STANDING COMMITTEE ON ENERGY (2002)
THIRTEENTH LOK SABHA

MINISTRY OF POWER
THIRTY-FIRST REPORT

THE ELECTRICITY BILL, 2001

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C O N T E N T S

COMPOSITION OF THE STANDING COMMITTEE ON ENERGY (2002)

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CHAPTER - I
INTRODUCTORY

Power is a critical infrastructure for economic development and for improving the quality of life. It is the mother of all industries. Accelerated economic growth and achieving higher standards of living depend upon the availability of adequate and reliable power at an affordable price. Unlike other commodities, electricity cannot be stored for future use; hence, the generation and consumption has to be done simultaneously. This unique feature of power as a commodity of service makes the dynamics of demand and supply difficult to manage. Installing power generation, transmission and distribution capacity is a complex, time consuming and expensive process.

1.2 The Electricity Supply Industry in India is presently governed by three enactments namely, the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998.

1.3 The Indian Electricity Act, 1910 created the basic framework for electric supply industry in India, which was then in its infancy. The Act envisaged growth of the Electricity industry through private licensees. Accordingly, it provided for licensees who could supply electricity in a specified area. It created the legal framework for laying down of wires and other works relating to the supply of electricity.

1.4 The Electricity (Supply) Act, 1948 mandated the creation of a State Electricity Boards. The State Electricity Board has the responsibility of arranging the supply of electricity in the State. It was felt that electrification which was limited to cities needed to be extended rapidly and the State should step in to shoulder this responsibility through the State Electricity Boards. Accordingly, the State Electricity Boards through the successive Five-Year Plans undertook rapid growth and expansion by utilizing Plan funds.

1.5 Subject of Power has been placed in the Concurrent List under the Indian Constitution with both the Centre and the States having jurisdiction to legislate. After independence, SEBs / State Electricity Departments have been the sole utilities (except a few licensees in private sector) responsible for generation, transmission and distribution of electricity.

1.6 To supplement the efforts of the States in bridging the gap between demand and supply, it was decided in the middle of 1970's to set up generation stations and associated high / extra voltage transmission lines in the central sector. Today, States control about 60% of the country's generation capacity, 70% of the transmission network and 100% of the distribution.

1.7 The achievement of increasing installed power capacity from a meagre 1362 MW to over 1,00,000 MW since independence and electrification of more than 5 lakh villages is impressive in absolute terms. However, it is a matter of concern that annual per capita consumption of India, at about 350 kWh, is among the lowest in the world. The per capita consumption in Brazil is 1783, China 719, UK 5843, Australia 6606 and USA 8747 kWh.

Further, people in a large number of villages have no access to electricity. The end users like households, farmers, commercial establishments, industries are confronted with frequent power cuts, both scheduled and unscheduled. Power cuts, erratic voltage and low or high supply frequency have added to the 'power woes' of the consumers. These problems emanate from the following factors:

(i) inadequate power generation capacity
(ii) lack of optimum utilization of the existing generation capacity
(iii) lack of grid discipline
(iv) inadequate inter-regional transmission links
(v) inadequate and aging sub-transmission and distribution network
(vi) large scale theft and skewed tariff structure
(vii) slow pace of rural electrification
(viii) inefficient use of electricity by the end consumer

1.8 The present power situation, lacks not only in terms of performance but also quality, security and reliability. In spite of impressive growth in the early decades of planning, the present total installed capacity of over 1,02,000 MW is still inadequate to meet our demand. The energy and peak power shortages are reported to be at the level of 12% and 8% respectively. It is estimated that the future additional power requirements will be around 1,40,000 MW at a cost of Rs.6,00,000 crores to be installed by 2012. This amount of huge investment, the Government feel, would be beyond its reach. This implies that both Government and the private sectors will have to bring in foreign investors with latest technology. Along with this amount of investments, efforts will have to be made to reduce the present high cost of per MW addition of generation capacity. Major part of our generation capacity is coal based. But high cost of coal, its poor quality and constantly increasing transportation cost adds up to high cost of additional capacity generation. The greater ash contents in the coal lead to environmental problems which are also to be dealt with by the thermal power stations adding up to the cost of adding new capacity.

1.9 Hydroelectricity is clean energy and its generation is not linked to issues concerning fuel supply. Less than one fourth of the vast hydel potential of 1,50,000MW has been tapped so far. When compared to the high utilisation of hydro potential in countries like Norway(58%), Canada(41%) and Brazil(31%), the utilisation of only 17% of its hydel potential by India is extremely low. In fact, the share of hydro generation in India has gradually declined during the past 25 years. Consequently, thermal generation, which should generally be used for base load operation, is also being used to meet peaking requirements. As against the desirable hydro share of 40%, the current share is only about 25% in the country.

