REGULATORY PERFORMANCE EVALUATION

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2002-2007

The Institution of Regulatory Commissions is the fulcrum of a series of Power Sector reforms initiated through Electricity Act 2003. Outcome and Success of the Act and a number of statutory policy instruments mandated under this Act, which were formulated and notified, is dependent on how the Regulatory bodies implement them and deliver maximum benefits to all the stakeholders, more particularly to the Consumers.

Power Sector of India, no doubt, did grow over fifty years after independence. However, it could have done much better in unlocking much faster the potentials of this country and could have provided energy access to more than sixty percent of our people who remained deprived of this essential service as also would have accelerate the growth of economy.

We had the Institution of Regulatory Commissions, at the Centre and in a number of States, even before the Electricity Act 2003 was enacted, under the Regulatory Commission Act 1998. As we know, this legislation was restrictive since it provided option to State Governments to allow to the Commission limited list of jurisdiction of functions, besides a few other constraints which were also observed. We took advantage, while drafting the new comprehensive legislation, to further strengthen the Regulatory framework under the Electricity Act 2003. A few new provisions will illustrate how the expectation from the Commission and commensurate empowerments were attempted for better deliverables.

a) The functions of the State Commissions were better structured and made obligatory and not optional to State Governments.
b) The Regulatory Commission Act 1998 envisaged appeal, on Commissions judgements, to the High Courts. The provision of Appellate Tribunal with specific focus and further appeal to Supreme Court was an appropriate recognition of the need.
c) In the Electricity Bill 2001, introduced in Parliament, the term of Chairman and

Members was kept as three years, extendable by three years. This was changed to five years to avoid any discretionary power to Government.

d) The Bill had provided to the Appellate Tribunal the wider authority of Superintendence and Control over the Commissions. This was changed and limited to only judicial functions of Commissions.

e) Commissions have been given authority to introduce competition in power sector to introduce efficiency and choice to consumers.

f) In the related Statutory Policies viz. National Electricity Policy, Tariff Policy, Rural Electrification Policy, Competitive Bidding Guidelines etc., Commissions have been given specific authorizations, which have tremendous potentials to change the shape of power industry.

g) Cutting edge of this industry is Electricity Distribution and Supply - a licensed activity - which has interface with consumers. The Act has relied a lot on State Regulatory Commissions, giving them powers to grant license, extend/ not extend licenses, suspend license, cancel license, fix their tariff, approve their plans to improve infrastructure, regulate their bulk power procurement process, punish the licensee etc - huge powers to make them perform efficiently and provide required service to consumers.

Now, before we get into the issue of Regulatory Performance Evaluation, let us briefly evaluate the outcomes, in the power sector, of various initiatives starting with the historic Electricity Act and the associated statutory policies mentioned earlier.

On power generation front, we have done reasonably well. There are, no doubt, issues in this sector as well, the larger picture, however, is that Delicensing generation and bringing competition has helped. From about 1,05,000 MW of capacity in the year 2002, we have now 3,67,000 MW, private sector was less than 10 percent, today it is over 46 percent. On Transmission side also we have done reasonably well. Though it is a licensed activity, we could introduce private sector whose contributions have also been significant to supplement the efforts of Power Grid. Transmission constraints are practically negligible. However, on Distribution and Supply, there are huge gaps- technical as well as, and more importantly, financial. This, in turn, adversely affects all others in the supply chain - generation, Transmission and fuel segments. With practically no competition, quality of service obviously becomes casualty in absence of competition. There seem no obvious answers as to why we did not delicense Distribution or why we did not invoke the provision in the Act which allows multiple licensees in the same areas of supply. There are technical and other challenges as well no doubt, but on balance present situation seems pretty bad. Our goal of 24x7 power supply seems moving away, in spite of power availability, entirely on account of serious performance gaps on how we are managing Distribution. Under this background, we are not able to face this question of consumers as to when they will have a choice to select or reject a power supplier so that pressure of competition could enable them to demand and get quality of service - perhaps the only service in which they do not have a choice is Electricity.

Having presented an overview of power sector reform, post Electricity Act 2003 very briefly, we may now address the main issue of REGULATORY PERFORMANCE EVALUATION.

This paper is limited to power sector and does not cover petroleum & gas, telecom, civil aviation, real state etc. In the power sector, the Central Electricity Regulatory Commission (CERC) has defined roles and functions with corresponding authority just as each State Electricity Regulatory Commission (SERC) has also defined functions and authority. Altogether we have about thirty Regulatory Commissions in the power sector. Functions have been provided for respective Commissions in the relevant Sections of the Act. Besides specific roles as stipulated, Commissions have to be guided by National Electricity Policy, Electricity Plan, Tariff Policy, Rural Electrification Policy etc notified by the Government of India.

The Electricity Act has provided another institution Forum of Regulators (FOR). The Rules notified by the Government in this regard stipulate the functions of the FOR as follows:

(i) Analysis of the tariff orders and other orders of Central Commission and State Commissions and compilation of data arising out of the said orders, highlighting, especially the efficiency improvements of the utilities.
(ii) Harmonization of regulation in power sector.
(iii) Laying of standards of performance of licensees as required under the Act.
(iv) Sharing of information among the members of the Forum on various issues of common interest and also of common approach.
(v) Undertaking research work in-house or through outsourcing on issues relevant to power sector regulation.
(vi) Evolving measures for protection of interest of consumers and promotion of efficiency, economy, and competition in power sector; and
(vii) Such other functions as the Central Government may assign to it, from time to time.

