addressing issues of the poor, this report uses the last option, which incidentally was also the way the break-out session was organised. Hence the issues are summarised in two sub-headings: those related to policy/planning and those related to practice (regulatory or utility).

### Policy/Planning issues

Most of the changes that the sector reforms introduced were market oriented and do not have issues of the poor as a high priority concern. Electricity is not considered as a merit good, but as a market commodity. Since the majority of the poor live in rural area, the urban bias of the planners make the situation worse. The high levels of load shedding in rural areas or the attitude to subsidy illustrate this bias. State subsidy or cross subsidy to provide basic services to the rural/ poor is an accepted norm in many developed countries, where as it is considered anti-reform in India!

The understanding and awareness of the issues of the poor amongst the policy makers is quite low. There is neglect of data collection, reporting and analysis of data related to small consumers. It is nearly impossible to get credible data on the consumption levels, electricity use or hours of supply to the small consumer. There are very few studies on the impact of electrification on the poor – either covering positive impacts of electrification or negative impacts of poor due to absence of quality affordable access to electricity. Efforts to build awareness about sector issues among the poor are low. Due to all these, participation/representation of the poor in the sector processes is very low. Planners look at the poor as passive grateful receivers of electricity and

not as a potential partner in planning and operation of systems meant for the poor. This could be the reason for the distortions and delays in many pro-poor programs.

Many institutions are not designed to be consumer friendly, leave alone poor friendly. With ongoing universal electrification programs, a large number of electricity consumers will be poor and it is essential that the institutions change their priorities. There should be active participation of the community in planning and operation of the system. This will help to reduce the information asymmetry and in better targeting subsidy. As an illustration, a participant pointed out how the rural micro-credit agencies have disproved the notion that poor is not bankable.

Failure in generation capacity planning is resulting in power shortages, which have severe adverse effects on poor, leading to lack of timely affordable power supply. Issues of power supply to agriculture are varied and complex with multiple linkages to cropping pattern, credit, marketing of produce etc.

In the last decade, electricity generation increased by 60%. It was clear that the poor have not largely benefited from this increase. It is time that the planners realise that quality access to poor, considered unviable from the short term financial perspective, is viable (and essential) from a long term socio-economic perspective.

## Practice issues

> *"There is a strong case for focussing questions of justice on what **actually** happens and **actual** lives rather than merely looking for ideal institutions and arrangements."*
>
> The Idea of Justice, **Amartya Sen**

Due to many field implementation issues, quality affordable access of electricity is still a dream for majority of the poor.

Progress of RGGVY has been slow due to many reasons. Problems about shortage of material, delays in getting required clearances and issues of coordination among multiples agencies (REC funding, CPSUs implementing, DISCOMs to take over and maintain) have been reported. The procedure for getting a legal connection (even though it is free for BPL family) is complex and involves transaction costs (photos, photo copy, bribe etc, which may add up to even Rs.500-700). Credibility of the distribution utility in delivering quality service to the poor is low and hence many hesitate to opt for a legal connection, which they fear may become a point for harassment. Distribution companies feel that supplying electricity to the poor is a losing proposition since losses are high and State subsidy (to compensate for the low tariff) is often not given in full or on time. Franchisees, which are expected to improve service delivery, have not taken off due to many reasons. Poor communities have not been able to create pressure to speed up electrification. District committees, which are expected to monitor the progress of the program, have not been active. There has been no public review of the rural electrification plans of the State governments. There have been many initiatives (mostly regulatory) to improve the standards of performance of distribution companies. But the ground implementation of these programs has been poor. Many are not aware that distribution companies have to compensate the consumer for low quality of service. Grievance Forums have not become very active in many States.

The quality of rural distribution systems has been deteriorating over the years. Poor maintenance and low investment could be reasons. There is very few staff at the village level. One stark result of this has been the frequent deaths due to electricity shocks. A participant reported nearly 200 deaths (most of them non-departmental) in a year, in his DISCOM. While steps should be taken to prevent such accidents, the procedure for compensating the victims needs to be improved. For example: there is discrimination of the compensation paid to the departmental and non-departmental incidents (Order of compensation is Rs.4 lakhs for departmental and Rs. 50,000 for others); in many cases the compensation is not paid in time; it is extremely difficult to establish that the victim was not responsible for the accident; there are problems in getting compensation for injury; compensation for death of cattle is very low (of the order of Rs. 2000, when the cost is Rs. 5000-25,000) etc.

There are many problems with stand alone systems, which have remained at the margins. In some cases of successful implementation of stand-alone systems with community participation (as reported from Chhattisgarh), there was collapse of the whole arrangement when the grid supply arrived. In the absence of grid supply, rural consumers pay as high as Rs. 20/unit to diesel generator operators in Bihar. To provide sustainable stand alone power, neither a market based option nor a State supported one has evolved to a mature stage.

## 2. PRO-POOR MEASURES – ROLE AND POTENTIAL OF UTILITY

Distribution utility is the first and mostly the only contact of consumers. It is responsible for most 'delivery' actions and has a very good understanding of ground realities – what is needed and what would work. Among all the actors, it has the best resources. But the question is whether the utility values service to the poor or does it neglect it? Since the general answer was that utilities do not value services to the poor, the next question is what measures are needed to make it important for utility to serve the poor. It could be financial / other incentives –disincentives or performance benchmarking. The panel presentations and discussions brought out many of these aspects, instances of good practice and action ideas.

Many consumers feel that the consumer interface of the utility is quite unfriendly. This has led to the growth of agents and middle men. CESC (urban distribution utility in Kokatta) has taken many measures to improve this, like using the services of retired employees to facilitate service centre for urban poor. Some utilities have attempted to vitalise the practice of substation committees with representation of all categories of consumers and the practice of local level consumer meetings.

Load shedding is common across the country with rural areas getting the worst treatment. There is no transparency in the ground level implementation of load shedding. In this context, the practice of Maharashtra Distribution Company hosting 11 kV feeder data on website is a welcome step. Any one can analyse the actual hours of load shedding.

After load shedding, the next major problem area for consumers is metering and billing. An innovative initiative started by Maharashtra Discom is photo metering, where every bill has a photo of the meter, which shows the meter reading. This prevents manipulation of meter readings to a large extent.

Many small consumers lose the legal connection due to non payment of bills. Quite often the starting point of this process is one very high bill wrongly issued by the utility. Since the rural electrification programs plan to provide universal access, Maharashtra has implemented one time amnesty scheme for small consumers whose arrears are below Rs.10,000.

Other good practices include the demand side management programs (CFL campaigns, tariff concessions for consumers who use solar water heaters etc) and Akshay Prakash Yojana, the successful voluntary load regulation program of Maharashtra, characterised by community- utility partnership.

## 3. PRO-POOR MEASURES – ROLE AND POTENTIAL OF REGULATION

Electricity regulatory commissions are relatively new institutions with a decade old history.They are expected to give equal attention to the interests of both the utilities as well as the consumers, and have the potential to enhance the influence of consumers on the utility as well as the government. They perform important functions which have impact on service delivery to poor - tariff determination, setting standards of performance, oversight of grievance redressal mechanisms etc. Thus the regulatory process is a window of opportunity. In the last few years, they have taken several positive steps like promoting transparent and participatory processes through public hearings, availability of information, reasoned orders etc. There is a need to deepen and broaden the regulator's approach to address concerns of poor and the pro-poor regulatory agenda.

Many States have a separate category for small residential consumers (based on low consumption) with tariff equal to 30-50% of the cost of supply. This is required to continue the legal connection of poor consumers. Since the tariff concession is based on meter reading of monthly consumption (typically 30 units/month), some problems occur. One is related to bad meter reading practices. Often an average consumption figures is entered in the records and meter reading taken only few times a year. If meter or wiring has a problem, this results in sudden high meter reading and high bill, leading to non-payment and disconnection. Regular meter reading, introduction of photo-metering etc would reduce this problem. Second is related to occasional high consumption due to a family function or festival. If this happens for a month, the category of the connection is changed. Maharashtra has introduced a limit on annual consumption (360 units/year) for a consumer to remain in the low tariff category.

Few states have low tariff for livelihood activities of the poor: domestic consumers in Delhi slums carrying out small businesses like tailor shop are charged at domestic rates; Cottage industries and Dhobi ghats in AP have tariff close to the lowest domestic tariff slab; village water supply schemes have low tariff in AP (20p/unit), Uttar Pradesh, Maharashtra etc; agriculture tariff is low in most States.

Calculation of Cost of Supply has a major impact on assessing the amount of subsidy to small consumers. Many States use average cost of supply for all consumer categories, which hides the differences like poor quality of service to rural consumers, provision of electricity to agriculture only during non-peak hours etc. Method used in States like Delhi and AP is detailed and gives a more realistic estimate of cost of supply. They use the cost of generation, cost of distribution network, cost of customer service, coincidence of load with system peak etc to calculate cost of supply for each consumer category.

Many SERCs have taken up awareness and consumer capacity building measures. KERC hosts the Electricity Consumer Network, which publishes awareness material and conducts workshops/meetings. Orissa commission has prepared and distributed Oriya booklets on consumer issues. MPERC has distributed 8 lakh leaflets on Standards of Performance and bought out a small booklet on consumer rights, in simple Hindi. 120 NGOs are registered with MPERC

and two conferences have been conducted to expose them to the issues of power sector. In MPERC public hearings on annual tariff revision, one day was set aside for NGOs who gave valuable advice in tariff determination.

Many Commissions bring out all publications in local language and hold public hearings at multiple locations to increase participation. Commission websites also are used by some to increase transparency and participation (providing details of SAC, starting email discussion groups). All commissions have advisory committees, where as, Maharashtra commission involves 3 consumer groups for technical validation, when draft regulations/orders etc are prepared. Maharashtra commission has held public hearings on crucial issues like load forecast, load shedding etc.

Some commissions have made efforts to bring public pressure on utilities to improve the quality of service. This includes consumer satisfaction surveys (Karnataka, Delhi, UP, Orissa) and preparation of reports on utility performance (Orissa, AP). MPERC has prevailed on the Consumer Grievance Forums to visit district headquarters and interact with consumers on some days to improve accessibility and outreach.

Activities of the Forum of Regulators (FOR) has been helping to study regulatory issues (quality of service, consumer capacity building, demand side management, rural electrification etc) as well as share and implement good practices of SERCs.

## 4. PRO-POOR MEASURES – ROLE AND POTENTIAL OF POLICY AND PLANNING

Policy and planning at national and state levels is crucial. They provide the frame work (legal, institutional), decide the priority for resource allocation and provide the political support (as they are prepared with political inputs). The issue for discussion was this: when there is appreciation, interest and resource allocation for pro-poor measures, why there is no matching improvement in the ground level situation as far as electricity service to the poor is concerned? Can the problem be traced to distribution utility? Is it lack of financial incentive, issues with institutional capacity to serve small consumers or low project implementation capability? Or is the poor oversight by regulatory institutions (Regulatory Commissions, CEA, REC, District Committee etc) leading to poor accountability mechanisms? Is the problem caused by bad planning, leading to electricity shortages, high cost power and poor network? Electricity network in India was not designed for universal access and hence large areas do not have infrastructure for distribution of electricity. All these may be compounded by the fact that the poor lack political power to influence sector governance.

It was felt that, while the stated goals in policies and programs are good (electricity as a basic need, ensuring minimum life line consumption of 1 kWh/day/house hold as a merit good, promotion of stand alone systems, promotion of energy efficiency), they are not supported by political commitment, strategy and institutional development. It appears that institutions with maximum interest in the poor (rural consumers, PRIs, organisations working with the poor) have least power to influence implementation. The coordination between Ministry of Power (MoP) and Ministry of New and Renewable Energy (MNRE) is weak. So is the case between state government, REC (funding rural electrification), CPSUs (implementing agency in many States) and DISCOMs (who are to take over and operate the distribution system).

As pointed out by many, the supply constraints have become worse compared to the last decade. This could be due to neglect of manufacturing strengths of public sector and the policy that "market will solve all problems like a magic wand". Infrastructure is not market driven, since it

has externalities. It was pointed out that in the US, as a part of New Deal, rural electrification was given big push with government support.

## 5. PRO-POOR MEASURES – ROLE AND POTENTIAL OF CIVIL SOCIETY ORGANISATIONS

Civil Society Organisations, especially those working with the poor, can create demand pressure on all actors in the sector through informed, innovative participation. Regulatory institutions provide an avenue for this. But these institutions have multiple objectives - promote private investment, improve financial health of companies and ensure quality service. Big consumers and companies have resources to represent their case in different forums and it is up to the CSOs to represent the case of the poor. They are better informed of ground realities, can serve as a two-way conduit of information and can draw on linkages to other issues. But there are also questions: whom do they represent? how are they accountable? is there a risk of being captured for private interests?

There are multiple ways for CSO engagement. Strengthening grievance redressal mechanisms (make consumers aware of rights/duties and organize for representation before grievance forums); participating in regulatory processes (providing feedback on particular programs, developing information and research on impact on poor, playing a watchdog role on process and substance); and playing an innovation role.

Should engagement of other institutions with CSOs be pro-active or reactive? Can there be a formal mechanism within CSOs to decide who represents the consumer interests - say through an election? How should the CSOs be financially supported – right at the beginning or after specified activities?

### Some good practices

Citizen consumer and civic Action Group (CAG), Tamil Nadu

CAG is a non-profit, professional organization working towards protecting citizen's rights in consumer and environmental issues and promoting good governance including transparency, accountability and participatory decision-making. CAG works on consumer issues mainly in urban centres of Tamil Nadu. It has been a member of the State Advisory Committee of TNERC.

In Tamil Nadu, 90% of the households have access to electricity and hence main issue is that of quality of supply CAG has published booklets written in simple Tamil for disseminating information about access to power, meter related issues, billing, distribution standards and grievance redressal mechanisms. A survey conducted by CAG to assess the awareness levels of TNEB officials revealed that the TNEB staff had very poor knowledge on the regulations, various service charges. 95% of middle and lower level staff are not even aware of CGRFs. CAG also explored the potential CSOs in getting information using the Right to Information Act, 2005 effectively. CAG efforts led to notifying interest on deposits, compensation for deficiency in service quality, information printed on bills and meter cards, and activating grievance redressal mechanisms like the functioning of CGRF. Because of CAG intervention, TNERC spent funds on consumer education.

Gram Vikas, Orissa

Gram Vikas is a non-profit, professional organization working towards rural development covering issues of livelihood, energy and water & sanitation. Activities in energy area include construction of 54,000 bio gas plants and two mini hydro power stations in tribal areas.

In electricity sector, GV has raised the awareness on power sector and consumers' role through publishing and distributing 2 booklets in Oriya; posters and leaflets on RGGVY and Biju Grameen Yojana; and flexi posters and leaflets on power saving and safety tips.

Workshops for elected representatives, opinion leaders, government officials, CSOs were held to create informed opinion. Regulators, senior utility staff, SAC members and academic contributed as resource persons. In order to take issues to ground level, workshops were organized at the local level in many districts. Because of the awareness created by these workshops people started taking up issues with the utility. Issues handled successfully include timely replacement of defective meters, replacement of burnt transformers and correction of bills. Gram Vikas has also intervened in the regulatory process to rationalise the tariff for community water works.

A survey was conducted in 23 villages spread over 8 districts in the state. This survey showed that while 71% of the APL households have electricity connection only 34% of the BPL households have electricity connection. 64% of the connected houses have meters. Quality of power supply was very bad. At least once a week power cut was there extending from 30 minutes to 5 hours. In the absence of power supply households depended on kerosene lamps for lighting which cost Rs. 27 per household per month. When distribution transformers failed, it took 3 days to one month to get it repaired. The communities had to incur a cost of Rs. 350 to Rs. 4000 to get these repairs done. Households had to bear a cost of Rs. 200 to Rs. 4800 to get electricity connection. Because of faulty and non-functioning meters average billing had become a norm in many places. Faulty meter reading and defective meters added to the problems.

Other States - Andhra Pradesh, Uttar Pradesh, Maharashtra

In Andhra Pradesh, a network of pro-poor organisations, under the umbrella of Peoples Monitoring Group on Electricity Regulation (PMGER) has been working on creating awareness and increasing participation in the regulatory process from 2000. Workshops organized in different parts of the State have helped to increase of persons participating in the public hearings. This has helped to highlight many issues of the poor. This group has been well represented in the State Advisory Committee and Grievance Forums. Deaths due to electricity shocks have been highlighted, many instances of gross inefficiency brought out (unfair power purchase agreements, exaggeration of agricultural power consumption etc). Provisions in SoPs were changed to penalize the staff instead of the utility if failure to follow SoP is because of the staff. Raithu Seva Samithi (a member of the PMGER) is mobilising farmers in Chittor district in AP on various issues including electricity supply to agriculture pumpsets. Because of its initiatives, scores of farmers are participating in public hearings on electricity tariffs every year since the process started in 1999.

In Uttar Pradesh, CSOs are working with the stakeholders towards creating awareness on rights and obligations of the consumers for a consumer forum Bijlee Dost. To be accessible to the general public a help line with toll free number (1800 11 4424) has been set up; a website www.bijlidost.org was also launched.

Prayas Energy Group and few other consumer groups have been active in Maharashtra regulatory process for many years. Prayas has also participated in the CERC processes and supported activities in few other states. This proactive, long term engagement has resulted in many pro-public interest changes.

## 6. POOR RELATED REGULATION & GOVERNANCE ISSUES IN OTHER SECTORS

This session discussed regulation governance issues in Gas, Water and Telecom sectors and had a presentation on the Competition Commission.

There are common elements in the area of governance of all these sectors. Independent regulation is an important aspect of the reforms initiated since 1991 and has its roots in the policy that the government need to get out of infrastructure sectors. But experience has shown that if private sector is not regulated properly, huge problems can arise (Enron etc). There is the presumption of credible techno-economic decision-making by the regulatory bodies and concerns for building investor credibility (leading to privatization). There are the realities of Indian context - intrusion of political agendas, uncertain authority, highly incomplete information availability and weak capacity. For all sectors, quality access at affordable price is a priority. The relative importance of the sector with respect to livelihood may vary - water may be the most important followed by electricity, telecom and gas. It was expected that there are lessons to be learnt on process and procedure; on structure (background of regulators & staff, autonomy, authority & mandate for pro poor action) and on creative pro-poor practice. Discussion on competition commission was to examine the question if competition is by default pro-consumer.

### Gas Sector

There is hardly any thing for the poor in this sector. There are many problems in the way the regulatory system has been implemented. Section 16 of the Regulatory Act is yet to be notified. The regulatory board was notified in January 2007, but the Act was notified only in October 2007. During this gap period, the government authorized nine gas pipe lines. The way gas transport tariff is being determined is disturbing. For transport of gas from KG Basin the tariff is going to be $1.39 per MBTU, almost 50% of the gas price which is not justified. Usually gas transport tariff is 10 to 20% of the gas price. Even according to the regulations of the Board, this tariff is to be decided using benchmarks. But in the present case no benchmarks are being used with the argument that each project is unique and cannot be compared. Cost plus system is also not being implemented properly. RGITL with just Rs. 5 lakh share capital claims to have spent Rs. 18,000 crore on the KG Basin gas pipe line. This gas transport tariff is being decided by the consultants and no public hearing is contemplated. Under City Gas Distribution scheme, gas is to be taken to all the charge area. There are some issues in deciding the extent of charge area. Ward in a municipality would be ideal but a constituency is being used as a unit for charge area. Active public participation is essential to improve the situation.

### Water Sector

Regulatory process is being introduced in the water sector also. It is at different stages in different parts of the country. There are issues that affect the poor. Landless are being excluded from the process. There is also apprehension that the existing inequities will be continued and strengthened. There is also possibility of new inequities because of redistribution through market mechanisms. Legalizing full-cost-recovery and gradual reduction of subsidies, cross-subsidies as well as government subsidies will affect the poor adversely. We cannot and should not replicate

IRA models from other sectors without critical analysis. Nevertheless, the current IRA in water is based on the electricity IRA framework. De-politicization of sector governance through IRA is a matter of concern in water. Dominance of technical-economic experts in IRA may aggravate the problem. Hence, need to ensure 'Public-Control on Governance' through TAPing of water regulation - a necessary but not sufficient condition. TAP-related provisions in Water IRA Laws are weaker in comparison to E-Act.