1.10 In early 50's the Hydel:Thermal ratio was 33:67. In the 2nd, 3rd, 4th, 5th & 6th Plans the ratio were 35:65, 41:59, 46:54, 42:58, 41:59 and 34:66, respectively. Since then, there is continuous adverse Hydel Thermal mix and now has reached alarming 25:75.

1.11 There is similar mismatch in the investment between Generation and Transmission/Distribution. As against, thumb rule of 1:1 investment in Generation & Transmissions the investment, has been lopsided and ranges, reverse **i.e.** 2:1.

1.12 It is estimated that for building over 100000 MW of additional power capacity and associated transmission & distribution infrastructure, nearly Rs.800000 crores of investments would be needed in the next decade. The investors have been wary of the sector due to lack of confidence in getting returns on their investments. The payment security measures taken till now have not yielded desired results. There is little doubt that resource generation within the sector through prompt and efficient collection of appropriate user charges from all the electricity consumers is the only long-term solution to attract investments in the sector. The sector has to be made financially strong from within in order to attract investments from outside.

1.13 Inadequate investments in transmission & distribution infrastructure have resulted in power evacuation constraints form the generating stations. The problem has been severe in the eastern region.

1.14 The matters relating to electricity were managed either by the State Electricity Boards or by the Electricity Department themselves. However, over a period of time due to variety of reasons the Electricity Boards were unable to sustain themselves and the State Governments were not in a position to invest heavy capital in commensurate with the requirements. The SEBs have many strengths which includes, highly skilled manpower, a good mix of sources of power, cordial relationship with the Government, non-storable, versatile, singular product, easily differentiable at the customer level and single large producer, without monopoly powers.

1.15 At the same time, weaknesses have also crept in the system. These are : tariffs not related to costs of operation, the inefficient operational phases and nearly 50% of the energy consumed not metered which go towards agricultural consumption, hut lighting, T&D losses and pilferage. T&D losses reported by many SEBs are fudged figures. There is free or subsidised power supply and absence of commercial outlook. Political intervention in decision making by SEBs is rampant. Shortage of power and energy is perennial. There was lack of clear cut policies, organisational purpose, control or responsibility and frequent change of leadership. This is coupled with over staffing and low productivity and revenue earning distribution function totally neglected. The poor financial health of SEBs resulted in non-payment of dues to other Government companies producing coal. It also affected the capacity of SEBs to properly maintain their plants resulting in very low Plant Load Factor. This in turn led to low generation and huge gap in demand and supply of Electricity. This forced the Government to have a re-look on the affairs of the power sector and the Government started the process of restructuring the power sector through out the country. During 1990's the States were asked to unbundle their SEBs into small manageble and efficient corporations which attract private investment to meet the power sector needs. The private sector was hesitant to invest in the sector because of poor financial condition of the most of SEBs in the country. They were not sure of returns from and safety of their investments. Even the international

organisations were hesitant to give loans in the existing scenario. It was suggested / desired by these organisations that they would lend money only when SEBs become financially viable by undertaking a set of reforms. Hence the State Governments have now started the necessary reforms by unbundling SEBs and by putting in place the regulatory mechanism in their States. To help the State Governments in the reform process, the Union Government issued policy guidelines from time to time and carried out amendments in the three Central Acts which presently govern the power sector in the country. Now with a view to consolidating various laws, the Government introduced the Electricity Bill, 2001 on 30.8.2001. The Bill was subsequently referred to the Parliamentary Standing Committee on Energy for examination and Report thereon under Rule 331L of the Rules of Procedure and Conduct of Business in Lok Sabha.

1.16 The salient features of the Bill are as under: -

I. Generation

(i) Generation would be free from licensing. Generation would need to conform to technical standards for grid connectivity and co-ordinate with the transmission utility for evacuation of power.

(ii) Hydel projects above a prescribed size would, however, need prior approval of the State Government and clearance from the Central Electricity Authority.

(iii) Captive generation is being made fully free. Captive generation would also have open access through the grid to its own premises subject to availability of adequate transmission facilities. Surplus power from captive power plants can be supplied through the grid subject to normal regulatory control.

(iv) The tariffs at which generators would sell electricity to licensees through contracts extending beyond one year would be determined by the Regulatory Commissions.

(v) Generation from non-conventional and renewable sources is to be promoted and Regulatory Commissions may from time to time prescribe a minimum percentage of power to be purchased from such sources.

II. Transmission

(i) The load despatch functions, which are critical for purposes of grid discipline and stability, would be performed by a Government Company/Organisation. Disputes and grievances relating to this function would be settled by the Regulatory Commissions.