Evaluation of Regulatory Performance obviously will need to capture the performance with reference to the roles and functions assigned and their outcomes. It will be a good idea to comprehensively identify all these factors and attempt a reasonable weightage structure to arrive at a performance index.

I recall what we did in power ministry in 2003-04 to rate each of the States on power sector reform agenda. We identified about two dozen performance parameters with weightages. Over next few years, the Scheme got refined. This initiative worked well in bringing about the need for focusing on important issues, comparing with others and trying to improve with reference to benchmarks and best practices. A sense of competition did emerge with required degree of debate and also uneasiness. We gave this assignment to CRISIL and ICRA so that these could be done on the basis of independent analysis of all relevant data.

FOR could consider this as an annual exercise. Important Factors could be identified for CERC and SERC on the basis of in depth understanding of expectations from them as stipulated under the Electricity Act, the Policies, the Rules, their compliance, Commission's own regulations and their implementation. Other factors could include: regularity of issuance of Tariff Orders/ Regulations, extent of pendency of cases, durations of judgements, delays on reserved orders after hearing is over, impact of delays in their decisions on financial sustainability of the concerned stakeholders.

We need to appreciate that the Sector as a whole is not doing well. We have power but we also have load shedding. State owned Distribution Companies have annual financial loss of the order of over Rs. 25,000 Crores, cumulative loss of the order over Rs. 3.5 lakh Crores. Outstanding amounts payable by DISCOMS to generators have increased, just in one year, to about Rs 88,000 Crores. Investments in Power Sector are perhaps the most stressed of all the sectors. Obviously, every problem is not attributable to Regulatory Commissions. But many important aspects are. Could management of working capital have been better facilitated through timely decisions on some of the less controversial issues like change in law, fuel escalation, rail freight increase, Coal Cess, etc.? Is there any justification for any State Regulator in not reviewing the tariff for years together when policy provides for annual review? Policy has empowered the State Regulators to even initiate suo moto review even if a DISCOM avoids making and submitting its proposals. Is there any justification for a situation under which indecisions lead to heavy burdens on DISCOMS which they will be unable to recover from consumers? Most of the SERC's have virtually disregarded an important provision of Tariff Policy to structure tariff and limit cross subsidy within plus /minus of 20 percent of average tariff over a five year period. It was meant to avoid excessively high tariff for industry which generates employment and GDP. Similar has been the state of affairs in respect of allowing open access as mandated in the Act with time bound obligations of SERC. The approach has been, instead of facilitative, completing restrictive, thereby totally defeating the spirit of this provision of the Act. The concept of Regulatory Assets by some of the Regulators has only led to postponing a right decision in time and passing on the buck to their future successor who will be unable to handle this if such Regulatory Assets become excessive. In many States, Regulators have not been able to enforce the principle of Merit Order Despatch thereby further burdening the already stressed Discoms.

While there are serious performance gaps on the part of DISCOMS, it is also important to highlight how DISCOMS are faced with financial burdens which could be reviewed and reduced. Transmission Infrastructure has to keep pace with rising trends of power supply. However, expansion of Transmission for unprecedented expansion of solar power generation is over stressing DISCOMS. Solar has to happen and should happen. But, there is a strong case to support the financing of Transmission infrastructure through fund available from Coal Cess. The stand taken by CERC in this regard is laudable. Massive burden of solar power procurement and also bearing the burden of financial obligations under existing power purchase contracts is another example of over stressing the DISCOMS. Must Run Condition for renewables and Continuation of Coal Cess are other issues which need re-examining. In a large number of States, non-payments and delayed payments to DISCOMS by State organisations like municipalities, hospitals, educational institutions etc., are quite common. SERC's roles in flagging these issues and sometimes even passing candid orders could be helpful.

Performance Evaluation Scheme for CERC may focus on Power Availability, power generation profile, Transmission Constraint, performance of generation and transmission companies including their financial health, any mismatch with fuel sector. It could also cover factors such as delays in decisions on cases filed, pendency, time gaps in orders reserved after hearing is over, raising of national level issues concerning power sector as whole, advice to government on important issues from time to time, effective functioning of FOR, functioning of the Central Advisory Committee etc.

Performance Evaluation Scheme for SERC may cover all aspects of performance of Discom including power procurement optimization, State level transmission constraints, adequate availability of Distribution infrastructure, ATC Loss reduction, load shedding, consumer services, payment to generating companies and others, financial health, introduction of competition at Distribution level, open access implementation and its outcome, regularity of tariff review, compliance of statutory policies under the Act, profile of cross subsidy in alignment with Tariff Policy, pendency of petitions and delays in judgements, advice to the State Government on important issues, functioning of the Commission's Advisory Committee etc
The above are not exhaustive lists. Other relevant factors could also be identified. Giving weightages to each factor will need to be an important consideration and may be done carefully. Regularity of this exercise on an annual basis will be equally important. FOR, may organize discussion after the Evaluation is available for benefits to all. Transparency of this exercise will also be very important so that it sets in discussions and debate toward making improvements.

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