Resource regulation may have positive impacts if operationalized within an 'equitable water distribution' framework. It is important for bringing to the forefront the issues of inequitable distribution of benefits. Water IR Laws includes direct references to social considerations like 'equity', 'just' and 'sustainable'. But the operational provisions are weak in giving teeth to social considerations in true sense of meaning. There is over-detailing, over-specification in some critical areas - leaving less space for raising political demands in future (e.g. equitable water entitlements). There is scope for backdoor privatization through market-linked entitlement system or through 'licensing system' for utilities. There is need for critical analysis of feasibility of privatization, especially, in water sector.

In absence of active CSO interventions, backdoor-privatization may be used for 'unregulated privatization' efforts (e.g. Privatization of Nira Deoghar Irrigation Project in Maharashtra). It is important to question feasibility of privatization and at the same time stop 'unregulated' privatization initiative.

**Telecom Sector**

In a brief presentation, doubts were raised on the effectiveness of the regulator (TRAI) - one gets doubt whether he is an employee or regulator. In many decisions TRAI went along with the government. There are detailed studies on quality of service, but no corrective action is taken and in any case the main issue is spectrum allocation. It should also be realised that regulation is not cure for every problem.

**Competition Commission**

The (Competition Commission of India (CCI) is not a sector specific regulator but cuts across all sectors even if there are sector regulators as the Competition Act, includes within its ambit public sector enterprises and government departments. Though the Competition Act was passed in 2002, the Commission started only in 2009. Even in this only some provisions of the Act were notified. According to Section 66 of the Act, MRTP ceases once CCI comes in to being, but this is yet to be notified. The panellist said that competition benefits the poor more, since efficient competition and markets leads to reduction of poverty. She said that competition ensures static and dynamic efficiencies and can be observed broadly under three levels of economic activity - level-1 (macro level of an open economy), level-2 (sector level – eg. rural markets) and level 3 (delivery mechanisms – eg. cooperatives, franchisees).

There are four elements to the Act. 1) Prohibiting anti-competitive agreements; 2) Prohibiting abuse of dominant position, prevents market capture; 3) Regulating combinations and 4) Competition advocacy. But the existing Acts/practices are limiting competition. For example, the bidding process and prequalification stipulations limit competition; power utilities are hesitant to promote franchisees etc. Competition Commission can help to break deadlocks.

## 7. DRAFT REGULATORY REFORM BILL - A DISCUSSION

Draft Regulatory Reform Bill has been prepared in April 2009 by the Planning Commission, towards developing an Act to govern the constitution, powers and functioning of the regulatory commissions for public utilities. Draft lists 12 such - Electricity, Telecommunications & internet, Broadcasting & Cable TV, Posts, Airports, Ports, Railways & Mass Rapid Transit System, Highways, Oil & Gas, Coal, Water supply & sanitation and Waterways. The 51-page document is available at the website of the Planning Commission at: http://infrastructure.gov.in/pdf/Reg_Act_08_08_18_Preface.pdf. This was an additional session organised late evening on second day.

The detailed presentation by Sri. Amit Kapur is given in the annexure. He noted that the stated objectives of the bill are 1) To establish a level-playing field where the industry-structure is amenable to competition; 2) Recommend sound principles to regulate monopoly services and 3) Supplement existing sector-specific laws. Section 61 gives the Bill has over-riding effect over all sector specific laws to the extent of inconsistency. This presentation provided an issue wise critique of the bill. It questioned a common approach to frame regulations for such diverse sectors and that also through the parliamentary route. This bill vitiates the constitutional "federal principle, may reverse the positive aspects of reform and bring back the license raj.

The presentation and the discussion concluded with the suggestion that the bill needs a re-look which may include a staggered implementation plan. It is also necessary to discuss the bill in different forums with wider participation.

**ANNEXURE - 2**

# INVITATION LETTER

June 19, 2009

**Sub: National Conference on 'Regulation and Electricity Service to the Poor': August 7-8, New Delhi**

Prayas Energy Group has been active in public interest oriented analysis and intervention in electricity regulation from 1996. Our activities include key regulatory interventions in Maharashtra, supporting CSOs in few other States, participating in the CERC process and networking with international groups on electricity governance. Our pro-active initiatives include reports on the functioning of SERCs, review of Quality of Service initiatives and awareness booklets for consumer groups.

As part of this ongoing effort, Prayas Energy Group along with a colleague, Navroz Dubash (Associate Professor at JNU), are organizing a 'National Conference on Electricity Regulation and Service Delivery to the Poor' on August 7-8, 2009 at New Delhi.

The ongoing reform has brought in many changes in the electricity sector. There have been major changes in policy, industry structure and ownership. But there is an overwhelming feeling amongst civil society that by and large, the issues of the poor have been neglected while there is disproportionate interest on some issues like captive power plants, open access, commercial viability and markets, which immediately benefit the large consumers. The pro-people and pro-consumer initiatives like RGGVY, participatory processes by regulatory commissions, as well as regulations to monitor quality and equity of electricity services to poor get less attention.

The conference aims to bring out the potential and limitations of the regulatory process to address issues of the poor. It will also try to elaborate on what the sector actors (regulatory, state, utility and CSOs) are doing and can do in the long term interest of the poor. The objectives of the conference are:

- Share experiences of using regulation to improve electricity service delivery to the poor and draw lessons from positive impacts and barriers faced.
- Explore the potential of regulatory process to make it more beneficial to the poor
- Understand the linkages with other aspects of decision making in electricity sector
- policy, planning, utility operation, CSO capacity - to assess the limitations of regulatory process
- Share experiences of the regulatory process in the water sector and other related sectors in India

**This approach is summarised in the table.**

| Perspective | Analyse the roles of | Towards ensuring |
|---|---|---|
| Implementation of pro-poor measures | - Regulator<br>- Utility<br>- State (planning & policy)<br>- CSO<br>(what: can be done, is being done, more could be done) | - Access<br>- Affordability<br>- Quality<br>- Participation |

The conference will be organized around discussion sessions based on above matrix. Each session will begin with a brief presentation providing background, discussion themes and questions for the session. This will be followed by moderated discussions. We expect participants from policy bodies (Ministry of Power, Planning Commission), Distribution utilities, Regulatory Commissions, Consultants, CSOs working with the poor, and Academics.

Shri. R.V. Shahi, Ex. Union Power Secretary, Dr. Pramod Deo, Chairman, CERC, and a few other senior experts and regulators kindly agreed to address the conference.

We request your support by way of participating in the conference and contributing to the discussion.

To help us make appropriate arrangements kindly confirm your participation by Tuesday, 7th July 2009.

We will be bearing the local boarding expenses and can offer travel expenses if required.

Thanking you
Yours truly,

*Girish Sant, Sreekumar N (Prayas Energy Group, Pune)*
*Navroz Dubash (JNU, New Delhi)*

# Agenda and Agenda Note

**ANNEXURE - 3**

# AGENDA

| S.No | Time | Session | Panel |
|---|---|---|---|
| **August 7, 2009** | | | |
| | 0930 | Registration | |
| | 0945-1000 | Introduction | Girish Sant (Prayas), Navroz Dubash (CPR) |
| **S1** | 1000-1130 | Issues of electricity service delivery to the poor | Sreekumar (Prayas), JL Bajaj(Distinguished Fellow, TERI),<br>*TL Sankar (Hon. Professor, ASCI) - Session Chair* |
| | 1130-1145 | **Tea** | |
| **S2** | 1145-1315 | Pro-poor measures - role and potential of **Utility** | V Sonavane (Director, MSEDCL), Utpal Bhattacharyya (ED, CESC), Kapil Mohan (Director – MoP)<br>*DK Roy (Chair,OERC - Retd) - Session Chair* |
| | 1315-1400 | **Lunch** | |
| **S3** | 1400-1530 | Pro-poor measures - role and potential of **Regulation** | JL Bose (Chair,MPERC), K Venugopal (Member,DERC),<br>*Pramod Deo (Chair, CERC) - Session Chair* |
| | 1530-1545 | **Tea** | |
| **S4** | 1545-1715 | Pro-poor measures - role and potential of Policy & Planning | Gireesh Pradhan (Addnl. Secy,MoP), Kwawu Gaba (Lead Energy Specialist, World Bank), Prabir Purkayastha (DSF),<br>*RV Shahi (Former Secy-Power) - Session Chair* |
| **August 8, 2009** | | | |
| **S5** | 0900-1115 | Pro-poor measures - role and potential of **Civil Society Organisations** | Gobardhan P(Gram Vikas), Nandikesh (CAG), K.Rajendra Reddy (Rashtriya Raithu Seva Samithi), Nikhil De (MKSS),<br>*Shailesh Gandhi (Info. Commissioner, CIC) - Session Chair* |
| | 1115-1130 | **Tea** | |
| **S6** | 1130-1315 | Break-out and Plenary | Navroz Dubash (CPR), Sreekumar (Prayas) |
| | 1315-1400 | **Lunch** | |
| **S7** | 1400-1530 | Poor related regulation & governance issues in **Other Sectors** | Sudha Mahalingam (Member- PNGRB), Geeta Gouri, (Member- Competition Commission) Sachin W (Prayas -ReLi ), Prabir Purkayastha (DSF),<br>*Sunil Jain (Columnist- Business Standard) - Session Chair* |
| | 1530-1545 | **Tea** | |
| **S8** | 1545-1715 | Strengthening **Governance** for Pro-poor Electricity Service Delivery & **Way forward** | H Panda (Director- HDF School of Management), Navroz D (CPR), Girish Sant (Prayas),<br>*S. P Sethi (Pr.Advisor - Energy, Planning Commission) – Session Chair* |
| **Additional Session** | | | |
| **S9** | 1800-2000 | Draft Regulatory Reform Bill - A Discussion | Opening Remarks - Shantanu Dixit (Prayas), JL Bajaj (TERI); *Presentation - Amit Kapur (Partner- J Sagar Associates)* |
| | 2000-2200 | **Dinner** | |
| Each session will be introduced by the organisers. Panel presentations (suggest 10-15 mins each) will be followed by remarks by the Session Chair, Question - Answer and discussions | | | |

# AGENDA NOTE

There are 8 sessions on the conference theme and an additional 9th session on the draft Regulation bill. Each session will begin with a brief presentation providing background, discussion themes and questions for the session. This will be followed by moderated discussions with a view to arrive at few action items for different actors. Key actors from the Ministry of Power, utilities, regulatory commissions, academics and civil society organizations will contribute to the discussion. Few key aspects to be discussed are given below.

**Issues of electricity service delivery to the poor (Session 1)**

a. Electricity reforms and the poor
   The first decade of reforms largely neglected issues of the poor. This can be seen in areas like rural electrification, attention to quality of service to small consumers or subsidising small consumers. The primary attention of all actors was on privatization and commercial viability of utilities.

b. Recent pro-poor initiatives
   Starting from 2004, there have been initiatives at national level and in few States to directly address the issues of the poor. These include programs like RGGVY, Biju Grameen Yojana (Orissa); policies like National Electrification Policy & Rural Electrification Policy; implementation of pro-consumer measures like Standards of Performance Regulations, setting up Grievance Forum etc. It is not clear that the poor are getting significant benefits from these initiatives, due to lack of coordinated action of multiple actors, at multiple levels (For example, take RGGVY: funding by REC, implementation mostly by CPSUs, monitoring by REC, operation by DISCOMs).

c. A framework to address issues of the poor
   Electricity service delivery issues of the poor are varied and complex. They cannot be generalized since they depend on power availability, geography, climate, occupation, and culture. Availability of data on this is low and hence the understanding of all actors - policy makers, planners, utilities, regulators, academic and analysts rather poor. A starting point to address the electricity service delivery issues to the poor could be to study what the poor need from electricity in terms of access, affordability and quality of service.

d. How to address issues of the poor?
   Poor sensitive institutions working under pressure from pro-poor civil society organizations, supported by a pro-poor government can achieve results. There are opportunities to push the envelope at all levels – be it with utility, regulators, civil society actors or government.

**Pro-poor measures - role and potential of Utility (Session 2)**

a. Key role of distribution utility
   Distribution utility is the first interface to the consumer and compared to the other actors, has high resources. Its role and potential is high.

b. Policy measures
   Quality affordable electricity delivery to the poor could be used to measure the performance of utilities. Pro-poor measures could be pro-active and institutionalized - eg. Strengthening GRFs, accountability mechanisms like having a Director to exclusively attend to service delivery issues of the poor; tying up with CSOs for regular consumer feedback, awareness building; structure changes like franchisee, rural cooperatives

c. Practice
Effective implementation of programs like RGGVY (connection melas; giving connection to all households in dalit/tribal bastis, when the backbone infrastructure is available), innovative measures to increase accountability (transparent, clear billing, detailed reporting of quality of service, measures like photo metering, load limiters); support to grievance redressal system (proper functioning of GRF, local meetings, awareness campaigns); attention to safety.

**Pro-poor measures - role and potential of Regulator (Session 3)**

a. State Regulator as a window of opportunity
Regulator is expected to balance commercial viability and consumer interest. Regulator offers participatory arenas like public hearings, and enhances transparency by giving detailed orders. All its functions – licensing, tariff setting, investment monitoring and quality of service monitoring - offer opportunities for pro-poor measures.

b. Developing a regulatory framework
Within the framework of the Electricity Act and Policies, regulator develops the State level framework for regulation. This could be towards making regulator a window to promote Transparency, Accountability, Participation, CSO Capacity building (TAPC) in the sector. Pro-poor measures could include public hearings for major utility actions (including load shedding, rural electrification, quality of service monitoring etc, in addition to tariff, power purchase); increased consumer participation (consumer network, technical validation by key consumer groups at different levels etc)

c. Regulatory Process
There could be special public hearing on issues of the poor. Consumer surveys, especially to understand issues of the poor could be taken up with support of CSOs. Regulator could take up civil society capacity building measures (awareness material in local languages, workshops, representation of pro-poor groups in SAC, GRF etc). Since gross in-efficiencies in utility operation result in high tariff/poor service delivery, regulator could play a role in reducing them (distribution losses, allocation of shortages, investment, power purchase etc)

d. Monitoring Role
Regulator could monitor all activities in the electricity sector. This could include third party monitoring of quality of supply indicators (segregated data, tightening of benchmarks, review of compensation) promoting 'metering for accountability' (11 kV feeders, DTs etc), audit of metering/billing etc. Regulator could also take up review of progress of rural electrification programs, including ensuring affordable tariff (audit of BPL category tariff)

**Pro-poor measures - role and potential of Policy & Planning (Session 4)**

a. Role of policy makers and planners
All sector actors operate within the legal/policy framework and the broad National/State level plans. Linking quality affordable electricity access to raising the human development index in a sustainable fashion should be the objective of policy makers and planners.

b. Framing Policy & detailed planning
Preparation of national/State polices and plans could be a participatory process, based on ground level data. Technical, financial and institutional issues could be addressed with equal attention. Monitoring and review could be part of the plan.Discussion ideas include:

State/district plans for rural electrification; central subsidized power plants for rural areas; integrated approach to rural energy supply (grid - non-grid, electricity – fuels etc); one-time amnesty for small consumers.

c. Monitoring impacts and reviewing

The poor progress of household electrification under RGGVY shows the limitations of planning. Mechanisms for monitoring impacts and reviewing should form part of the framing activity. National, State, District and Panchayat institutions, CSOs and academics could have roles. Discussion ideas: Regular review of policies and programs (REP, NEP, RGGVY) to see if they are benefitting the poor; promoting ideas like community audit of RGGVY, ensuring no load shedding in areas with very low HDI. Involvement of CSOs would need plans for capacity building.

**Pro-poor measures - role and potential of Civil Society Organisations (Session 5)**

a. Importance of CSOs engaging with the sector

Electricity service delivery to the poor will not improve unless CSOs working with the poor take this up as one of their agenda items. Continuous pressure and demands on the utility, regulators and policy makers is essential.

b. Grievance level

CSO engagement could begin with grievance issues of individual or groups. Forums like complaint facilities and grievance forums should be extensively used. Innovative measures like community involvement models like Akshya Prakash (Maharashtra) or electricity supply monitoring (Prayas initiative to record quality of supply) to improve quality of supply are examples of positive role of communities.

c. Policy level

For sustainable improvement, pro-active patient continuous engagement with the sector (grievance, regulator, policy, social audit) is required. This could include participation in regulatory hearings, giving feedback on program implementations (like RGGVY public forum), innovative measures to audit quality of supply, assess consumer satisfaction levels.

**Poor related Regulation & Governance issues in other Sectors (Session 7)**

Regulatory institutions have been operational in similar sectors like Gas, Telecom and Water. There is also a competition commission to promote and sustain competition in markets while protecting consumer interest.

Panellist presentations will bring out the regulation & governance issues which impact the poor in these sectors. Discussion may bring out some positive elements in electricity regulation (for example, compared to Gas or Water regulation) and examine if there are some lessons to be learnt from other sectors (for example the TRAI practice of third party monitoring and reporting of quality of service). Discussion on substantive issues of the sectors is not planned

**Strengthening Governance for Pro-poor Electricity Service Delivery (Session 8)**

This is the concluding session. It will consolidate lessons from sector restructuring and regulation – positives, challenges and negatives. Since regulation is emerging as a new institution of governance, the idea of using it as a window to democratize governance will be

discussed. Since capable CSOs are essential for this, the roles of different actors in CSO capacity building will also be discussed. Quality affordable power supply to rural and urban poor is in a dead lock situation. It is hoped that few innovative ideas (at policy, institutional and implementation levels) to break deadlock will emerge.

**Draft Regulatory Reform Bill – A Discussion (Session 9)**

Draft Regulatory Reform Bill has been prepared in April 2009 by the Planning Commission, towards developing an Act to govern the constitution, powers and functioning of the regulatory commissions for public utilities. Draft lists 12 such – Electricity, Telecommunications & internet, Broadcasting & Cable TV, Posts, Airports, Ports, Railways & Mass Rapid Transit System, Highways, Oil & Gas, Coal, Water supply & sanitation and Waterways. The 51-page document is available at the website of the Planning Commission at: http://infrastructure.gov.in/pdf/Reg_Act_08_08_18_Preface.pdf .

The objective of this additional session is to understand the implication of the new bill, primarily to the electricity sector.