(ii) There would be a transmission utility at the Centre and one each in the States which would be Government companies with responsibility for coordinated and planned development of the transmission network.

(iii) Private sector participation would be permitted in transmission through transmission licences to be guided by the Regulatory Commissions.

(iv) Time bound clearances would be made available. Single window clearances for power sector projects.

(v) Neither the Load Depatch Centre nor the transmission utility/licensee would trade in power.

(vi) Transmission tariffs would be determined by the Regulatory Commissions.

(vii) There would be neutral and non-discriminatory open access in transmission.

(viii) In addition to the transmission tariff, there would be a surcharge to take care of the current level of cross subsidy being generated from distribution licensees who have a better consumer mix. The surcharge would be progressively reduced and eliminated along with cross subsidies.

III. Distribution

(i) Distribution Licensees would have the responsibility and the obligation of providing power to all consumers residing in their area of supply.

(ii) Consumer tariffs to be charged by the Distribution Licensee would be determined by the State Regulatory Commission.

(iii) The State Government would have to provide subsidies upfront if it wishes the tariff for a class of consumers to be lower than that prescribed by the Regulatory Commission.

(iv) The Regulatory Commission would prescribe standards relating to quality of supply.

(v) Metering would be mandatory.

(vi) The Distribution Licensees would be free to take up generation and generators would be free to take up Distribution Licences.

(vii) Open access may be allowed in distribution by the State Electricity Regulatory Commission in phases to enable bulk consumers to access generators / traders directly.

(viii) Provision for stand alone system for generation and distribution in rural areas is being made.

(ix) There is provision for bulk purchase of power and management of local distribution in rural areas through Users Association, Cooperatives, Franchisees, Panchayat Institutions or any other person.

(x) Provisions regarding theft have a focus on revenue enhancement rather than criminal proceedings with provisions for compounding and on the spot penal assessment of unauthorised use of electricity.

IV. Trading

(i) As a distinct activity is being permitted with licensing.

V. Regulation

(i) The creation of a State Regulatory Commission which has till now been optional is being made mandatory.

(ii) An Appellate Tribunal to be headed by a Supreme Court Judge is being created to hear appeals against the orders of the Central Electricity Regulatory Commission and State Electricity Regulatory Commissions. Appeals against the orders of the Appellate Tribunal would lie only before the Supreme Court.

VI. Government

(i) The responsibility of Government for development of the power sector would remain. Government would have the responsibility for making National

Electricity Policy and specific policies for tariff, development of renewable sources of energy and extension of electricity to rural areas.

(ii) The Central Electricity Authority would have the responsibility for preparing National Plans and prescribing safety and other technical standards. It would be the technical advisor to the Government as well as the Regulatory Commissions.

VII. Restructuring

(i) There are provisions enabling the State Government through statutory transfer scheme(s) to create one or more company(ies) from the State Electricity Boards.

(ii) The service conditions of the employees would not be inferior as a consequence of restructuring.

(iii) The State Government may continue with the State Electricity Board if they wish to do so.

(iv) The State Governments are being given adequate flexibility to undertake power sector reforms in the manner they consider appropriate.

1.17. Taking into consideration, the public importance of the Bill, the Committee invited suggestions from the public at large who may be interested in the subject matter of the Bill. The Committee received written submission from various quarters and they held wide ranging discussions with various Chambers of Commerce and Industry, State Governments, stake-holders, consumers organizations, experts, PSUs, Trade-Unions, etc.

1.18. The detailed examination of these Memoranda showed that most of these are dealing with one or the other aspects of the Bill and have given suggestions for additions / alterations in the Bill. If all these suggestions were to be incorporated in the Bill, which are sometimes contradictory to each other, there is every possibility that the Bill may end up as an impracticable piece of legislation. Hence, the Committee after careful consideration of the material placed before it, formulated the following guidelines to examine the Bill and the material placed before it:-

(i) **Autonomy to States:** A number of States have raised before the Committee, the question of the competency of the Parliament to legislate on a subject which is in the 'Concurrent List' of the Constitution and on which the States have already passed individual legislations to carry out the power sector reforms. The States have also requested that their legislations should be duly protected from being superseded by this Bill otherwise whatever reform process undertaken by them will be jeopardised. The Committee requested the Ministry of Power to seek the views of the Ministry of Law on the above objection of various States. The Ministry of Law have opined that the Parliament is fully competent to legislate on the subject which is in the Concurrent List and that in the event of any inconsistency between Central Act and the State Act, on the same subject, the Central Act shall prevail.

Nevertheless, the States remain the main players in the power sector as they are the implementing agencies in their respective States. And the success or failure of the Bill to achieve the desired results would depend on its implementation by various agencies of the State. Moreover, in the federal structure of our Constitution a feeling should not go that the Union Government is trying to put in place a legislation against their wishes. To obviate all these mis-givings, it is imperative that the Bill must provide sufficient power to the State Governments to frame policies, plans and programmes and also lay down various Rules and Regulations in the implementation of the Bill based on the different ground realities in each State so that they also have a sense of participation in the whole process.

However, to remove any uncertainty, it is suggested that wherever State Governments have been authorised to frame rules and regulations, etc., it may also be provided that the State Governments must finalise and notify the relevant provisions within a period of one year from the date of coming into force of this Act failing which the provisions of this Act shall automatically apply to all the States.

(ii) **Need to simplify the procedure, curtail Bureaucratic Control and delays**: There are certain provisions in the Bill, which are likely to cause bureaucratic delays and instead of simplifying the procedures would rather complicate it. There is thus a need to delete or suitably modify some of these Clauses. In the present day spirit of economic liberalisation, it would be rationale and just to decentralise and do away with bureaucratic control to such an extent that the power sector attract the desired private investment. Re-orientation of the role of CEA in power sector, delicensing of captive power and restructuring of Electricity Boards, are some of the moves to de-bureaucratise the power sector.

(iii) **Need to cut down costs**: Certain provisions in the Bill are likely to add up to the costs of electricity supply which ultimately shall have to be borne by the consumer. These provisions need to be modified / deleted.

(iv) **Need to check multiplicity of agencies**: The Bill provides for setting up of a number of agencies / Commissions / Committees / advisory bodies, etc. Some of them are to be created as new bodies. The Committee feel that multiplicity of such bodies delay the decision making process and dilute the responsibility. The possibility of regulatory capture also cannot be ruled out. There is a need to do away with provisions creating such bodies. The work proposed to be assigned to such bodies can be given to the existing bodies / agencies. For example, the Bill provides for creation of Regional Power Committee for each region to ensure stability and smooth operations of the integrated grid, economy and efficiency in the operation of the power system. But Regional Electricity Boards constituted in 1964 already exist performing the same functions. Here is a list showing multiplicity of organisations, committees, authorities as contemplated in the proposed Bill:

ALL INDIA BASED

Sl. No.	**Agency**	**Section**	**Members**
1.	Appellate Tribunal	110	Chairperson plus 3 Members
.2.	Central Electricity Regulatory Commission	76(1)	Chairperson plus 3 Members
3.	Central Advisory Committee	80(1)	31 Members
4.	Selection Committee for Appellate Tribunal and Central Commission	78(1)	6 Members
5.	National Load Despatch Centre	26(1)	To be notified
6.	Regional Load Despatch Centre	27(1)	To be notified
7.	Regional Power Committee	29(4)	To be notified
8.	Central Electricity Authority	70(1)	14 Members
9.	Central Transmission Utility	38(1)	

STATE LEVEL

10.	State Commissions	82(1)	Chairperson plus 2 Members
11.	Selection Committee for State Commissions	85	Chairperson plus 2 Members
12.	State Load Desptach Centre	31(1)	To be notified
13.	State Transmission Utility	39(1)	To be notified

INTER STATE

14.	Joint Commission	83(1)	One Member from each involved State

(v) **Need to clearly demarcate the rule-framing, implementation and adjudication functions to separate agencies**: The present Bill has placed all the three functions of rule-making, implementation and adjudication with one organisation, **i.e.**, the Regulatory Commissions. Whereas, the cardinal principle of administration is to assign each of these functions to a different agency. It is felt that there is need to assign the above functions of the power sector to three different agencies.

(vi) **Need to provide an authority to oversee the working of the power sector as a unified unit**: This Bill is singularly lacking in mechanism which would ensure and oversee the coordinated working of different sections of the power sector which can meet the national power demand at a minimum cost. There is a need for such a mechanism which can coordinate the working of the different players so that each player does not pull the sector in its own way to such an extent that it may fall apart.

1.19 Based on the above parameters, the Committee have examined the Bill. The Committee recommend that the Bill may be passed, subject to their recommendations and observations which are given in the succeeding chapters. 1.20

As per the Preamble, the Electricity Bill, 2001 proposes to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally taking measures conducive to development of electricity industry, rationalization of electricity tariff, ensure transparent policies regarding subsidies, promotion of efficient environmentally benign policies, constitution of a Central Electricity Authority and Regulatory Commissions establishment of Appellate Tribunals, etc. The Committee are of the view that some of the other objectives on which the Bill should concentrate include promotion of competition, protection of consumer interest and universal obligation to supply electricity to all. The Committee, therefore, recommend that the phrase "including promotion of competition, protection of consumer interests and universal obligation to supply electricity" be added in the Bill suitably.