**ANNEXURE - 4**

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New Delhi, August 7-8, 2009

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# Introductory Presentations

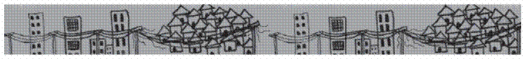
# INTRODUCTORY PRESENTATIONS

## Introduction

Regulation and Electricity Services to the Poor

National Conference

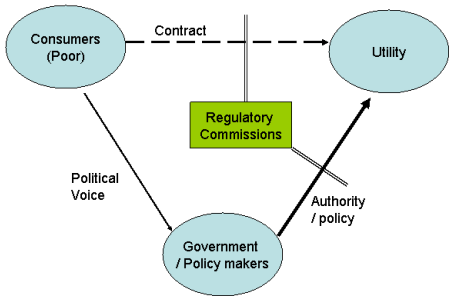
August 7-8, 2009, New Delhi



## Objectives

- Bring issues of poor in the focus
- Explore ways to improve services to the poor,
- Understand linkages between policy, planning, regulation, and utility planning (to improve services to the poor)
- Learn from other sectors
- Evolve an action plan

2

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## Agenda for 7th and 8th

- **Issue** of Service to the poor
- Role & potential of **Utility**
- Role & potential of **Regulator**
- Role & potential of **Policy / Planning**
- Role & potential of **Civil Society Org**
- Break-out session
- Learning from **Other Sectors** (gas/ oil, telecom, water, competition etc.)
- **Strengthening governance & way forward**
- Sp Session – **Draft bill** on Regulatory Reforms

4

## S1: Issues of Electricity Service Delivery to the Poor

Issues of electricity service delivery to the poor

Sreekumar N
Prayas, Energy Group

National Conference on 'Regulation and Electricity Service to the Poor',
August 7-8, 2009, New Delhi

## Issues of the poor - opportunities

- Policies
  - National Electricity Policy, Rural Electrification Policy, Decentralised Distributed Generation guidelines
- Programs
  - RGGVY, State programs (Biju Grameen Yojana), Re-structured Accelerated Power Development and Reforms (R-APDRP)
- Regulatory Provisions
  - Public hearings, Standards of Performance regulations, Grievance Forums
- Substantive resource allocation, attention

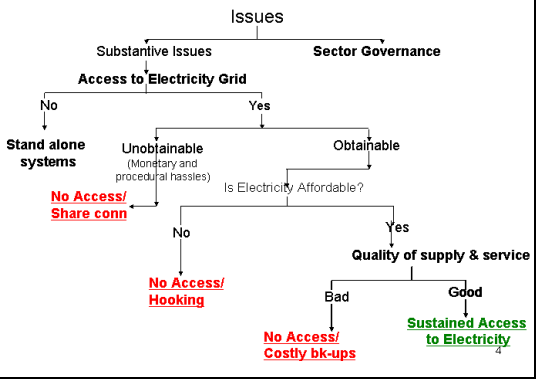
2

## Issues of the poor - challenges

- One model does not fit all
  - Wide differences in many aspects: technical, geographic, climatic, cultural, political, livelihood options
- Well intentioned legal, policy, program initiatives is only the first step
  - RGGVY household targets will not be met, franchisees have not taken off
  - Focus only on creating physical infrastructure can be counter productive
  - Short term mission mode Vs long term approach where electrification should catalyse increase of purchasing power
- Stand alone options still at the margins

3

## Affordable quality electricity access - bumpy long road

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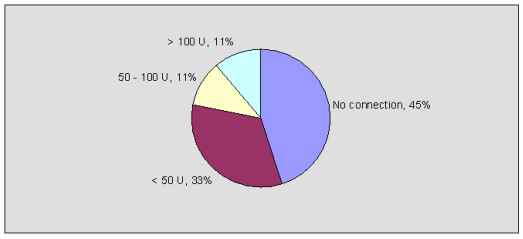
## Most of the households are poor




- From the approx distribution of monthly household consumption, we see that only 25–30% of Indian households pay electricity bill more than Rs.150/month!

- Top third of the households consume 60% of total household consumption

5

## Electricity needs of the poor

– Social needs
- **Household** (lighting, fan, TV) **& Community** (drinking water pumping, street lighting, health centre)
- Low amounts can make big difference, especially for the poor
- Not financially viable to the service provider (due to low density, low consumption & revenue)

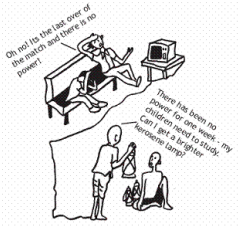
– Economic needs
- Individual (agriculture pumps, cottage industry, shops), Community (Lift irrigation, small industry)
- Adequate supply & good quality required to make a difference
- Not financially viable to the service provider (due to spread and low revenue)

Quality access to poor is viable from social and economic perspectives

6

## NEGLECT & low effort

- Neglect of data collection, reporting, analysis
  - consumption levels
  - electricity use
  - hours of supply
- Low efforts
  - Awareness building
  - Studies on impact on poor




→Some efforts by different agencies – international, consultants, NSSO, voluntary organisations

→ In the last decade, generation increased by 60%. How much of this went to poor?

7

## Pushing the envelope

| Conference Approach | | |
|---|---|---|
| **Perspective** | **Analyse the roles of** | **Towards ensuring** |
| Implementation of pro-poor measures | - Utility<br>- Regulator<br>- Planning & policy<br>- Academic<br>- CSO<br>(what: can be done, is being done, more could be done) | - Access<br>- Affordability<br>- Quality<br>- Participation |

Utility: Connection drive, consumer meetings …

Regulator: Review rural electrification, special public hearings on issues of poor …

Policy & Planning: Incentive to utility to serve the poor, Working group to study issues of poor …

CSO: Informed participation at all levels …

8

## Issues of electricity service delivery to the poor

*"There is a strong case for focussing questions of justice on what **actually** happens and **actual** lives rather than merely looking for ideal institutions and arrangements."*

- The Idea of Justice, Amartya Sen

9

## S2: Pro –Poor Measures: Role and Potential of Utility

### S 2 - Pro-poor measures: Role and Potential of Utility

National Conference on Regulation and Electricity Service to the poor

Shantanu Dixit

### Utility Role Is Critical

- First and mostly only contact of consumers
- Utility responsible for most 'delivery' actions
- Very good understanding of ground realities – what is needed, what would work

### Utility *Policy* measures

- Do utilities *value* services to poor? What is needed?
  - Financial / other incentives –disincentives?
  - Performance benchmarking
  - Institutional reforms ? (Franchisee, C.E. Service delivery to poor)
- What are policy and program options?
  - HR policies,
  - Load shedding protocols,
  - 100 mts. – 100 % legal connections program? , Limited load connections, Group metering / connections?

### Utility *Practices*

- Effective implementation of programs
  - APDRP – accountability for CapEx?, RGGVY
- Metering and billing practices
  - Photo metering?, pre-paid meters? remote metering?
- Service quality monitoring
  - 11KV feeder AMR, Electricity supply monitoring initiative (ESMI), Compensation processes
- Functioning of CGRF / Ombudsman
  - Timely appointments, compliance with orders

## Discussion Issues

- How to make service delivery to poor an important agenda for utility?
- Synthesis of best practices and innovative options

## S3: Pro –Poor Measures: Role and Potential of Regulation

### S 3: Pro-poor measures: Role and potential of regulatory process

National conference on Regulation and Electricity Services to poor

### Regulatory process – Window of opportunity

- *Important functions for ensuring service delivery to poor*
  - Tariff determination, Standards of performance, grievance redressal mechanisms
- *Several positive steps*
  - Transparent and participatory processes (public hearings, availability of information, reasoned orders)
- *Need to deepen and broaden regulatory agenda as well as approach to address concerns of poor*

### Regulatory Framework

- *Tariff design*
  - BPL tariff category
  - Balancing legal requirement to reduce cross-subsidy, increasing cost of power purchase and shortages?
  - Insulate poor from costs of in-efficiency?
- *Creating incentives and disincentives for utility*
  - Linking RoE to services to poor?
  - Special dispensation for CapEx and O&M in poor / rural areas?
- *Support / flexibility for targeted pro-poor programs*
  - 100 mts.– 100 % progs.
  - Allocation of low cost power , load shedding protocols

### Regulatory Process

- How to increase participation of pro-poor groups and concerns in the regulatory process?
  - Public hearings in remote areas, Special public hearings on issues of poor
  - Consumer surveys
  - Designated pro-poor groups
  - Civil society capacity building
    - Awareness materials, financial support

## Monitoring and Implementation

- Strengthening supply and service quality monitoring
  - Third party "Systems" audit (metering and billing systems, complaint handling systems, compensation payments systems etc.)
  - Review of RGGVY / APDRP plans implementation
  - Desegregated performance and service quality data (interruptions, DT failure, new connections)

## Discussion Issues

- Opportunities of improving service delivery to poor through regulatory process
- What are the necessary enablers to achieve this?
- Role of FoR, MoP and other actors

## S4: Pro – Poor Measures – Role and Potential of Policy and Planning

## Pro-poor measures - role and potential of Policy & Planning

Sreekumar N
Prayas, Energy Group
National Conference on 'Regulation and Electricity Service to the Poor',
August 7-8, 2009, New Delhi

## Importance of Policy & Planning

- Legal framework
  - Policy
  - Plan
  - Program
  - Institutions
- Resource allocation
- Political support / push
- National and State levels

## Policy & Planning - Questions

- There is appreciation, interest and resource allocation. Still, situation has not improved at ground level. Why?
- Is it due to:
  - Lack of financial **incentive** to distribution utility?
  - Issues with institutional capacity
    - Low **implementation capability** of distribution utility?
    - Poor oversight by regulatory institutions (RC, CEA, REC, District Committee etc) leading to poor **accountability** mechanisms?
  - Planning issues
    - Electricity shortage
    - High cost power
  - Poor lacking **political** power?

## What could be done?

- At two levels of Policy & Planning
  - Design level
  - Review and Monitoring level
- Few ideas
  - Special group to study issues of the poor,
  - Incentive mechanism for utility to serve the poor
  - Integrating electricity needs in the broader energy needs for livelihood …

## S5: Pro – Poor Measures – Role and Potential of Civil Society Organisations

### Pro-poor measures - role and potential of **Civil Society Organisations**

Navroz K Dubash
Centre for Policy Research

National Conference on 'Regulation and Electricity Service to the Poor', August 7-8, 2009, New Delhi

### Rationale
### Why are CSOs Important?

- Regulation is a form of governing
  - Imperfect information
  - Trade off between objectives
- Important for regulator to hear from all sides
- End consumers face a collective action problem
- Problem is much worse for poor consumers
- CSOs provide one (imperfect) solution

2

### Pros and Cons

- Pros
  - Often better informed of ground realities
  - Serve as a two-way conduit of information
  - Economies of scope: draw on linkages to other issues
- Cons
  - Who do they represent?
  - How are they accountable?
  - Risk of being captured for private interests

3

### Types of Engagement

- Grievance mechanisms
  - Make consumers aware of rights and processes
  - Organize for representation before regulator
- Regulatory operation
  - Feedback on particular programs
  - Information and research on impact on poor
  - Watchdog role on process and substance
- Innovation role
  - Stimulate regulatory attention to issues
  - Help develop innovative programs

4

### Issues for Discussion

- Laissez faire approach or proactive engagement with CSOs
  - Education and outreach?
- Formal mechanisms within NGOs for representation?
  - Elected "PIG"?
- Financial support for CSOs?
  - *Ex post* vs. *ex ante* financial support

5

## S7: Poor Related Regulation and Governance Issues in other Sectors

### Poor related regulation & governance issues in **Other Sectors**

Navroz K Dubash
Centre for Policy Research

National Conference on 'Regulation and Electricity Service to the Poor', August 7-8, 2009, New Delhi

### Common Roots?

- Presumption of credible techno-economic decision-making
- Concerns for investor credibility (privatization)
- Realities of Indian context
  - Intrusion of political agendas
  - Uncertain authority
  - Highly incomplete information
  - Weak capacity

2

### Commonalities and Differences

- Common concerns regarding the poor
  - Access
  - Price
  - Quality
- Differences
  - Importance of sector for livelihood (and therefore political visibility)
  - National versus state
- Competition commission as a special case
  - Logic: competition = choice = pro-consumer
  - Are there exceptions?

3

### Issues for Discussion

- Lessons to be learnt on process and procedure?
- Lessons to be learnt on structure
  - Background of regulators
  - Background of staff
  - Founding statute: Autonomy, authority, mandate for pro poor action
- Lessons to be learnt on creative pro-poor practice

4

## S8: Strengthening Governance for Pro – Poor Electricity Service Delivery and Way Forward

### Strengthening **Governance** for Pro-poor Electricity Service Delivery & **Way forward**

Navroz K Dubash
Centre for Policy Research

National Conference on 'Regulation and Electricity Service to the Poor', August 7-8, 2009, New Delhi

### Regulation as Governance

- Credible decision-making
  - Trade-offs
  - Information
- Scrutiny and accountability
- Democratization
  - Deliberative processes to discuss intractable or politically charged issues
  - Generation of creative ideas

2

# Panellist Presentations

# PANELLIST PRESENTATIONS

## S2: Role and Potential of Utility for Pro – Poor Measures

### Role and potential of utility for pro-poor measures

National Conference on Regulation and Electricity Service to the Poor on 6-7, August 2009.( Convened by PRAYAS, Pune)

*Dhirendra Kumar Roy,*
*Former Chairman*
*Orissa Electricity Regulatory Commission*

### The Challenge

- The poorest of the poor who make up the majority of people who lack access to modern energy do not stand to benefit from reforms targeted primarily at financial viability, economy and efficiency of utility and at customers who are willing to pay for initial connection and the regulated tariff.
- The poor consumers individually lack knowledge, power and lobby to obtain the electricity supply services

### The problem of access for poor

- Electricity network in India was not designed for universal access and hence large areas do not have infrastructure for distribution of electricity
- Networks are costly to build and hence not viable in areas with low density of people
- Investment in non-grid technology are quite lumpy and takes many years to be recovered

### Problem of Affordability

- Lack of ability to pay for initial connection and for cost of supply
- Lack of credit facility for initial connection expenses and electrical appliances
- Absence of targeted subsidy

### Problem of Quality

- The demand characteristics of low income energy use are not taken into account for planning of supply.
- The poor consumers are not able to get their voice heard and not in a position to avail of opportunities permitted in law.

### Participation

- Lack of awareness and knowledge about the electricity, about supply system and about their rights and duties.
- Poor have neither time nor means or scope for being involved in the participatory process available in regulatory regime.

## Posers for Utility

- Has the utility arranged to obtain adequate quantity of energy from the grid and also for non grid supply in areas not served by Grid
- Is the Utility equipped to supply electricity on demand at reasonable cost
- Has the Utility taken steps with regard to duration, voltage stability and safety of supply

## Governance issues for utility

- Professionalised management
- Infusion of capital
- Customer centric approach
- Co-ordination with Government agencies
- Extent and quality of support from Govt.
- Integrity of staff

## Strategy for Supply in Rural Areas

- Rural Energy Corporations
- Rural Electricity Cooperatives
- Village Committees
- Franchise to Private Companies, Panchayat Raj institutions and Self-help groups
- Decentralised generation and supply through stand alone mini hydro, wind power or solar photovaltic system in remote areas

## Experience of other countries

- In China commercial market based approach is combined with solution for non electrified areas through PV systems along with wind farms and small water farm
- In Bangladesh grid supply through REC and PBS system supplemented by off grid decentralized distribution under Remote Area Private Sector Project
- Srilanka and Nepal have used off-grid centralized supply based on micro-hydro mini grid system
- In Mexico,the central utility as well as village co-operatives provide supply through diesel generators.

## Concluding Remarks

- Meeting the needs of sustainable energy for poor means finding institutional innovations and technological solutions
- Distribution utilities must go beyond grid supply to off grid and hybrid systems.
- Supply and distribution system need to be custom designed to suit the topographical, economic, political and social needs.

## Thank You

## S3: Pro – Poor Measures – Role and Potential of Regulation

**PRO-POOR MEASURES –ROLE AND POTENTIAL OF REGULATION**

7th Aug., 2009
Presented by Sh. K. Venugopal
Member, DERC

India Habitat Centre,
Lodhi Road, New Delhi.
-1-

- Continuity of supply – better comfort now as load shedding down.
- Quality of supply – fewer gadget damages suffered due to Regulated Voltage.
- Tariffs : Reasonable due to continuous and substantial AT&C loss reduction secured over the years of reform and close prudency checks.

  ATC Losses (Average) in 2002 - 53%
  ATC Losses (Average) in 2009 - Below 20%

- Multiplicity of Grievances resolution mechanism adds to consumer confidence.

-2-

**Govt. of NCT of Delhi hand held reform process by supporting transition at critical stages:**

Following Arms length approach

Administering subsidy in copy book manner. 1 Re/unit for consumption below 200/150 units per month in peak/non-peak months – Facilitated metering of these consumers.

GoNCTD subsidy support limited to Rs. 200 Cr./annum.

Taking upon itself the responsibility of providing third party grievances redressal/meter testing at low cost.

Publicising Performance Standard Regulations through the Bhagidari medium among RWAs. – capacity building.

GoNCTD waived off past dues of consumers amount over Rs. 2700 Cr.

Transition loan support of Rs. 3452 Cr. Converted into Equity without Return.

-3-

**Benefits to masses:**

Savings on alternate fuel/standby generation due to continuous supply.

Affording cheapest source of energy for the longest duration.

Computerization and modernization has helped consumers secure higher satisfaction with Metering and Billing – CSS: 2009 substantiates.

-4-

Performance Standards – a tool for securing continuous improvement in Quality of Supply through guaranteed SoP and Quantity of Supply through overall SoP.

Detailed examination of capital costs by Commission.

Organizing third party testing of meters in face of public perception about fast running meters.

-5-

- Compensation for default in observance of SoP – advantage consumers.
- RoCE and Supply Margin – Sliding scale incentive mechanism for providing more continuous supply.
- Contingency fund – consumer's cushion against future tariff shock.
- Financially viable sector, 100% metering, 100% collection efficiency – a win-win proposition for all, particularly the economically weaker sections of the Society, who are getting by far the most continuous and quality supply at reasonable tariffs which arguably are getting the lowest in the country.

-6-

- Domestic consumers in JJ Colonies, carrying out Small business like Tea Shop, Tailor Shop etc. being charged at domestic rates.
- Small dairy farms converted from Commercial category to Domestic.
- Regulations and Reforms have resulted in Savings in excess of Rs. 1500 Cr./annum, which is available for use in Social Sectors. would have otherwise precipitated a tariff hike of about 30% .

-7-

*THANK*

*YOU*

-8-

## S4: Pro-poor measures - role and potential of Policy & Planning

### Power Sector Policies and Service to the Poor

**R.V. SHAHI**

As we know, electricity sector, prior to the Electricity Act 2003, was governed and managed through, and on the basis of, two important legislations viz. Electricity Act 1910 and Electricity Supply Act 1946. As per the second Act, development of electricity sector was anticipated through State Electricity Boards. Though the Act did not provide any specific treatment for the poor, it is well known that political considerations prevailed through several decades, and it is these considerations which also addressed the issue of subsidy etc. As a result, the sector was never allowed to develop and grow on a commercial line and provide its service in a sustainable manner. In most cases, therefore, neither the poor got served well nor were those customers who had the ability to pay, and could pay, were properly serviced. Chaotic conditions created over a period of more than fifty years led to the realisation of the need for a radical restructuring of this sector. This recognition led to the enactment of Electricity Act 2003 and a number of accompanying statutory and other policies.

Electricity Act 2003 specifically provides for the much needed dispensation to solve the problem of power for the poor. Section (4) of the Act provides "The Central Government shall, after consultation with the State Governments, prepare and notify a national policy, permitting stand alone systems (including those based on renewable sources of energy and non-conventional sources of energy) for rural areas." Section (5) further states that "The Central Government shall also formulate a national policy, in consultation with the State Governments and the State Commissions, for rural electrification and for bulk purchase of power and management of local distribution in rural areas through Panchayat Institutions, user's associations, co-operative societies, non-government organisations or franchisees". Section (6) has made it obligatory for the appropriate Governments for supply of electricity in rural areas.

Liberalisation of the power sector through Electricity Act 2003 meant a number of reforms and restructuring deliverables including de-licensing of power generation, open access on transmission systems, open access on distribution networks, multiple licensees in the same area of supply, empowered regulatory institutions, subsidised supply of electricity only on payment by Government, re-organisation of Electricity Boards etc. While transmission, distribution and trading have been prescribed to be licensed activities, in order to encourage quicker power generation and distribution in rural areas, the Act specifically provides that power generation and distribution both will be de-licensed in rural areas. The proviso of Section (14) says "provided also that where a person intends to generate and distribute electricity in a rural area to be notified by the State Governments, such person shall not require any license for generation and distribution of electricity ……."

The National Electricity Policy notified in January 2005 not only reinforced these legal provisions, but also extensively elaborated what needs to be done for rural electricity distribution. This Policy puts at the top "rural electrification" among a dozen other issues which the Policy seeks to address (refer Para 4.0 – Issues to be Addressed). In Para 5.1.1 the Policy recognises that about 56% of rural households have not yet been electrified even though many of these households are willing to pay for electricity. Determined efforts should be made to ensure that the task for rural electrification for securing electricity access to all households and also ensuring that electricity reaches poor and marginal sections of the society at reasonable rates is completed within next five years.

Para 5.1.2 of the NEP provides that reliable rural electrification system will aim at creation of (a) Rural Electrification Distribution Backbone (REDB), (b) from REDB a feeder to distribution transformers in every village settlement, (c) household electrification, (d) wherever grid connectivity is not feasible, Decentralised Distributed Generation together with local distribution network, and (e) development of infrastructure to cater to the needs of agriculture and other economic activities. Para 5.1.3. Specifically requires household electrification in Dalit Basties, Tribal Areas and other weaker sections.

Particular care has been taken in the Policy for subsidised electricity supply for the poor. Para 5.5.2. of the NEP provides "a minimum level of support may be required to make the electricity affordable for consumers of very poor category. Consumers below poverty line who consume below a specified level, say 30 Units per month, may receive special support in terms of tariff which are cross-subsidised. Tariffs for such designated consumers will be atleast 50% of the average (overall) cost of supply. This provision will be further re-examined after five years."

These important provisions have been further reinforced with greater details in the Rural Electrification Policy issued by the Ministry of Power in August 2006 in compliance with Sections (4 & 5) of the Electricity Act 2003. This Policy brings out, in detail, the mechanism of involvement of local community in rural electrification. Financial assistance in rural electrification projects has been stipulated. Section (7.1) provides that "for attainment of the objective of providing all households with access to electricity by year 2009, it is necessary to seek least cost options after taking into account full life cycle costs and explicit as well as implicit subsidies in different delivery options and mechanisms."

A very important provision in this Policy obliges the State Governments for enabling Decentralised Distributed Generation in rural area. Para 8.8 stipulates "Special Enabling Dispensation would be put in place for stand alone systems of upto 1 MW which are based on cost effective proven technology and use locally available resource such as bio-mass. These projects would have automatic approval for land use change for area as per norms, pollution clearance if technology is proven, safety clearances on the basis of certification conveyed."

Thus, it may be seen that the Electricity Act, the National Electricity Policy and the Rural Electrification Policy, have not only duly recognised the need for special dispensation in the matter of electricity supply in rural areas specially for the poor, but specific line of actions have been suggested. If implemented with proper planning and committed execution, these provisions have the potential for fetching far reaching positive outcomes. Central Government, State Governments and Regulators – each one of them has definite role. So far as the Central Government is concerned, it formulated and notified a very powerful Scheme, Rajeev Gandhi Grameen Vidyutikaran Yojna which provides as much as 90% of the project cost as grant funding, and even the balance 10% is funded by way of loan to the State Government by Rural Electrification Corporation. On the Decentralised Distributed Generation upto 1 MW, a lot is required to be done, and can be done, by the State Governments and the State Regulators. This approach, if implemented, can transform the shape of rural electricity supply in India. The RGGVY also funds fully the electricity connectivity for all the BPL households. Based on experience, the Central Government would need to provide adequate and timely fund, and REC would need to closely monitor the outcomes.

The single most important issue for rural India, where most of poor people live, is the issue of availability of power itself. The problem of lack of connectivity (56% of rural households not having electricity connectivity as per Census 2000) is progressively getting mitigated under the

Rajeev Gandhi Grameen Vidyutikaran Yojna. But, a bigger issue that may emerge is that after we have created the rural electricity distribution infrastructure good enough to provide household electrification, would there be power to supply. Obviously, in a situation of extreme shortage, urban India will continue to receive priority treatment, and power will be supplied to rural India only when there is balance after meeting the requirement of towns and cities. Normally, this should not happen, but in practice this is what happens and will happen. Therefore, we need to find alternative solutions. For the isolated villages and hamlets, decentralised generation and supply arrangements have been attempted over the years by the Ministry of Non-Conventional Energy Sources and parallel Departments in the State Governments. Technologies adopted generally have been PV Systems and in some cases Bio-mass and Micro- hydel. In both these cases, the applications have been rather limited. In the case of PV, though the lighting requirement in these far flung areas has been met except in rainy seasons, in any case, this cannot be a satisfactory arrangement for economic development activities. There is an urgent need for going in a big way on various forms of Decentralised Distributed Generation. This alone can meet the need of rural India not only for lighting but for the development of rural economy as a whole.

Various Decentralised Distributed Generation Technologies do not appear cost effective if we attempt to compare cost of power generation with other conventional systems. State Distribution Utilities, however, need to recognise the total cost concept which would include the cost starting from large power stations right upto the rural consumers, and should also take into account the losses in transmission and distribution systems. If this is properly accounted for there will be an element of support which will make the non-conventional distributed generation commercially acceptable. This approach will obviously require and orchestrated integration of inputs from various agencies and a commitment and belief that these systems alone can provide an effective answer to rural electricity supply problems.

In the Rajeev Gandhi Grameen Vidyutikaran Yojna, not only rural electricity distribution infrastructure has been planned and almost fully grant funded, but also the funding covers connectivity right upto households for families below poverty line (BPL). At one stage we were seriously considering, in the Ministry of Power and REC, whether this could be integrated with provision of CFL to these families within the funding already provided, so that the burden of excess electricity consumption is minimised. This approach needs to be pursued with required fine tuning.

Under the Electricity Act 2003, as already mentioned above, rural areas have been given special attention. State Governments were advised by the Ministry of Power and in almost all the cases, the rural areas have been notified for this purpose. The role of State Regulatory Commissions would be very crucial. Using the liberal provision of the Act, co-ordinating with the State distribution companies for estimating the savings on account of substantial reduction in the distribution loss, when decentralised generation facilities are set up, and declaring a price at which the development agencies could supply power, a comprehensive Scheme could be worked out suited to the specific needs of different rural clusters. The role of Regulator is relevant because distribution companies on their own would not be able to factor in the savings they would achieve. This has to form part of their annual revenue requirements. It is this saving which can support somewhat higher cost of power from new technologies in the distributed generation. In absence of this, this may remain a non-starter.

Revenue sustainability of rural electricity supply has always been a matter of concern. Technical losses due to the long LT Lines have inevitably been high. Coupled with these have also been the problems of metering, billing, bill collection in these scattered areas. Rajeev Gandhi Grameen

Vidyutikaran Yojna has an important requirement of putting in place Franchisees which will take care of both technical and commercial responsibilities in rural electricity supply. Whether it is grid connected power supply or supply through DDG route, the Scheme of Franchisees appears to be the best alternative. State Utilities as well as Regulatory Commissions have definite roles to make this happen.

Another important aspect which, no doubt, has been noticed but has not received due attention is the pattern of energy consumption in rural area. Government does support heavy subsidy on account of kerosene oil lamps and also use of kerosene in cooking by rural poor. But when it comes to subsidising, in a significant way, rural electricity through new and innovative methods which will replace consumption of kerosene oil, but which are definitely costlier, it becomes a big problem to decide. This mind set has to change. Once the present pattern of subsidy, huge distribution losses of distribution companies, long haul transmission loss and transmission cost are all duly integrated an accounted for, the economics of distributed generation would automatically fall in place.

NGO's have also not been active in this field. In the context of Franchisee Scheme, in the Rural Electrification Policy of the Ministry of Power, we provided that NGO's can also take up this role. In a few States, such as West Bengal and Uttarakhand we did get a few such groups interested, but considering the magnitude of this problem, the response from NGO's has been disproportionately low. Specific provision (Section 6) of the Electricity Act stipulates a role for NGO's in the matter of bulk purchase of power and management of local distribution in rural areas. This is one area which needs to be acted upon. Role of State Governments and Central Government may be by way of capacity building in this regard. Large NGO's of the country may themselves come forward and also help in creating new NGO's and guiding the existing NGO's. It is relevant to mention that even in U.S.A. the rural electricity is largely managed through co-operatives, an initiative which was started in thirties and continued to get strengthened through sixties. The support of the Government was substantial.

Our Prime Minister has been emphasising on an inclusive growth, and various initiatives of the Government, including Bharat Nirman, vindicate this approach. An 8 to 9% growth of economy will be meaningful only if its benefits percolates down and permeates through the entire cross-section of the society. Policies and Schemes in general are on these considerations. What is important is the proper implementation of these Schemes. It is here where the shoe pinches. The weak link is the governance systems, particularly in States which need these Schemes most. An awareness is visible now but the process to tone up the administration and improve governance is rather slow. Silver lining, however, is the public pressure and exposure by the media. This gives a great hope that things will change and will change faster for the better.

## S5: Pro-Poor Measures - Role and Potential of Civil Society Organisations

NATIONAL CONSULTATION ON ELECTRICITY FOR IMPROVED SERVICE DELIVERY IN RURAL AREAS

*Presented by*

*Mr.Gobardhan Pradhan*

Date :- 7th & 8th August 2009

Gram Vikas


### The beginning

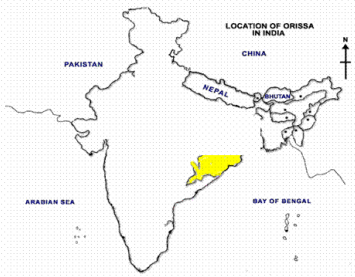
- A group from the Young Students Movement for Development, Chennai came to Orissa at the time of the cyclone in 1971
- After rehabilitation efforts for a year, the group worked in Cuttack district in improving livelihoods through technological applications and social organisation in agriculture
- Invited to Ganjam district by the administration and the milk union in 1976 to work with *adivasi* communities

### Initial years 1979-81

- Organizing a **tribal people's movement** across 60 villages in Kerandimals, Ganjam against moneylenders and liquor merchants
- Together with interventions in health, education, small savings and income generation

### Alternative Energy

- Biogas promotion in collaboration with the National Programme for Biogas Development
- Over 54,000 plants constructed from 83-93 – training over 6,000 masons and 600 barefoot supervisors/ technicians




Currently working with 60,000 families in 700 rural habitations across 22 districts

## Gram Vikas' mission

**To promote a process which is sustainable, socially inclusive and gender equitable, to enable critical masses of poor and marginalised rural people and their communities to achieve a dignified quality of life**

## Core Values

### Inclusion

- **All** take part – women, men and children of all sectors of society **Share** efforts, costs and benefits

### Cost Sharing

- **Community contribution** of Labour and materials
- Mobilize **social costs** from government and non-government agencies

## Social Equity

- **Poorer pay less** better off pay more

## Gender Equity

- **Women** and men have **equal** say

### Sustainability

Inbuilt mechanisms for financial and institutional sustainability

## Vision of Orissa Power Sector

- Quality and reliable power supply
- Affordable and reasonable price
- High level of consumer satisfaction
- Environment and friendly power generation

## Maladies shrouding the sector

- High level of AT and C loss
- Danger of power shortage
- Weak distribution system
- Lack of skill improvement
- Inefficient management practices
- Poor capacity building system
- Low motivation level of man power
- No addition to existing transmission capacity
- Lack of awareness among the consumers.

## *Gram Vikas Intervention and achievement*

- The first introductory-cum- sensitization workshop on electricity regulation for senior and middle level management staff of Gram Vikas was held at Head Quarters, Mohuda in Oct 07.
- 1000copies of booklets in Oriya (Title: Rights and responsibilities of a Consumer) have been published.
- Posters and leaflets on RGGVY and BGY have been published and distributed among the villagers.
- One thousand copies of an oriya booklet named " Aina, Aayoga O Abhijog Byabasta" have been published.
- Flex posters and leaflets (9000) on saving and safety tips have been prepared.

## Contd....

- A one-day workshop for elected representatives, opinion leaders and govt. officials and was organized in July 08, which was inaugurated by the Hon'ble minister, power, culture and tourism, Govt. of Odisha. Top officials from OERC also attended the workshop.
- Workshops have already been organized for the staff and community leaders of Dhenkanal, Ganjam, Keonjhar ,mayurbhanj ,Bargarh,Sonpur, Balangir,Mohana,Puri projects.
- A state level workshop was organized in June at CYSD, BBSR.

## Survey and its Findings...

A survey was conducted in 23 villages of 8 districts of Orissa.

**Major Findings:-**

- 34% of BPL have a connection
- 71% of APL have a connection
- 64% of the connected houses have a meter (individual or shared)
- Main uses of electricity was for lights and fans

## Problems and issues at Village level

**Power-cut**

→ At least once a week, for 30 min to 5 hours
→ Non-declared power cuts during peak summer
→ The use of kerosene lamp as an alternative leads to extra cost ≈ Rs.27 per HH

**Distribution transformer failure**

→ Time to get it repaired: 3 days to 1 month
→ Cost of the repair: from Rs.350 to 4000

## Problems and Issues at Consumer Level

- Varying cost of electricity connection, from Rs.200 – Rs.4800
- Varying cost of monthly bill
- Varying cost per unit (Average: Rs.3.0)
- Defective bill and faulty meter reading
- No quick redressal of grievances
- Average billing

## Achievements after regulatory intervention

- Replacement of defective meters with new ones on GV campus by the SOUTHCO.
- Replacement of burnt transformer by WESCO in Pradhanpallivillage of Sonapur Dist.
- Change in meter category from third phase to single phase ,in Jallaripentho village of Ganjam Dist. by SOUTHCO
- Revision of bill for Ramguda village of Ganjam Dist.
- A consumer interface sponsored by SOUTHCO

## S5: Pro-Poor Measures - Role and Potential of Civil Society Organisations

### Pro Poor Measures - Role of CSO's

by
Nandikesh S
**Citizen consumer and civic Action Group (CAG)**

### Status of Electricity Regulations in Tamil Nadu

- Awareness
- Implementation
- Monitoring
- Effectiveness / Impact

### Our Initiatives

**Publications**

- Access
- Meter
- Billing
- Distribution Standards & Grievance Redressal

### Our Initiatives

**State Meeting**

Provided platform for consumer groups to discuss issues with the regulator and the utility

**Community Meetings**

Reached out to 200 groups

- Human rights groups
- Women's SHGs
- Village leaders
- Consumer groups

### Our Initiatives

**Others…**

- Assisted in resolving consumer disputes with TNEB through:
  - CAG's consumer clinic
  - Provide support in taking grievances to the CGRFs and the Ombudsman
- Article in news paper and CAG news letters
- Empowering consumers with the knowledge and skills required to use the Right to Information Act, 2005 effectively in getting the information that they require

### Our Initiatives

**Survey on awareness level of TNEB officials**

- Very poor knowledge on the regulations
- Lack of clarity on various service charges
- 95% of middle and lower level staff are not aware of CGRF's

**Our Initiatives**

**Interventions made at various levels**

- Notifying interest on deposits
- Compensation for deficiency in service quality
- Grievance Redressal and functioning of CGRF
- Information printed on bills and meter cards

THANK YOU

## S5: Pro-Poor Measures - Role and Potential of Civil Society Organisations

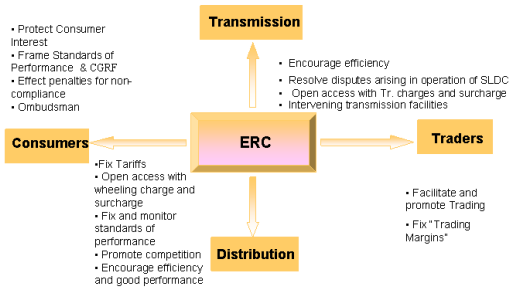
**Regulation**

**and**

**Electricity Service to the Poor**

**Surinder Pal,** IA&AS (Retd.)
*former* **Member,APERC**

### Role of Electricity Regulatory Commission

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### Regulation and the Consumers

- Consumer is the key stakeholder in the entire value chain.
- Different consumer(s) have different needs:
  - Voltage of consumption is different
  - Consumption pattern is different
  - The Poor have altogether different concerns
- Need to regulate the working of the licensees:
  - Light-handed regulation but tough Standards of Performance ?
  - Trade-off in initial years but strict Performance Standards later ?
- Licensees to formulate perspective plans for better performance and consumer satisfaction.

3

### Common Interests of Consumers

- Availability
- Accessibility
- Un-interrupted Supply
- Affordable
- Quality
- Safety
- Good Service

4

## Consumer Category-Specific Problems - Industrial & Commercial consumers

- Need Continuous availability & Cost-reduction

**Steps taken/initiated**

- Open Access introduced (Electricity Act, 2003)
- Cross-subsidy to be reduced substantially (Act + Tariff Policy)
- Generation de-licensed and Captive generation freed from liability to pay cross-subsidy surcharge
- Group-captives to be treated on par with Captive Generators

**Proper implementation should take care of the problems.**

5

## Consumer Category-Specific Problems
### Agriculture/Rural Consumers

**•Need reliable Supply for at least 9-Hr during agricultural season**
**•Need 24-Hr supply for Domestic & for (largely) Cottage Industries**

**What can be done**

**Regulation/Regulator-related Steps**

**Roster of supply across the State for optimisation**
**•Segregation of feeders, exclusively for Agriculture and Rural Domestic, etc.**

**Governance/ Government-related steps**

**•Easy availability of & subsidy for efficient pump sets**
**• Timely payment of subsidy to Distribution Licensees**
**•Pre-determination of subsidised consumers**
_ So that the subsidy is not diverted to those not entitled to it.

**Agricultural consumers are one of the main stakeholders in the entire value chain. Entire data is managed based on this category of consumers**

6

## Electricity – A Merit Good

**Electricity is as much a "merit good" as**

- Food grains
- Fuel (kerosene, Diesel, LPG)
- Fertilizers

Electricity supply to the poor too deserves the same consideration and concession as extended, *inter alia*, to the above-mentioned items.

And it needs to be made available to all, as recognised by National Electricity Plan.

7

## Un-electrified Areas- and the Poor

- RGGVY to be implemented by a single agency; monitoring agency to have representation from the Regulatory Commissions
- Minimum targets for electrification a must
- Electrification of BPL household clusters ought to be a pre-requisite
- Subsidy/ additional subsidy for specific number of electricity units to the poor households, based on per child attending school

**(Education Enlightens ; Electricity would Educate)**

8

## Regulation & the Poor

- The Electricity Act, 2003, does not allow the Commissions to fix any preferential tariff for the poor (capacity to pay)
- The Act & Tariff Policy mandate the Commissions to bring down the cross-subsidies to the minimum
- This renders the Poor consumer dependent mainly on Govt subsidy

**But the Commissions are not too helpless**

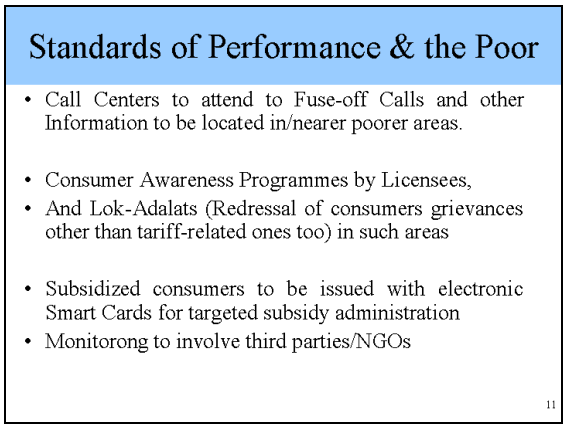
- The Act and the Policy place **no bar on quality of supply**
- Some Regulators have mandated that feeders catering mainly to industrial loads should be the last ones to be picked up for load-shedding (or "load-relief"). Feeders catering mainly to the poor can be accorded the same treatment.