1.21 The Committee find that there are nine different agencies, authorities, committees, commissions contemplated on all India level in the Bill. Similarly, there are four such agencies at State level and one at inter-State level. The details of authorities and the members to serve thereon are given in Para 1.18 of the Introduction. In the opinion of the Committee, there are too many agencies and organisations envisaged in the Bill. The Committee do not share the views of the Government that such authorities, bodies, committees existed in the 1910, 1948 and

1998 Acts except the Appellate Authority, which is an additional body. A plan reading of the Bill reveals that powers conferred on various authorities are too wide without the necessary policy framework. As a result, there is every possibility of arbitrary decision-making. Similarly, there are too many functional overlaps. There is very likelihood of multiplicity of approach leading to several widely varying electricity regime across the country which is not conducive to the power sector. The Committee, therefore, desire that the Government should reconsider the creation of so many authorities.

The Committee find that some of the recommendations may not necessary require amendment (s) in the Bill itself. In such cases, the Committee desire Government should make appropriate provisions in the Policy, Rules, Regulation and Orders framed for the purpose. The Committee also recommend that Government / Commission / CEA should notify all the required regulation, rules and orders within one year of the enactment of this Bill.

CHAPTER-II

NATIONAL ELECTRICITY POLICY AND PLAN

National Electricity Policy and Plan

2.1 The National Electricity Policy and Plan are to be formulated by the Union Government. Clause 3 of the Bill governs preparation of this policy. It reads as under:

> "Clause 3(1): The Central Government shall, from time to time, prepare the National Electricity Policy (including tariff policy), in consultation with the State Governments and the Authority for development of the power system based on optimal utilisation of resources including conservation thereof and the use of renewable sources of energy.
>
> (2) The Central Government shall publish the National Electricity Policy from time to time.
>
> (3) The Central Government may, from time to time in consultation with the State Governments, review or revise, the National Electricity Policy referred to in sub-section(1).
>
> (4) The Authority shall prepare a National Electricity Plan in accordance with the National Electricity Policy and notify such plan once in five years:
>
> Provided that the Authority while preparing the National Electricity Plan shall publish the draft National Electricity Plan and invite suggestions and objections thereon from licensees, generating companies and the public within such time as may be prescribed.
>
> (5) The Authority may review or revise the National Electricity Plan in accordance with the National Electricity Policy".

2.2 This Clause has been criticized on the grounds that Central Government have amassed over- riding powers in regard to National Electricity Policy and Plan. Taking into consideration that State Governments and their agencies are the implementation Authorities, the Committee held wide – ranging discussion with them, State Governments expressed divergent views as the matter. These have been summarized as under:-

2.3 State Government of Rajasthan have opined that Since electricity is in the concurrent list, they have no reservation for National Electricity Policy including tariff policy. However, the States should be free to form their own policy also. They also stated that the National Policy should provide for common minimum programme and States be required to adhere to common minimum programme provided in the National Policy. The National Electricity Plan should also be prepared in consultation with the States and sufficient budget provision should also be made in the central budget for implementation of the Plan. The State Government of Uttaranchal on the other hand was of the view that Central Government cannot have exclusive powers to frame policy on a concurrent list subject. However, in order to prevent chaos, GOI policy, framed in consultation with the States, should have force of law, unless subsequently amended by the State Government. Policy can be laid down at the national level, and States be free to

participate in the process. State should be left free to devise their plans. Similar views were expressed by the Governments of Chhattisgarh. State Government of Tamil Nadu state that the National Electricity Policy needs to be laid down at National level in consultation with State Governments since electricity is a concurrent subject.

2.4 However, the State Government of Madhya Pradesh questioned the competence of Parliament to legislate on the matter and stated that as Electricity is a concurrent subject under Schedule VII(List III of the Constitution), keeping in view the federal structure, the States should be left to decide on matters concerning electricity, considered appropriate by them. The situation in different States are different. There can not be uniformity in approach in all the States in the application of the Electricity Laws. The powers to be exercised by Central Government should be confined to broad National policies and plans".

2.5 NCT of Delhi have also stated that care has to be taken that such a framework of national policy-making does not become a constraint on state-level thinking and innovation; the very consensual nature of such a process may have such an effect, e.g. it may be difficult to obtain a national consensus on such desirable measures as privatization of distribution. It may be preferable for national policy-making to focus primarily on inter-state issues.