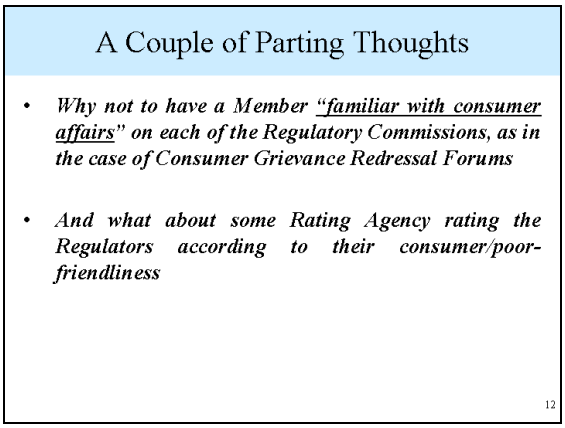
9

## Regulation & the Poor

- **No-cut Zones:** The poorer areas of a city/town (like JJ Clusters) should be declared no-cut zones, especially for the evening peak hours, their consumption being so little to significantly affect overall availability
- This should promote education & perhaps fewer school dropouts, making Right to Education more meaningful.
- Should also allow the inhabitants to spend more daylight-hours on income-generating activities
- Targets for such coverage

10




## S7: Poor Related Regulation and Governance Issues in Other Sectors

### The Role of Competition Commission of India

**(Geeta Gouri,** Member – Competition Commission of India)

- Role of Competition Act, 2002 and Competition Commission of India (CCI) in 'poor related regulation' gains significance in a context where competition is generally associated merely with the organized sector largely industry and services. And the gains of competition are with reference to resource allocation in these sectors, raising concerns on the centrality of competition and poor related regulation.
- In our opinion competition benefits the poor consumers or rather the lack of competition affects the poor much more than the rich. However having made this broad statement the interrelationship between competition and the benefits to the poor persuades a detailed examination. Competition and efficiency dimension operate at different levels which call for a 'drilling down' exercise.
- Competition ensures static and dynamic efficiencies and can be observed broadly under three levels of economic activity
  - Level-1: benefits of competition at the macro level of an open economy where competition ensures static and dynamic efficiencies.
  - Level-2: benefits of competition at the sector level. An area of immediate priority for the poor is the efficiencies from provision of markets and access to markets. For example, efficient transport systems, availability of power, telecommunications systems, warehousing facilities and agricultural distribution systems create markets but their access depends on several other conditions which include price, quality and quantity.
  - Level 3: competition to improve delivery mechanisms especially at the unit or household level

**Competition Act, 2003**

- There are four elements to the Competition Act:
  a. Section 3 : Prohibiting anti-competitive agreements - Agreements that cause or are likely to cause appreciable adverse effects on competition (AAEC)within India are anti-competitive agreements
  b. Section 4:Prohibiting abuse of dominant position –dominance defined in terms of position of strength in a relevant market which enables it to:
     - Operate independently of the competitive force prevailing in the relevant market
     - Affect its competitors or consumers or the relevant market in its favour
  c. Section 5 & 6: Regulating combinations – which cause or likely to cause AAEC on competition
  d. The fourth element is competition advocacy.

- The CCI is not a sector specific regulator but cuts across all sectors even if there are sector regulators as the Competition Act, includes within its ambit public sector enterprises and government departments.

A few areas for discussion

The selection has been done keeping in mind the immediate scope for involvement by the participants at this workshop. Accordingly Level 2 and level 3 have been identified. This however does not leave out Level 1 as there are inter-linkages between the three levels.

- Level 2: Development of Rural Markets
  1. Barriers to interstate trade and commerce are innumerable. For example, one study (Chand, Srinivasan and Jha) estimates that with the removal of restrictions on interstate trade in wheat and rice the increase in consumer surplus would be Rs.2556 crs in the case of rice and Rs.1306 crs in the case of wheat at 2004 prices. Barriers to interstate trade are:
     a. Article 301 and Article 304 of the Constitution. Article 301 is the privilege of state legislature to restrict freedom of trade, commerce and intercourse between states and within the state. Article 304 provides for imposition of taxes by a state on interstate goods
     b. Non-tariff barriers such as detention of outside state vehicles and the pan caking impact of octroi; excise duties
  2. Lagged infrastructure development especially of intra-state highways and in the availability of power. In the case of roads and highways the expanse and quality add to transaction costs.
  3. Limited development of warehousing facilities

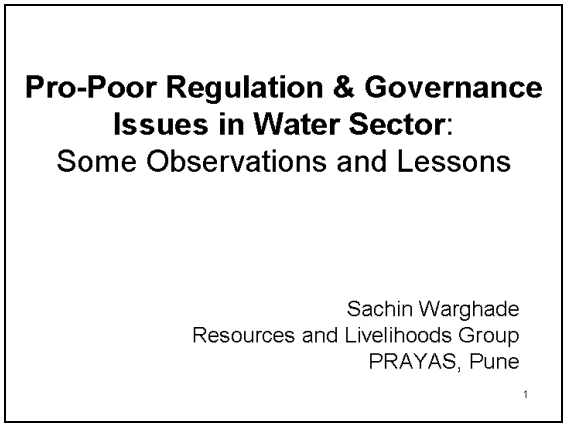
  Discussion from the aspect of market creation:
  - Public procurement and competitive bidding process - infrastructure projects such as road transport, electricity generation,
  - Involvement of PPI for provision of multiple warehousing facilities
  - Alternative mechanisms of intermediation to existing traders and mandi's

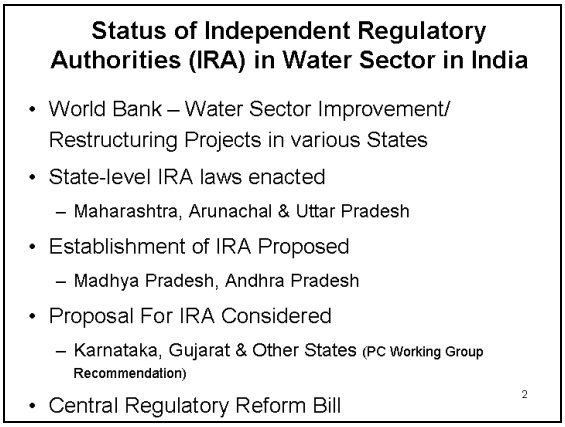
- Level 3: Delivery Mechanism at the unit or household level
  1. Very often the poor suffer from monopolies of local delivery systems for example, the linesman in giving connections, bill payment arrears ; suggestions are usually in terms of involving the people – can competition be brought here?
  2. One observation on the scope of competition in delivery mechanism is to develop alternate mechanism
     a. Cooperatives under the Act provide for only one cooperative in a region as the current debate dairy cooperatives in Andhra are currently engaged – multiple cooperatives could be examined
     b. The neglect of rural franchising schemes which under the National Rural Electricity Policy permits distribution franchisees with sourcing from sources other than utilities with power taken on a competitive bidding basis, perhaps even from the power exchanges
     c. Each panchayat can be a distribution company and every household be entitled to a share thereby creating stakeholder involvement

**Conclusions**

The intent of the note is to initiate dialogue and discussion where Competition Commission of India can examine.

**S7: Poor Related Regulation & Governance Issues In Other Sectors**



## Functioning of IRAs in Water Sector

- Organizational Set-up
  - Chairman (Ex-Chief Secretary, State Government)
  - Member Technical
  - Member Economy
- Function: To Determine and Regulate
  - water entitlements, water use, water tariff, project approvals, state water plan, service operator licenses
- Scope of Regulation
  - Bulk (surface) water supply to agriculture, domestic and industrial use
  - Groundwater (unclear mandate)
  - Attempts to bring retail water supply under regulatory purview

3

## Issues of the Poor in Water Sector Regulation

- Entitlement Regime
  - exclusion of landless
  - continuation & strengthening of existing inequities (land-based, urban-industrial)
  - possibility of new inequities (redistribution through market mechanisms)
- New Tariff Regime
  - Legalizing full-cost-recovery without adequate legal protection to poor
  - Gradual pressure of reducing subsidies (cross-subsidies and govt. subsidies)

4

## Preliminary Observations & Lessons from Comparison of Water & Electricity IRAs

5

## Can We Compare Electricity and Water IRAs ?

- Limitations in direct comparison – fundamental difference in nature of resource
- Argued that we cannot and should not replicate IRA models from other sectors without critical analysis
- Nevertheless, the current IRA in water is based on the electricity IRA framework
- Hence, lessons still need to be drawn from comparison

6

Observations & Lessons:

## Issue of De-politicization

- De-politicization of sector governance through IRA – a larger concern in water
- Dominance of technical-economic experts in IRA may aggravate the concern
- Hence, need to ensure 'Public-Control on Governance' through TAPing of water regulation - a necessary but not sufficient condition
- TAP-related provisions in Water IRA Laws are weaker in comparison to E-Act
  - E.g. Provisions of E-Act related to Previous Publication, Mandatory Consultations, Consumer Representative, Ensuring Transparency, Supply Electricity to All and others not considered in Water IRA Laws (Source: PRAYAS Submission to MWRRA)

7

Observations & Lessons:

## Focus on Utility Regulation OR Resource Regulation ?

- E-Act: Relatively stronger in Utility Regulation
- Ambiguity in Water IR Laws: But seem to take-up Resource Regulation Focus (through determining & monitoring entitlements, use-criteria)
- Weaknesses in provisions for regulation of utilities (e.g. Ignorance of cost-regulation in tariff determination process)
- Resource regulation may have positive impacts if operationalized within an 'equitable water distribution' framework

8

Observations & Lessons:

## Focus on Resource Allocation OR Tariff Determination

- Water IRA Laws: Along with tariff issues, the focus of water IRA is on distribution of water entitlements i.e. resource allocation).
- Important for bringing in forefront the issues of inequitable distribution of benefits

9

Observations & Lessons:

## Techno-Economic Rationality OR Social Rationality

- Water IR Laws includes direct references to social considerations like 'equity', 'just' and 'sustainable'
- But the operational provisions are weak in giving teeth to social considerations in true sense of meaning
- Over-detailing, over-specification in some critical areas - leaving less space for raising political demands in future (e.g. equitable water entitlements)

10

Observations & Lessons:

## Direct OR Backdoor Privatization

- E-Act: Direct provisions for privatization of utilities
- Water IRA laws: Ambiguous, non-vocal and provides for backdoor privatization
- Backdoor Privatization: through market-linked entitlement system or through 'licensing system' for utilities
- Need for critical analysis of feasibility of privatization, especially, in water sector (e.g. Petition to MWRRA by PRAYAS)
- In absence of active CSO interventions backdoor-privatization may be used for 'unregulated privatization' efforts (e.g. Privatization of Nira Deoghar Irrigation Project in Maharashtra)

11

Observations & Lessons:

## Weak OR Strong Foundations for Regulatory Governance

- Compared to electricity technical & managerial foundations for water regulations are very weak
- E.g. no effective water measurement systems, no adequate cost-accounting systems
- This makes IRA standing on a weak footing and open for 'regulatory capture'

12

## Overall Observations

- Need to learn from Electricity for process aspects & enhancing TAP (and not using the electricity experience to avoid TAP)
- Need to think beyond the 'expert-oriented' organizational structure of IR
- Bringing social rationality issues such as 'equity' within the legal framework and within the ambit of IRA can be useful for electricity
- But over-detailing & over-specification in IRA laws may be avoided – to keep open the avenues of raising political demand
- Need to question feasibility of privatization and at the same time stop 'unregulated' privatization initiative
- Bring to center stage the 'rights perspective'

13

Thank you

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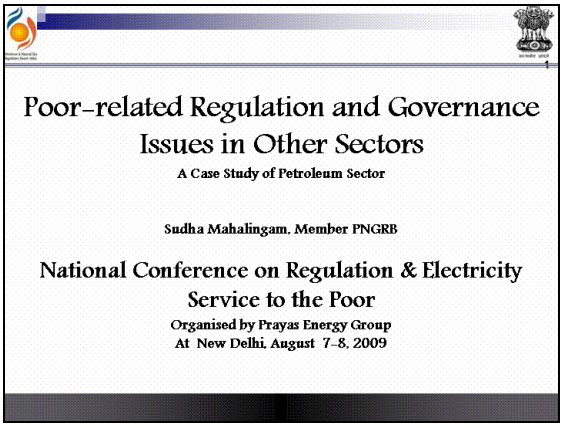
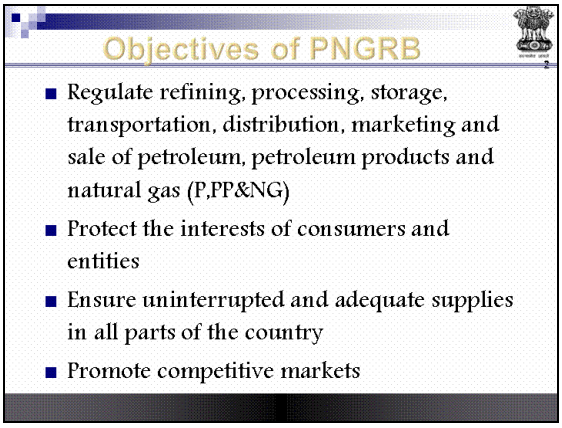
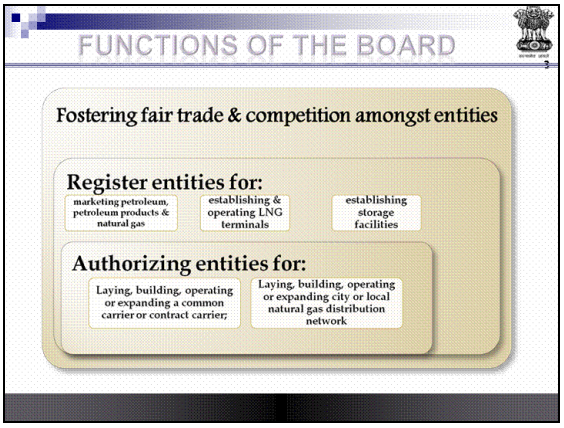
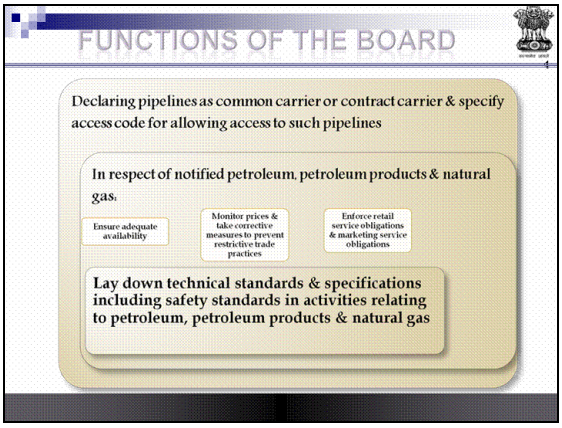
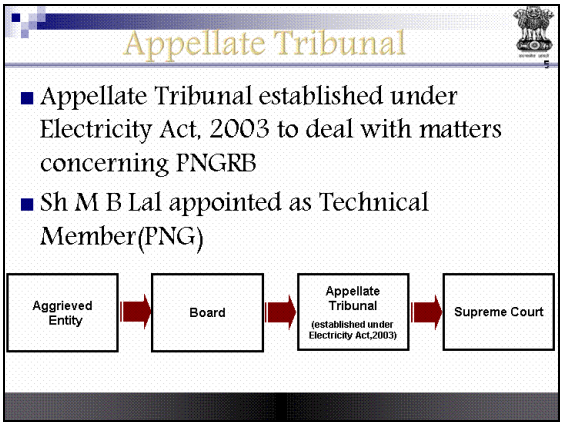
## S7: Poor – Related Regulation and Governance Issues in Other Sectors

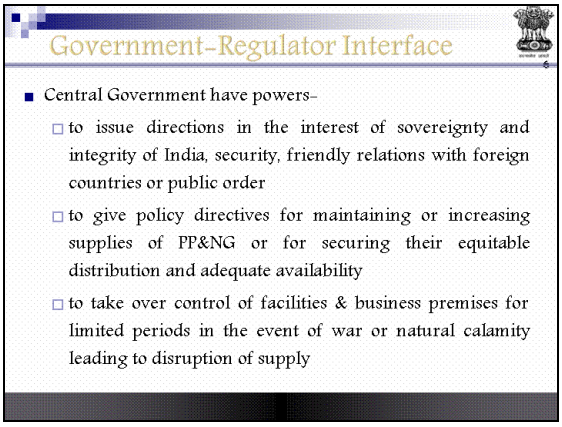


## Offences and Punishments

| | |
|---|---|
| Contravention of directions of PNGRB | Fine upto Rs.25 crore and additional fine upto Rs.10 lakh per day for continuing contravention |
| Non compliance of orders of Appellate Tribunal | Fine upto Rs.1 crore for first offence, Rs.2 crore for second or subsequent offence and Rs.20 lakh per day for continuing contravention |
| Unauthorised activities and willful damages to common or contract carrier | Imprisonment upto 3 years and/or fine upto Rs.25 crore and Rs.10 lakh per day for continuing contravention |

## Status of various Regulations

| S No. | Regulation | Notified on |
|---|---|---|
| 1 | Levy of Fee and Other Charges | 26-11-2007 |
| 2 | Meetings of the Board | 26-11-2007 |
| 3 | Appointment of Consultants | 30-11-2007 |
| 4 | Conduct of Business, receiving and investigation of complaints | 30-11-2007 |
| 5 | Authorizing entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution networks | 19-03-2008 |
| 6 | Determination of Network Tariff for City or Local Natural Gas Distribution Network and Compression Charges for CNG | 19-03-2008 |
| 7 | Exclusivity for City or Local Natural Gas Distribution Networks | 19-03-2008 |

## Status of various Regulations

| S No. | Regulation | Notified on |
|---|---|---|
| 8 | Authorizing entities to Lay, Build, Operate or Expand NG Pipelines | 06-05-2008 |
| 9 | Affiliate Code of Conduct for Entities Engaged in Marketing of NG and Laying, Building, Operating or Expanding NGPL | 17-07-2008 |
| 10 | Access Code for Common Carrier or Contract Carrier NG Pipelines | 17-07-2008 |
| 11 | Tech. Std and Specifications including Safety Sts for CGD Network | 27-08-2008 |
| 13 | Determination of NGPL Tariff | 20-11-2008 |

## Status of various Regulations

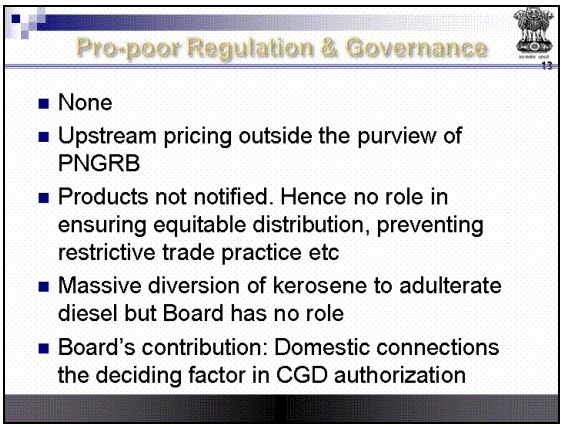
| S No. | Regulation | Notified on |
|---|---|---|
| 14 | Procedure for Standards Development | Notified in June 2009 |
| 15 | Declaring pipeline as Common Carrier or Contract Carrier | -do- |
| 1 | Emergency Response and Disaster Management | Public Consultation completed. |
| 2 | Technical Standards and Specifications including Safety Standards for NG Pipelines | -do- |
| 3 | Authorizing entities to Lay, Build, Operate or Expand Product Pipelines | -do- |
| 4 | Registering entities for setting up LNG terminals | -do- |

## Status of various Regulations

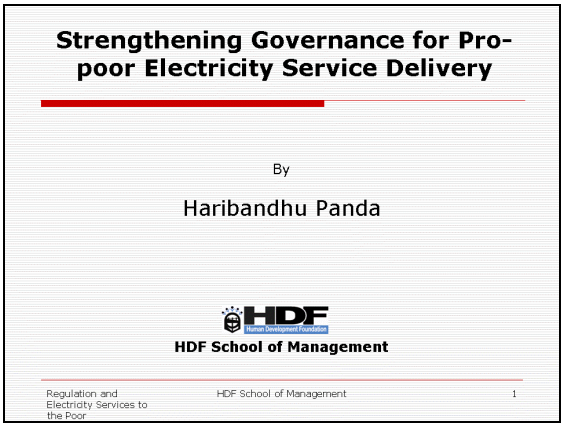
| S No. | Regulation | Notified on |
|---|---|---|
| 5 | Determination of capacity for pipelines | Under finalisation |
| 6 | Access Code for Petroleum Product pipelines | Under Preparation |
| 7 | Quality of Service for CGD Networks | Under Preparation |
| 8 | Determination of Tariff for Petroleum Product pipelines | Under Public Consultation |

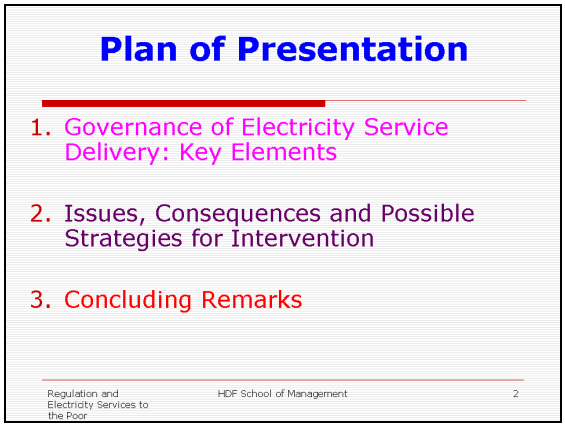
## Authorisations issued so far

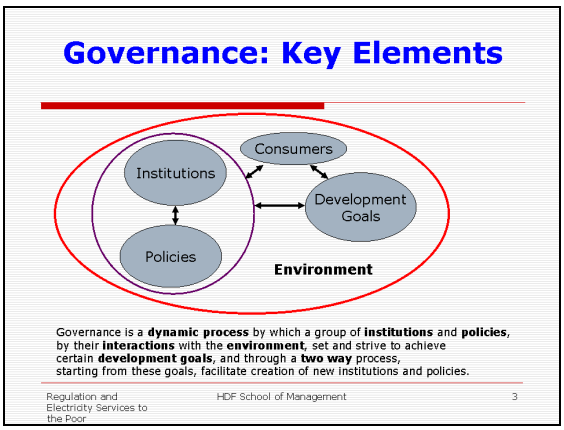
- Section 16 has not been notified.
- No entity shall-
- (a) lay, build, operate or expand any pipeline as a common carrier or contract carrier,
- (b) lay, build, operate or expand any city or local natural gas distribution network, without obtaining authorisation under this Act : Provided that an entity :-
- (i) laying, building, operating or expanding any pipeline as common carrier or contract carrier; or
- (ii) laying, building, operating or expanding any city or local natural gas distribution network, immediately before the appointed day ***shall be deemed to have such authorisation*** subject to the provisions of this Chapter, but any change in the purpose or usage shall require separate authorisation granted by the Board.

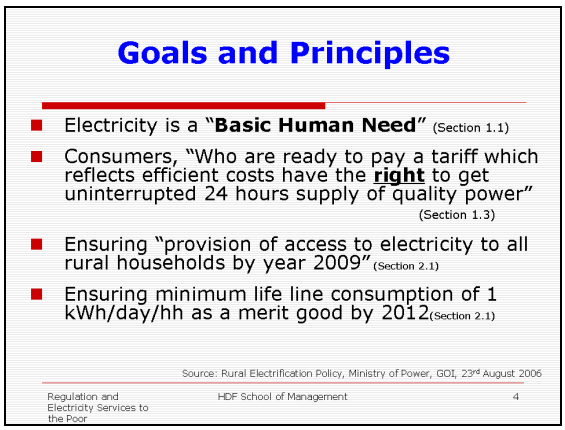



## S8: Strengthening Governance for pro – Poor Electricity Service Delivery



## Issues Related to Goal

- Goals not supported by strategy
  - Perpetual demand-supply gap: Rural customers in the tail end of the hierarchy of customers
  - No pro-active system to improve paying capacity: empowerment and sustainability are not key factors
  - No mechanism to enforce 'right': Poor service to rural customers 'inevitable'
- Can we relook our focus?
  - 'Energy for all' vs 'Electricity for all'
  - 'Income generation plus quality of life enhancement' vs 'Only quality of life enhancement'



## Issues Related to Environment

- Political commitment: rhetoric vs reality
  - "6-8 hours of electricity" for rural area vs 'reliable power'
  - Demand side management through interruption
  - 'Financially viable electricity' vs 'Electricity for all'
- Dominant social perception
  - duty of state to provide power
  - patronage of socio-economically powerful class in pilferage of electricity
  - Environmental concern in line with "business as usual"

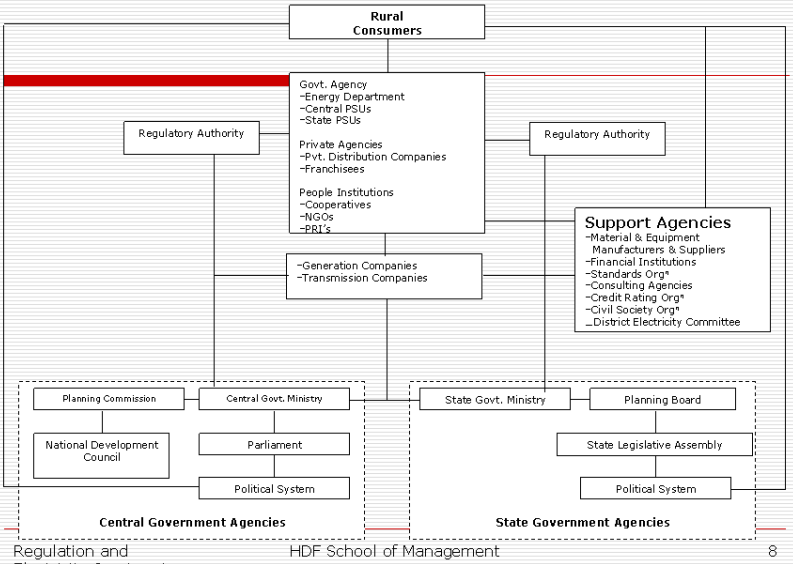


## Issues Related to Environment

- Lack of convergence in development interventions
  - Competitive populism
- Disempowering rural energy system
  - Grid based centralised private system approach: dominant
  - Inadequate incentive and demonstration for decentralised and integrated system



## Institutional Web



## Issues Related to Institutions

- **General**
  - Lack of coordination
  - Inadequate data for planning and implementation
  - Ineffective mechanism for organising poor consumers and incorporating their requirements in the regulatory and planning process



## Issues Related to Institutions

- **OERC**
  - Mandate to reduce cross-subsidy
  - Has little time and space for rural electricity
- **Energy Department of GoO**
  - Under-staffed
- **DISCOM**
  - Does not yield much revenue
  - Inadequate staff
  - "Why to invite burden?" attitude

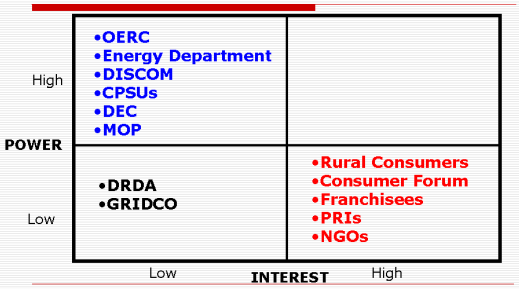


## Issues Related to Institutions

- CPSUs
  - Just another job
  - No system to make them accountable for timely completion and adopt appropriate design
- Franchisees
  - Few in number, lacks capacity and experience
  - Lacks enabling environment
- PRIs
  - Advisory role only
- DEC
  - Last priority in Collector's agenda
  - Executive Engineer of DISCOM is overburdened



## Issues Related to Institutions: Power vs Interest






## Issues Related to Acts and Policies

- Rural Electrification Policy GOI (23 August 2006)
  - By Feb 2007 states were to develop Rural Electricity Plan (Section 3.4)
    - Orissa had it in June 2009
  - SERC would ensure that electricity access to HH is complied with by 2009 (Section 3.4)
    - 63% of villages in Orissa have electricity by 31st March 2009



## Issues Related to Acts and Policies

- Rural Electrification Policy GOI (23 August 2006)
  - Ineffective coordination mechanism by Ministry of Power to realise the objectives of the Policy (Section 4.3)
  - District level committee hardly takes up coordination and review of the extension of electrification, review quality of power supply and consumer satisfaction, and promote energy efficiency in the district (Section 6.3)
  - RGGVY requires deployment of franchisees for the management of rural distribution in projects financed by it, otherwise capital subsidy could be converted into interest bearing loans (Section 7.3)

## Issues Related to Acts and Policies

- Rural Electrification Policy GOI (23 August 2006)
  - Enabling dispensation for Stand Alone Systems (Section 8.8)
    - Not comprehensive
  - PRIs will oversee the service delivery (Section 9.5)
    - Limited role in reality
  - Time bound program of capacity building of franchisees, consumer associations and PRIs (Section 9.12)
    - Not clearly articulated by the players



## Issues Related to Acts and Policies

- Rural Electrification Plan of GoO (6 June 2009)
  - Compulsory deployment of franchisee for revenue sustainability
  - Capacity building of franchisee by nodal agency in consultation with REC
  - PRIs will oversee the service delivery
  - State will evolve an "affordable tariff" structure for BPL HHs
  - Ensure "minimum daily supply of power for 6-8 hours" in rural area



## Consequences of Present System of Rural Electricity Governance

- Goals of 'electricity for all' by 2009 and 2012 cannot be met because
  - Implementing agencies are not accountable for time overrun
    - No penalty on PSUs
    - Not accountable to state governments
  - Weak coordination mechanism
    - Between MNCE and Power Ministry,
    - Between state government, REC, PSUs and DISCOMs
  - Weak techno-managerial capability of sub-contractors of PSUs



## Consequences of Present System of Rural Electricity Governance

- Goals of 'electricity for all' by 2009 and 2012 cannot be met because
  - Lack of availability of adequate power
    - Supplied when available
    - Supplied whatever quality available
  - Suppliers not accountable
    - Regulatory commission is not proactive and not pro-poor
    - Does not improve supplier's profitability
    - Weak civil society and consumer forum's response
    - DISCOM's not interested to develop Franchisees
    - High O&M expenses



## Possible Strategies for Electricity Services to Poor

- Rural electrification should not be treated only a technological issue, institutional issues are more important and hence require due integration.
- Electricity is one component of total energy system for the rural area and has to be looked accordingly
- Goal cannot be "6-8 hours of electricity" for rural area.
- CM's Office need to monitor regularly the implementation of RE Program for adhering schedules and quality strictly



## Possible Strategies

- Developing distribution infrastructure by PSUs stops diversion of resources by the DISCOMS. Mechanism for time bound implementation is required. DEC has not been effective.
- Separate distribution companies for rural areas if good quality and reliable 'electricity for all' are to be achieved.
- Access subsidy and use subsidy scheme needs to be relooked for effective delivery

## Possible Strategies

- Protecting, operating and maintaining the system in a sustainable manner needs to be thought of. Involvement of SHGs and PRIs as franchisees to be looked in.
- Rural consumers' ability to pay can be strengthened through support for innovative use of electricity and method of collection of charges

Regulation and Electricity Services to the Poor HDF School of Management 21

## Concluding Remark

- Since electricity is basic need, give priority in supply (mechanism for distributing shortage)
- Position rural electricity for productive and quality of life use simultaneously
- Participatory rural electricity infrastructure development and service management essential
- Systematic monitoring and accountability in project implementation
- Regulation: Rural consumers have low bargaining power. ERCs may protect the interest of consumers through access to better information system, and promotion measures

Regulation and Electricity Services to the Poor HDF School of Management 22

## Concluding Remark

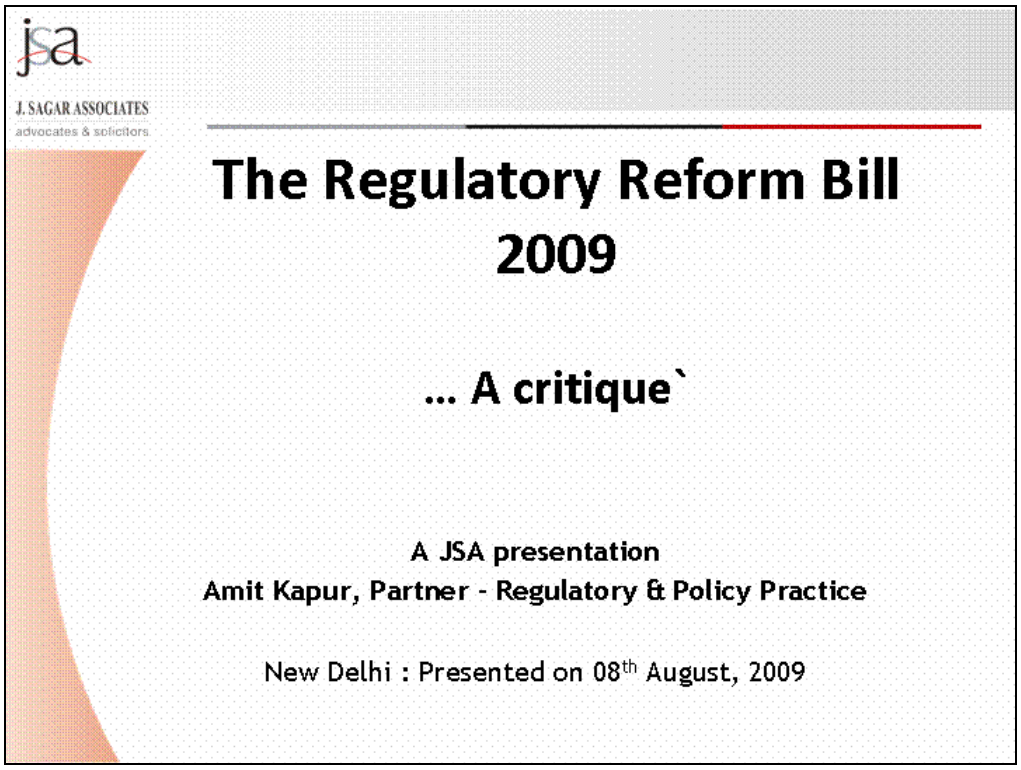
- Appropriate incentives to DISCOMs through required O&M expenses, DSM measures. Penalty for not adhering to performance standard
- Capacity building for potential and existing franchisees needs to be taken up comprehensively
- Required separate distribution company for rural electricity (focussed differentiation strategy)
- Develop a comprehensive policy for micro-generation

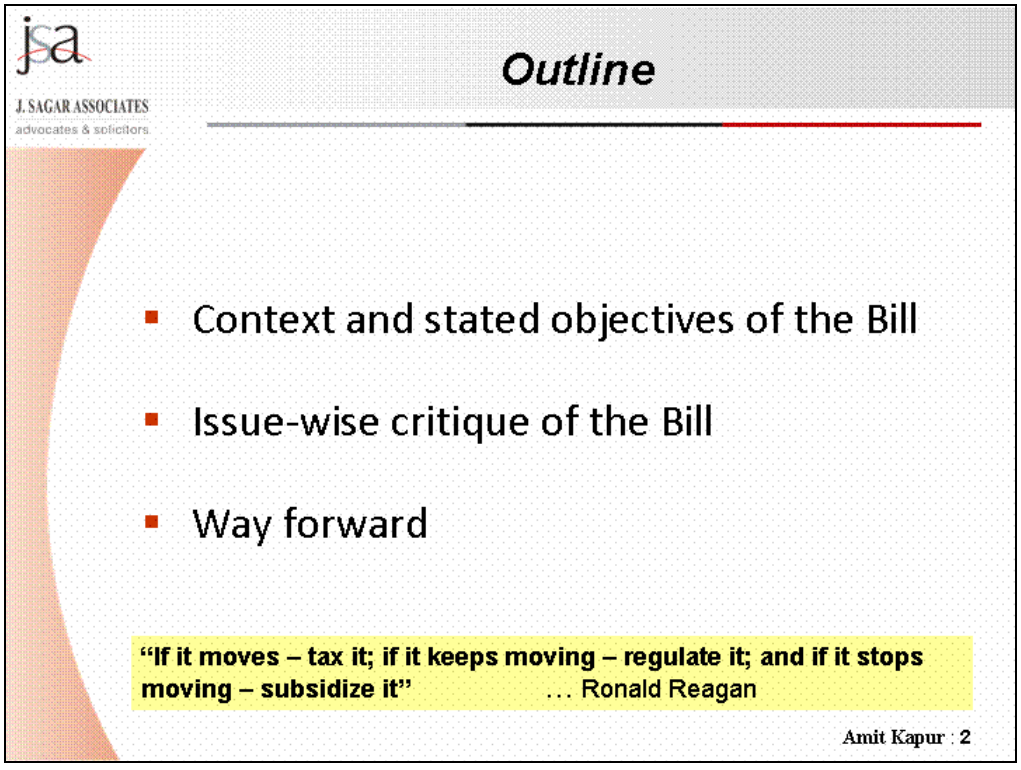
Regulation and Electricity Services to the Poor HDF School of Management 23

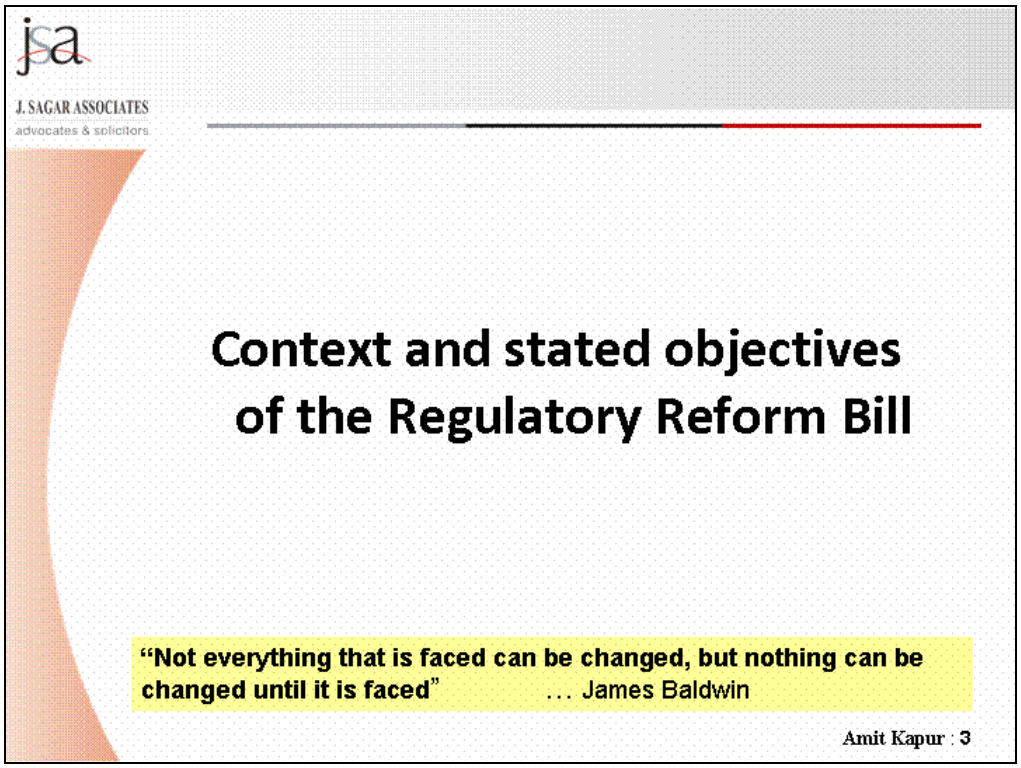
## THANK YOU

Regulation and Electricity Services to the Poor HDF School of Management 24

## S9: Draft Regulatory Reform Bill - A Discussion

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Context and stated objectives of the Regulatory Reform Bill
"Not everything that is faced can be changed, but nothing can be changed until it is faced" ... James Baldwin
Amit Kapur : 3