2.6 State Government of West Bengal have advocated primacy to State Government in such matters and have informed the Committee that State should be allowed to formulate their own policy on electricity. In order to provide the policy framing perspective properly to each State, this Act should mention clearly the methodology and principles of resources allocation to state in electricity sector. However, the tariff policy in terms of principles of calculation and methodology shall be done at National Level as proposed in order to avoid unhealthy competitions among the States.

2.7 Echoing the same sentiment, the State Government of Gujarat stated that in a federal structure, State should have a dominant role in the formulation of National Electricity Policy. In fact the development in power sector varies significantly from State to State. It is, therefore, necessary that detailed proposals from various States should be sought for and national parameters and national features of the electricity plan should be formulated by the Central Government. Details for each State should be worked out by that State and then those details can be compiled in a coordinated manner by the Central Government and the plan should be approved in a joint forum of the States and Centre. Similarly, tariff policy has also to be formulated by the State and common approach from that should be evolved in the National Tariff Policy. The State Government of Gujarat also informed that since most important factor in National Electricity Policy is the cost and availability of fuel used for generation, it should be mentioned in Clause 3 that the Central Government and the States together should ensure that there are no significant variation in the delivered price of any class of fuels received by the generating stations situated in various parts of the country.

2.8 State Government of Maharashtra and State Governments of Assam also in favoured of a larger say of the States in formulating the National Electricity Policy and Plan.

2.9 State Government of Punjab suggested that National Electricity Policy (including tariff plan) can be prepared only by CEA and not by Central Government because the

policy requires in-depth knowledge, experience and technical data inputs which are available only in the CEA. A function which is primarily of technical nature can be entrusted only to CEA. National Electricity Plan also is to be made by CEA which is the only organisation at apex level for the job. On the other hand State Government of Karnataka suggested that Central Bill should mainly address the inter State and national programmes making optimum utilization of localized resources like fossil fuels. In respect of other issues, only broad guiding principles be laid down in the Bill.

2.10 The Committee also solicited the views of the various Apex Chambers of Commerce and Industry. They also inter-acted with them, the views of some of them are as under:-

> Federation of Indian Chambers of Commerce and Industry (FICCI), while welcoming National Policy on electricity, urged an implementation action plan as the part of States. The Chamber further stated that various State Governments levy electricity duty and cess on the consumption and sale of electricity (including on captive generation). These taxes and duties restrict the scope of the Appropriate Commission to prescribe cost based tariffs. They, therefore, suggested that the National Electricity Policy (NEP) must clearly outline an implementation strategy for the States.

2.11 Elaborating further, one of the representatives of FICCI during evidence stated as under:-

> "You are aware that each State is now having a Tariff Commission. Tariff Commissions are meaningless if the individual State Governments start putting cess. The Appropriate Commission is supposed to prescribe cost-based tariffs. But in addition to the tariff, if cesses are put by States, then the Commission itself is undermined. Therefore, the National Electricity Policy must clearly outline an implementation strategy for the States. Today, there is no implementation strategy. The Commission will go in one direction, the States will go in another direction".

2.12 Associated Chambers of Commerce and Industry of India (ASSOCHAM) commenting on the need to have National Electricity Policy, opined :-

> "It is essential that first National Electricity Policy (NEP) is enunciated along with the Bill so that a clear picture emerges on the scope of its contents and its direction. This will have a vital bearing on the licensing and tariff policy to be followed by Central and State Electricity Regulatory Commissions.
>
> Further, the need for the Government (Centre & State) to be involved in framing Tariff policy periodically is not appreciated when the subject should be left solely to the discretion of CERC and SERCs. Otherwise this may lead to conflicting situations".

2.13 When the Committee pointed out whether Central Government should involve itself with preparation of Electricity Policy and Plan when the electricity is in concurrent list and different States have at different stage of structural reforms in power sector, the Ministry of Power in a note stated:-

"Power being a concurrent subject, the Central Government also has responsibility in the coordinated development of the sector. Provision for consultation with State Governments in the formulation of National Electricity Policy ensures full involvement of the States in the whole process of policy formulation. Besides electricity being a network business, some amount of uniformity is necessary across the country".