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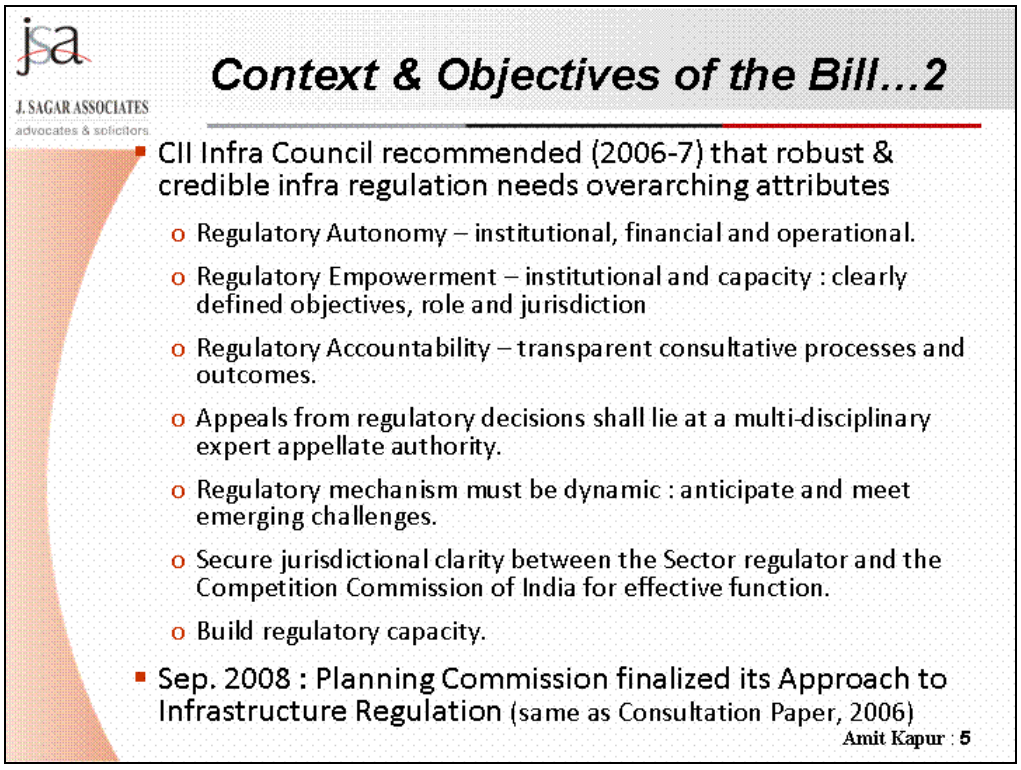
Context & Objectives of the Bill
Aug. 2004: PM announced infrastructure related measures
Need to revamp the regulatory framework characterized as "... transparent, autonomous, world class, independent of govt ... balance between public sector and private sector suppliers... ."
Committee on Infrastructure chaired by PM to monitor projects, assisted by a Secretariat (anchored by the Planning Commission)
Aug. 2006: Planning Commission's consultation paper "Approach to Regulation - Issues & Options"
The existing regulatory framework for infrastructure sectors, including the issues that need to be addressed
Analysis of 4 international examples (US, UK, Australia, Sri Lanka)
Issues on which comments were elicited
Regulatory institutions must be designed anticipating the federal principle & to secure their autonomy, effectiveness & accountability
After building consensus, it was expected that a law laying down over-arching principles of regulation would be enacted which would be supplemented by sector-specific laws
Amit Kapur : 4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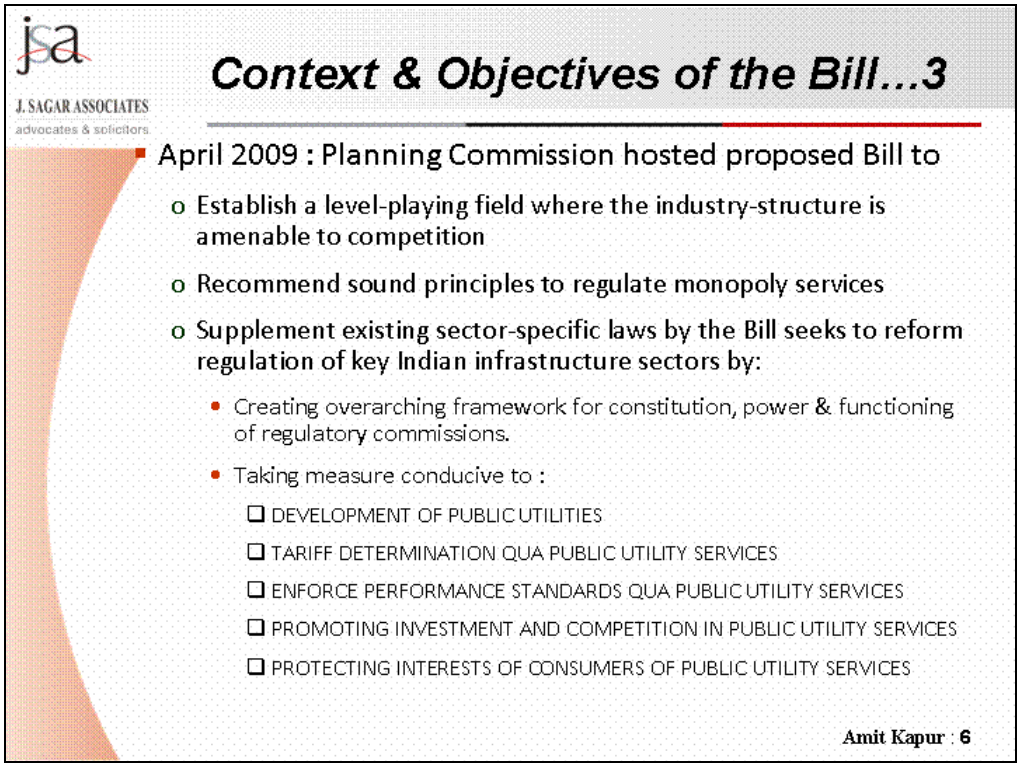
Context & Objectives of the Bill…2
CII Infra Council recommended (2006-7) that robust & credible infra regulation needs overarching attributes
Regulatory Autonomy – institutional, financial and operational.
Regulatory Empowerment – institutional and capacity : clearly defined objectives, role and jurisdiction
Regulatory Accountability – transparent consultative processes and outcomes.
Appeals from regulatory decisions shall lie at a multi-disciplinary expert appellate authority.
Regulatory mechanism must be dynamic : anticipate and meet emerging challenges.
Secure jurisdictional clarity between the Sector regulator and the Competition Commission of India for effective function.
Build regulatory capacity.
Sep. 2008 : Planning Commission finalized its Approach to Infrastructure Regulation (same as Consultation Paper, 2006)
Amit Kapur : 5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Context & Objectives of the Bill…3
April 2009 : Planning Commission hosted proposed Bill to
Establish a level-playing field where the industry-structure is amenable to competition
Recommend sound principles to regulate monopoly services
Supplement existing sector-specific laws by the Bill seeks to reform regulation of key Indian infrastructure sectors by:
Creating overarching framework for constitution, power & functioning of regulatory commissions.
Taking measure conducive to :
DEVELOPMENT OF PUBLIC UTILITIES
TARIFF DETERMINATION QUA PUBLIC UTILITY SERVICES
ENFORCE PERFORMANCE STANDARDS QUA PUBLIC UTILITY SERVICES
PROMOTING INVESTMENT AND COMPETITION IN PUBLIC UTILITY SERVICES
PROTECTING INTERESTS OF CONSUMERS OF PUBLIC UTILITY SERVICES
Amit Kapur : 6

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## Coverage of the Bill

- Proposes that 12 "public utility industries" listed in the Schedule (which could be expanded by a GoI notification) shall be regulated by a uniform regulatory mechanism administered by economic regulatory commissions :
  - Electricity
  - Broadcasting & Cable TV
  - Airports
  - Highways
  - Coal
  - Waterways
  - Telecommunication & Internet
  - Posts
  - Ports
  - Oil & Gas
  - Water Supply & Sanitation
  - Railways & Mass Rapid Transit System
- Section 61 gives the Bill over-riding effect over all sector specific laws to the extent of inconsistency

Amit Kapur : 7

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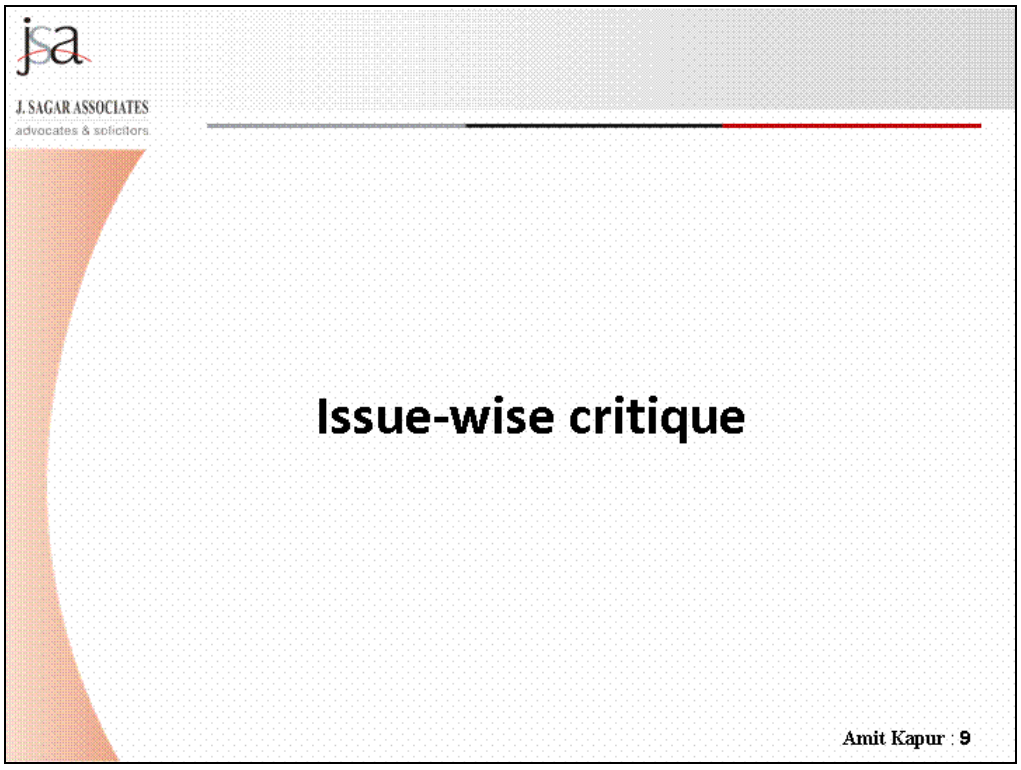
## Scheme of the Bill

- The Bill is arranged in 10 Parts
  - 1: Preliminary (Secs. 1 & 2)
  - 2: Constitution & Proceedings of Regulatory Commissions & Appellate Tribunals (Secs. 3 to 10)
  - 3: Powers & functions of Regulatory Commissions (Secs. 11 to 17)
  - 4: Fund & Accounts (Secs. 18 to 22)
  - 5: Licensing (Secs. 23 to 38)
  - 6: Tariff (Sec. 39)
  - 7: Consumer Protection (Secs. 40 to 41)
  - 8: Competition (Secs. 42 to 44)
  - 9: Dispute Resolution (Secs. 45 to 48)
  - 10: Miscellaneous (Secs. 49 to 62)
  - Schedule: List of 12 Public Utility Industries defined in Sec. 2(23)

Amit Kapur : 8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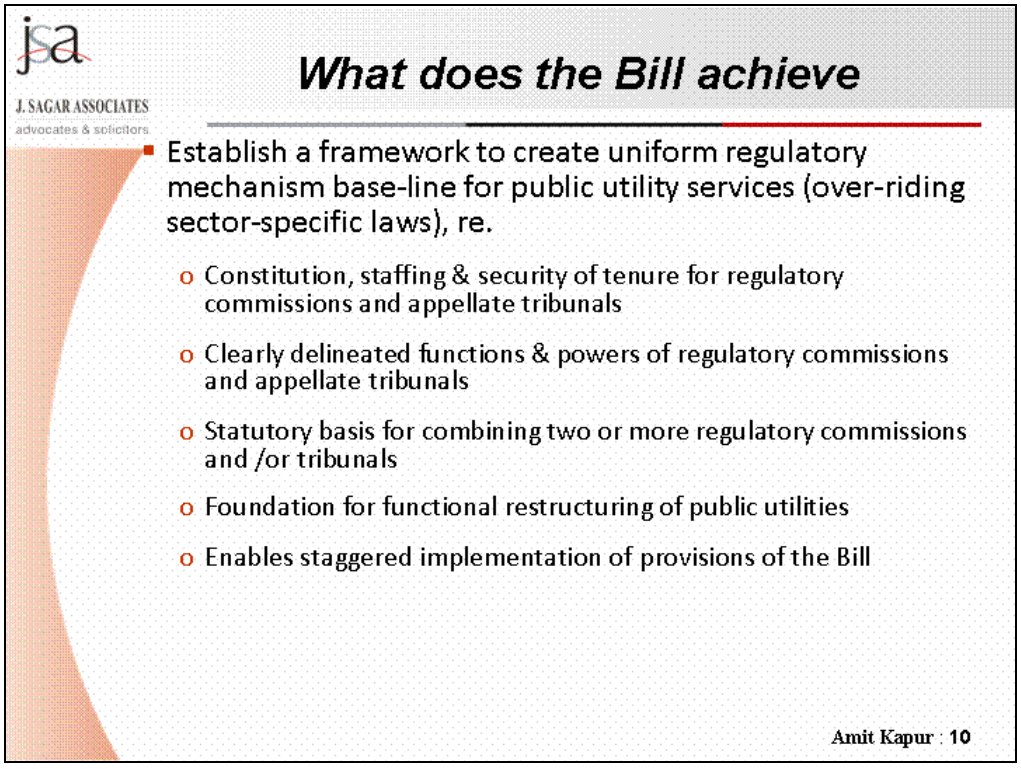
Issue-wise critique
Amit Kapur : 9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What does the Bill achieve
Establish a framework to create uniform regulatory mechanism base-line for public utility services (over-riding sector-specific laws), re.
Constitution, staffing & security of tenure for regulatory commissions and appellate tribunals
Clearly delineated functions & powers of regulatory commissions and appellate tribunals
Statutory basis for combining two or more regulatory commissions and /or tribunals
Foundation for functional restructuring of public utilities
Enables staggered implementation of provisions of the Bill
Amit Kapur : 10

## But, the Bill flatter to deceive ...

### Constitutional challenges/issues

- Several "public-utility industries" sought to be legislated upon are state or ULB/Panchayat level issues in terms of 7th Schedule read with Articles 53, 73, 154, 162, 245 to 254 of the Constitution of India
- Parliament can enact laws on List II subjects only in the circumstances listed under Articles 249, 250 and 252 (none of which has arisen yet):
  - If 2/3rd of the members of the Rajya Sabha pass a resolution to the effect that ***"it is in national interest to enact a law with respect to any matter in the State List II"*** which resolution would be ***valid for one year*** and be ***extendable by another year***.
  - In case there is a ***proclamation of emergency*** for whole or any part of India, laws may be enacted by Parliament on State subjects ***for that area and period***.
  - If all ***houses of legislature of 2 or more states pass a resolution*** to the effect that a particular State subject must be regulated ***within those states*** by a law enacted by the Parliament. Such law once enacted could be adopted by other state legislatures.

Amit Kapur : 11

## But, the Bill flatter to deceive ... 2

### Constitutional challenges/issues -2

- The Bill –
  - Appropriates overarching powers to the Parliament and Govt of India on state subjects effectively undoing the de-centralization, reform and liberalization undertaken in the last 20 years
  - Be evaluated for its efficacy in context of
    - The coalition-governance model with increased decentralization that has emerged in India over the last 20 years with enhanced share of fiscal devolution to states
    - The enactment of the 73rd & 74th Amendments to the Constitution
  - Suffers from the vice of excessive delegation since the constitution of a regulatory commission has now been left to a notification issued by the Govt (administrative ministry), without
    - The probity and accountability of sector governance policy decisions being presented to the Parliament

Amit Kapur : 12

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## But, the Bill flatter to deceive … 3

### Disconnects from the Approach paper & Objects

- Regulatory institutions designed as per the federal principle
  - Proposed Parliamentary law for industries mostly State subjects & water supply & sanitation with governance at ULB /panchayat level
- The law shall lay down over-arching principles of regulation which over-ride all sector-specific laws, except 3 laws
  - There is no provision for recognition of the existing ground realities (market structures, stakeholders, laws, policies, regulatory mechanism) in the 12 public utility industries
    - NO CLARITY REGARDING TRANSITION PATH & POSSIBLE CHANGES TO LICENSE
    - NO STAGGERED IMPLEMENTATION FOR SECTORS like electricity, petroleum & natural gas, telecom, highways
  - Shall lead to uncertainties and regulatory risks in "brown-field" sectors muddying the waters for private investments in these sectors
  - One general law cannot provide for sector-specific variations, leaving excessive and unguided discretion with administrative ministry

Amit Kapur : 13

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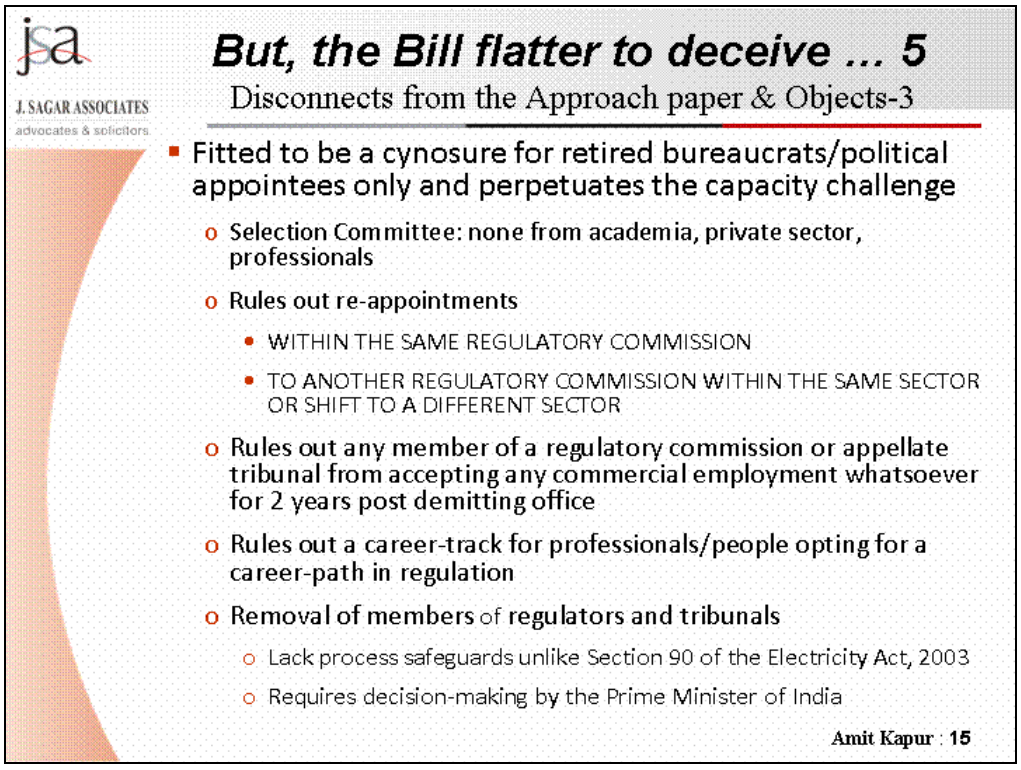
## But, the Bill flatter to deceive … 4

### Disconnects from the Approach paper & Objects-2

- Fails re. autonomy & efficacy: ignores models, lessons & jurisprudence in infrastructure regulation over last 15 years and leaves the institution susceptible to Govts.
  - Constitution of a regulatory commission left to a notification issued by the Govt (administrative ministry)
  - Budget & funding being routed through the Govt (admin ministry)
  - Terms & conditions of office to regulatory commissions & appellate tribunals left to be determined by Govt (admin ministry) by Rules
    - Erodes efficacy and autonomy of the regulator vis-à-vis the administrative ministry: security of tenure, dignity of office & autonomy
    - Destroys the level-playing field premise of regulatory reform
    - Section 21 General Clauses Act enables rescission and amendment of such notifications by the administrative ministry at will
- Foundation for regulatory risk in
  - Undefined charter for licensing ("services"): LICENSE RAJ
  - Scope to impinge upon indoor management of utilities
  - When to go to forbearance

Amit Kapur : 14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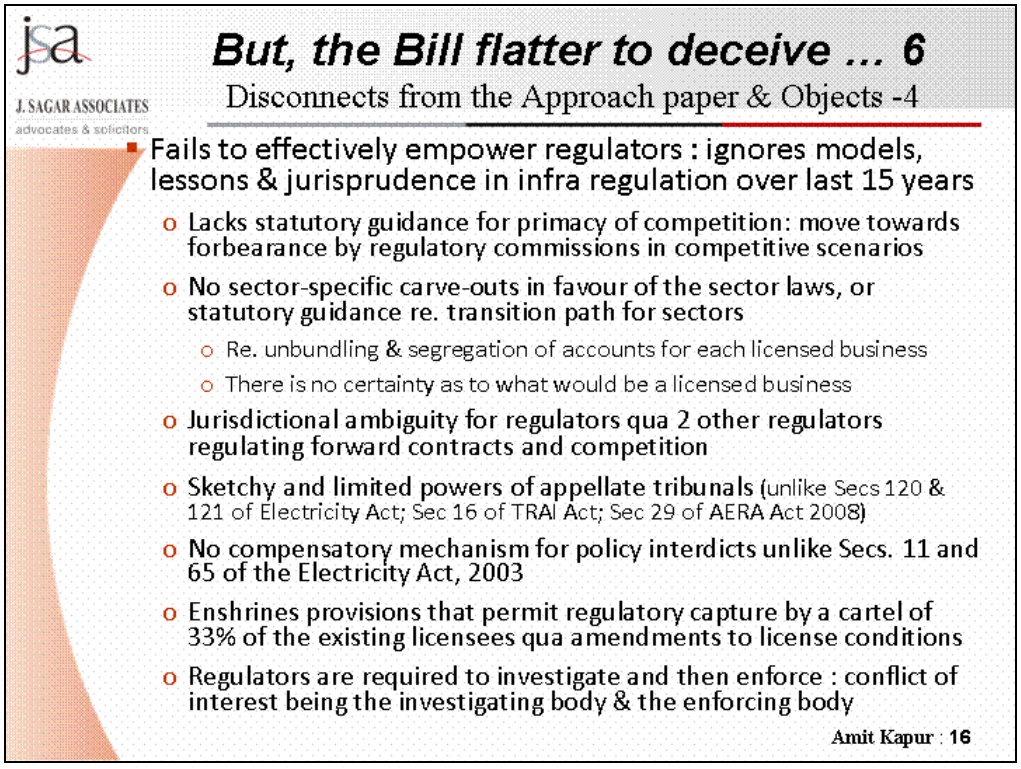
But, the Bill flatter to deceive ... 5
Disconnects from the Approach paper & Objects-3
Fitted to be a cynosure for retired bureaucrats/political appointees only and perpetuates the capacity challenge
Selection Committee: none from academia, private sector, professionals
Rules out re-appointments
WITHIN THE SAME REGULATORY COMMISSION
TO ANOTHER REGULATORY COMMISSION WITHIN THE SAME SECTOR OR SHIFT TO A DIFFERENT SECTOR
Rules out any member of a regulatory commission or appellate tribunal from accepting any commercial employment whatsoever for 2 years post demitting office
Rules out a career-track for professionals/people opting for a career-path in regulation
Removal of members of regulators and tribunals
Lack process safeguards unlike Section 90 of the Electricity Act, 2003
Requires decision-making by the Prime Minister of India
Amit Kapur : 15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But, the Bill flatter to deceive ... 6
Disconnects from the Approach paper & Objects -4
Fails to effectively empower regulators : ignores models, lessons & jurisprudence in infra regulation over last 15 years
Lacks statutory guidance for primacy of competition: move towards forbearance by regulatory commissions in competitive scenarios
No sector-specific carve-outs in favour of the sector laws, or statutory guidance re. transition path for sectors
Re. unbundling & segregation of accounts for each licensed business
There is no certainty as to what would be a licensed business
Jurisdictional ambiguity for regulators qua 2 other regulators regulating forward contracts and competition
Sketchy and limited powers of appellate tribunals (unlike Secs 120 & 121 of Electricity Act; Sec 16 of TRAI Act; Sec 29 of AERA Act 2008)
No compensatory mechanism for policy interdicts unlike Secs. 11 and 65 of the Electricity Act, 2003
Enshrines provisions that permit regulatory capture by a cartel of 33% of the existing licensees qua amendments to license conditions
Regulators are required to investigate and then enforce : conflict of interest being the investigating body & the enforcing body
Amit Kapur : 16

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## But, the Bill flatter to deceive ... 7

### Disconnect from the sector-specific ground-realities

- Embodies a decision to legislatively foist upon all 12 industries : of regulation "by regulatory commissions" & not "by contract"
  - This issue deserves a consultative cabinet-level decision including consultation with states (through the Chief Ministers' Conference hosted by the Prime Minister). No such decision yet!
  - Fails to deal with the existing ground-realities in India and globally
    - For licensees, **license conditions** are required to be compliant with the Bill and the sector laws but ignore the body of delegated/sub-ordinate legislations (rules, regulations) and other regulatory instruments (standards, norms, guidelines et al)
    - Model for **licensing and performance regulation** by contracts exists in several industries with government or statutory authorities: Telecommunications, Broadcasting, Internet, Cable Television, Posts, Railways, Mass Rapid Transit Systems, Highways, Up-stream Oil & Gas, Coal, Water-supply, Sanitation, Waterways
    - **Deregulation & competitive market scenarios** prevalent in some segments like generation of electricity: requires all "**services**" (being an undefined term) to be licensed or exempted by regulators

**Amit Kapur** : **17**

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## But, the Bill flatter to deceive ... 8

### Disconnect from the sector-specific ground-realities-2

- Fails to deal with the existing ground-realities in India and globally ...
  - **Tariff/price-discovery** in several sectors is by competition in or for the market, or by government or statutory authorities
  - While providing for **merger of regulatory commissions, or appellate tribunals** – fails to note sector-wise divergences in institutions
  - While providing for **revocation of license and removal of the works of the licensee**, there is no statutory requirement to ensure maintenance of the assets as also provision of public utility infrastructure service to consumers
  - Post revocation sale of utilities is required to be done primarily based on **highest price bid** which erodes flexibility in getting the most suitable party
- The Bill seeks to reinvent well-established principles, grounds & factors for grant of interim relief
  - Replace prima-facie case + irreparable harm + balance of convenience by likelihood of loss & excluding availability
  - Posing risk of eroding deference shown by writ-courts in not interfering with regulatory orders: in light of a vacuum caused in the legal system

**Amit Kapur** : **18**

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## But, the Bill flatter to deceive ... 9

### Disconnect from the sector-specific ground-realities-3

- Challenges qua competition issues
  - Power to restrict actions that have effect on market-power can pose some significant challenges since
    - All public utilities inherently possess market power
    - Competition regulation frowns upon abuse of market power and not market power itself
  - The Bill enshrines "per-se" rule of regulation qua mergers which has been consistently rejected by courts in India and the Parliament
  - Provision of fine upto 10% of turn-over in a utility business will be crippling
  - There is no provision corresponding to Section 22A of the Competition Act, 2002 enabling a reference to be made by Competition Commission
- Dispute Resolution mechanism
  - Arbitration provision (Secs 45 & 46) enables forum shopping in the teeth of recent judgements of the Supreme Court that have read exclusive adjudicatory powers into SERCs
  - 2nd Proviso to Sec 48(2) violates Artcle 32 & principles of natural justice

**Amit Kapur : 19**

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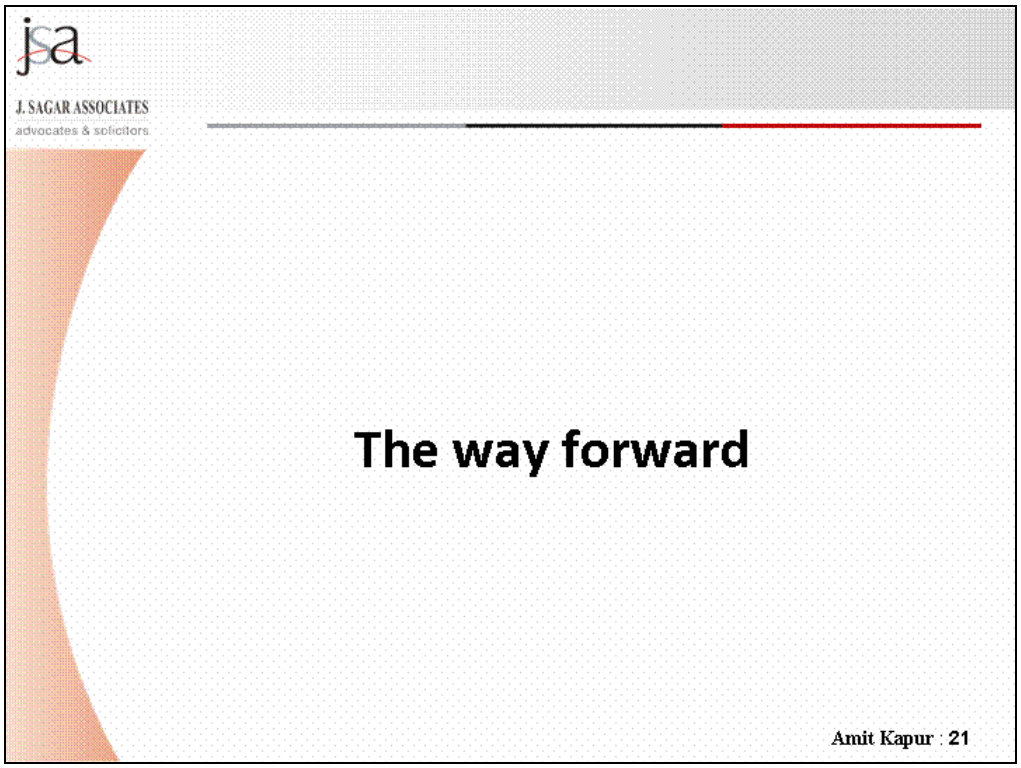
## Implications for Sectors with regulators

| *Attributes* | *Electricity* | *Telecom* | *National Highways* | *RR Bill* |
|---|---|---|---|---|
| *Regulatory Mechanism* | Regulatory Commission (CERC & SERCs) | Regulatory Commission (TRAI) | By Contract | By Regulatory Commissions |
| *Licensing* | By ERC | By Govt (Deptt of Telecom) | By NHAI (statutory authority) | By Regulatory Commissions |
| *Performance Regulation* | By ERC | By TRAI | By NHAI | By Regulatory Commissions |
| *Tariff determination* | By ERC (except where discovered through market) | Base-line tariff by TRAI with option to licensees to offer alternate packages. TRAI adopted forbearance | Tolling-clause in Concession with flexibility | By Regulatory Commissions |
| *Competition* | ERC required to promote market development; take remedial steps where action causing adverse effect on competition | No such role explicitly given | International Competitive bidding is the sole basis of procuring concessionaires | By Regulatory Commissions |
| *Adjudication* | Arbitration and adjudication in areas specified: ERCs | TDSAT | DRB, Arbitration & Enforcement of Award | Appellate Tribunal |
| *Appellate Tribunal* | ATE | TDSAT | No such provision | Appellate Tribunal |

**Amit Kapur : 20**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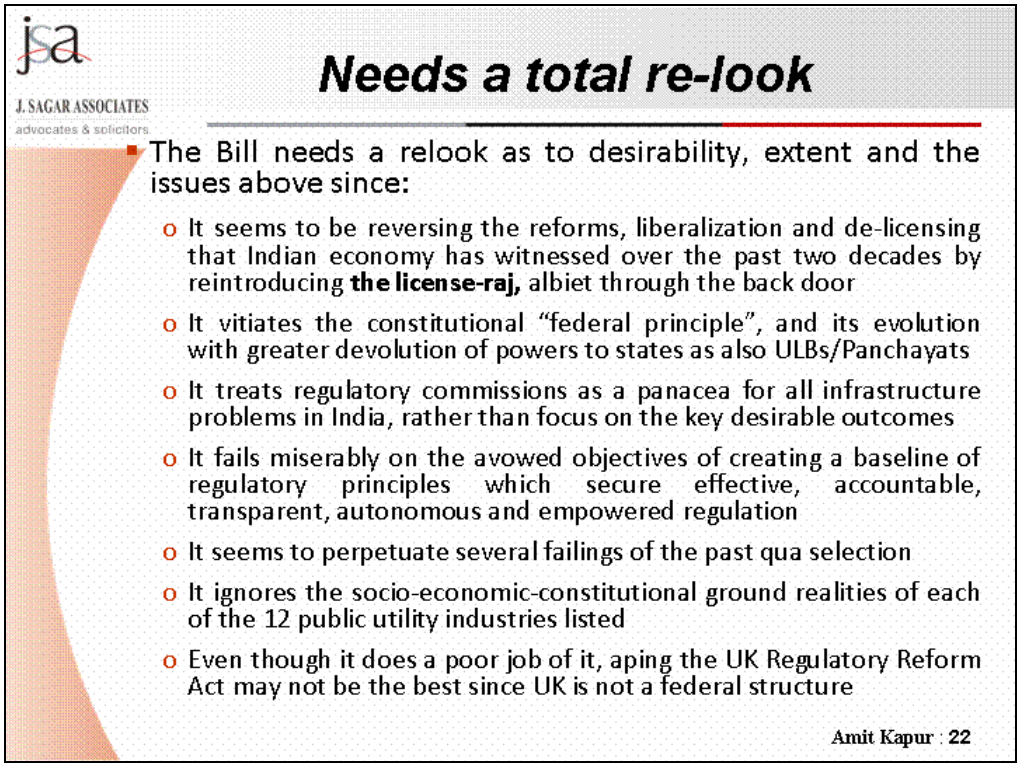
The way forward
Amit Kapur : 21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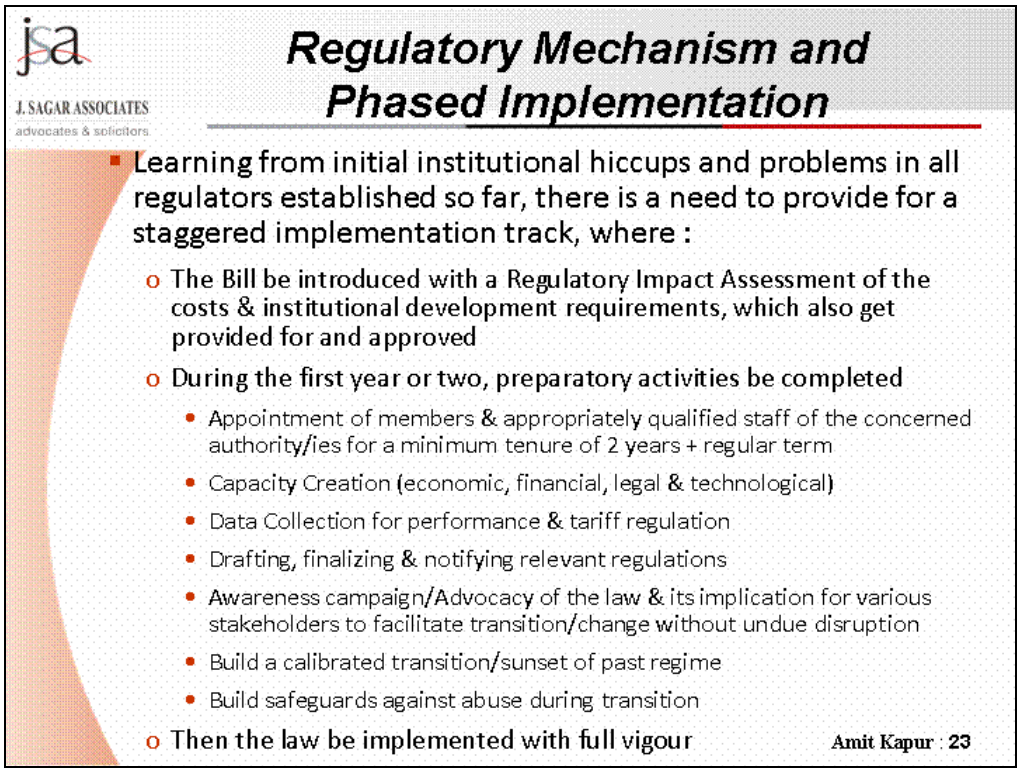
Needs a total re-look
The Bill needs a relook as to desirability, extent and the issues above since:
o It seems to be reversing the reforms, liberalization and de-licensing that Indian economy has witnessed over the past two decades by reintroducing the license-raj, albiet through the back door
o It vitiates the constitutional "federal principle", and its evolution with greater devolution of powers to states as also ULBs/Panchayats
o It treats regulatory commissions as a panacea for all infrastructure problems in India, rather than focus on the key desirable outcomes
o It fails miserably on the avowed objectives of creating a baseline of regulatory principles which secure effective, accountable, transparent, autonomous and empowered regulation
o It seems to perpetuate several failings of the past qua selection
o It ignores the socio-economic-constitutional ground realities of each of the 12 public utility industries listed
o Even though it does a poor job of it, aping the UK Regulatory Reform Act may not be the best since UK is not a federal structure
Amit Kapur : 22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Regulatory Mechanism and Phased Implementation
Learning from initial institutional hiccups and problems in all regulators established so far, there is a need to provide for a staggered implementation track, where :
The Bill be introduced with a Regulatory Impact Assessment of the costs & institutional development requirements, which also get provided for and approved
During the first year or two, preparatory activities be completed
Appointment of members & appropriately qualified staff of the concerned authority/ies for a minimum tenure of 2 years + regular term
Capacity Creation (economic, financial, legal & technological)
Data Collection for performance & tariff regulation
Drafting, finalizing & notifying relevant regulations
Awareness campaign/Advocacy of the law & its implication for various stakeholders to facilitate transition/change without undue disruption
Build a calibrated transition/sunset of past regime
Build safeguards against abuse during transition
Then the law be implemented with full vigour
Amit Kapur : 23


Pro Poor Measures - Role of CSO's
Nandikesh S
Citizen consumer and civic Action Group (CAG)
National Conference
on
Regulation and Electricity Service
to the Poor

**Proceedings of the**

# National Conference on Regulation and Electricity Service to the Poor

Prayas Energy Group along with Dr.Navroz Dubash organised a national conference on 'Regulation and Electricity Service to the Poor' on August 7-8, 2009 at New Delhi. The conference planned to bring out the potential and limitations of the regulatory process to address issues of the poor. It also tried to elaborate on what the sector actors (utility, regulatory, state, and CSO) are doing and can do in the long term interest of the poor. There were around 50 participants in the conference. They represented all stake holders in the sector and came from 12 States. The conference was organized around Eight discussion sessions with presentations by senior panellists and discussions. An additional Ninth session was held on Day -2 to discuss the new draft Regulation Bill.

The issues of electricity service to the poor are many and complex. Improvement of the situation requires understanding of different perspectives and action by different actors. This conference provided a unique opportunity, where senior reflective practitioners from different areas of specialization and different parts of the country participated and exchanged views. This publication captures the key aspects of the Conference. It contains a Report of the discussions with suggestions to improve electricity service to the poor, final Agenda, List of participants, Presentations, Handouts, Agenda note and the Invitation letter.

आरोग्य, ऊर्जा, शिक्षण आणि पालकत्व
या विषयांतील विशेष प्रयत्न