2.14 The Committee have considered the views expressed by various State Governments, Apex Chambers of Commerce and Industry and other stake holders on National Electricity Policy, Tariff Policy and National Electricity Plan. Most of the State Governments have expressed the view that Electricity being a subject in the Concurrent List of the Constitution of India, the States should also be involved in decisions making on these matters. The Committee find that at present State Governments have a major role to play in the field of Electricity. As much as 60% of generation and almost cent-per cent Transmission & Distribution is within the domain of State Governments. In such a scenario, the role played by States cannot under any stretch of imagination be relegated. In fact, Electricity being in the Concurrent List, a much bigger role in the Sector should be envisaged for the States, as they themselves have to implement the policy for the Sector. The Committee, therefore, feel that the National Electricity Policy and Plan should contain only the broad parameters, leaving the State Governments to work out the minute details, keeping in view their ground realities. Further, major responsibility for implementing the plans primarily rests with the State Governments. Unless and until the State Governments agree with the basic details, it would be difficult to achieve the desired goals, in the implementation of the proposed Bill. It would, therefore, be better if the States are allowed to chalk out their own plans and programmes within the broad National Policy framework. The participative role for States has also been advocated, as it would be difficult to have a uniform Electricity Policy at a National level for the present when different States are at different stages of reform process in the Power Sector. The Committee, therefore, recommend that Clause (3) of the Bill should be amended to cover the views expressed above.

2.15 The Committee note that the Regulatory Commissions have been empowered to determine tariff and discharge all other functions assigned to them. It is therefore, necessary that for the sake of providing uniformity in approach, the expression 'including tariff policy' appearing in Clause 3(1), need not be put in parenthesis. The Clause 3(1), accordingly be read as "The Central Government shall, from time to time prepare National Electricity Policy and Tariff Policy…." The Committee desire that consequential changes in the Bill may be carried out.

2.16 The Committee find that under Clause 3(1), the Central Government is empowered to prepare a National Electricity Policy including Tariff Policy in consultation with State Governments and the Central Electricity Authority(CEA) for the development of power system based on optimum utilisation of resources, including conservation thereof and use of renewable energy sources. However, the Committee find that as per Clause 3(3), the Central Government may review or revise the National Electricity Policy from time to time in consultation with the State Governments. Here, the CEA has been left out of the need for consultations. The Committee are at a loss to understand the rationale for exclusion of CEA from reviewing or revising the policy. The Committee, therefore, are of the view that

when the Central Government can associate the Authority while preparing electricity policy, there is no justification, whatsoever, in not associating CEA while reviewing or revising this policy. The Committee, therefore, recommend that CEA should also be involved in the process of revising or reviewing Electricity Policy.

2.17 As per Clause 3(4), the Central Electricity Authority shall prepare a National Electricity Plan in accordance with the National Electricity Policy and notify such plan once in five years. In the opinion of the Committee, the plan should have the approval of the Central Government. The Committee desire that Sub-Section 4 of Clause 3, be amended accordingly. Consequential changes, if any, may also be effected in the Bill.

2.18 The Committee find that power sector projects have always been starved of adequate supply of natural gas as compared to the other sectors of economy such as fertilizer, textiles, etc. Taking into consideration the recent discovery of major findings of natural gas in various parts of the country and possibility of more such discoveries in future, the Committee desire that the National Electricity Policy should encourage setting up of generating stations at the source i.e. near the gas wells, so as to take advantage of low cost of transportation from the source of fuel and to meet environmental concerns. The Committee also desire that Government should take proactive action to utilise the natural gas available in neighbouring countries for power projects. The Committee, recommend that optimal utilisation of indigenous sources such as coal, gas, nuclear, hydro and renewable sources of energy and sourcing of fuel should be prime considerations while drafting the National Electricity Policy and Tariff Policy. Due priority should be given in the policy for setting up of power plants using natural gas as feed stock. The Committee recommend that suitable amendments may be made in the Bill for this purpose.

CHAPTER-III

Policy in respect of Renewable Energy Projects.

India being endowed with renewable energy sources in plenty, was among the earliest in the world to realize not only the potentials of energy sources but also the need to exploit them. The Ministry of Non-Conventional Energy Sources has been entrusted to provide a thrust and importance to the renewable energy sector. Considerable progress has already been made and a grid capacity of over 3400 MW, which is over 3% of the total installed capacity, is today operational in the country based on these resources.

3.2 The following provisions in the Electricity Bill, 2001 have an indirect bearing on the non-conventional energy sector:-

Clause 3(1) and 3(2)

Under Clause 3(1) and 3 (2), it has been stated that the Central Government shall from time to time prepare and publish the National Electricity Policy and tariff policy, in consultation with the State Governments and the Authority, for development of electricity system based on optimal utilization of resources, including conservation thereof and the use of renewable sources of energy.

Clause 4

Clause 4 states that the Central Government shall, after consultation with the State Governments, prepare and notify a National Policy for rural and remote areas permitting stand- alone systems, including those based on renewable and other non-conventional energy sources.

Clause 61(1)(i)

Clause 61(1) (i) states that the Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so shall be guided by the following, namely, the promotion of cogeneration and generation of electricity from renewable sources of energy; the National Electricity Policy and Tariff Policy prepared by the Central Government under Clause 3.

Clause 79(1)

Clause 79(1) and 79(1) (i) state that the Central Commission shall discharge such other functions as may be assigned under this Act.

Clause 86(1)(e)

Section 86 (1) (e) state that the State Commissions shall discharge the following functions, namely promote cogeneration and generation of electricity from renewable

sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, if it considers appropriate for purchase of

electricity from such sources, a percentage of total consumption of electricity in the area of supply of a distribution licensee.

3.3 ASSOCHAM in a note submitted to the Committee, desired that Clause 86(a)(e) of the Bill may be amended as under:-

Proposed Amendment

"Promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid (including free wheeling and banking of energy) and sale of electricity to any person, so that purchases therefrom constitute a minimum of 10% (or such higher percentage as specified in the National Electricity Policy the Renewable Energy Policy or as notified by the State Government from time to time); of the total consumption of electricity in area of a distribution licence and the Commission shall determine preferential purchase price, as per the Tariff Policy and the Renewable Energy Policy of MNES".

3.4 PHD Chambers of Commerce and Industry, New Delhi in their Memorandum suggested that the following to be incorporated into the Electricity Bill,2001 for the promotion and development of renewable energy sector:

i) The Fossil Fuel Power Generating Companies to purchase 10% of their generation from renewable sources, at incentive prices to be mutually agreed.
ii) The policy should permit Renewable Energy Projects to sell their power directly to third parties, without any charge by the states and with maximum 4% wheeling and transmission charges and maximum 5% Royalty by states.
iii) The policy should permit the immediate creation of Renewable Energy Trading Company (RETC) to buy energy from a large number of Small Renewable energy projects and sell it further to third parties/ Fossil fuel power generators etc.
iv) The policy should make it mandatory for states to give freedom to the Renewable Energy Projects to sell their power to the State Electricity Boards or RETC or direct to third parties or outside the State, without any penalty in terms of Royalty or otherwise.
v) The policy should provide support to Small Hydro Projects in remote hill villages, through Ministry of Rural Development, to build infrastructure e.g. roads and evacuation systems.
vi) The policy should provide Nil Customs duty/ Nil Excise duty on Electro-mechanical equipments, irrespective of the source for funds being IREDDA or otherwise.
vii) The policy should provide for 5% interest subsidy, in respect of SHP in the remote hill villages.
viii) No Environmental clearance should be required in respect of SHPs upto 25 MW Capacity, irrespective of the Capital Cost of the projects".

3.5 Central Electricity Authority (CEA) in a note furnished to the Committee, stated that the growth rate and market share of renewable energy would further increase from the present level of operations in case the following suggestions are considered favourably for incorporation in the Bill:-

i) Central Electricity Regulatory Commissions (CERCs) should explicitly prescribe at least 10% additional capacity addition in respective States to come from renewable sources of energy in line with announcements made in this regard, by the Hon'ble Prime Minister.

ii) CERC should formulate guidelines for promotion of wheeling, banking charges and third party sale for grid connected renewable energy power projects.

iii) State Electricity Regulatory Commissions (SERCs) should fix their regulatory framework based on the CERC guidelines.

iv) Generation and distribution of electricity from renewable energy sources should be delicenced.

3.6 Confederation of Indian Industry (CII) also advocated the desirablity to promote Non-Conventional Energy Sources (NCES) in the country.

3.7 The Ministry of Non-Conventional Energy Sources on the other hand suggested the following for promoting the development of non-conventional energy based power generation:-

i) The legislation should provide for the Central Electricity Regulatory Commission (CERC) to formulate guidelines for the promotion of renewables by incorporating 'preferential' prices for renewable based on the avoided cost of negative externalities associated with fossil-fuel-based generation of electricity.

ii) Promotional measures such as wheeling, banking and third party sale for gird connected power projects should be incorporated to accelerate commercialization and stimulate investments.

iii) Appropriate provisions, including de-licensing, should be made so that decentralised/ off-grid generation and distribution of electricity do not get constrained by intrusive regulation.

3.8 It was also informed by MNES that the Draft Renewable Energy Policy Statement proposed the formations on of a National Renewable Energy Fund by charging a cess, in the form of a sustainability tax in the coal and hydro – carbons sectors. The fund would be utilised to support the preferential prices for renewable.

A. <u>Formation of Renewable Energy Trading Corporation</u>

3.9 A suggestion was made that in order to promote renewable sources of energy, a renewable trading corporation be set up on the lines of Power Trading Corporation. When asked about the desirability of such a Corporation which can buy energy from renewable energy projects and sell it further to third parties / fossil fuel power generators etc., the CEA in a note stated as under:-

> "It may be preferable to have a Renewable Energy Trading Company or Corporation in line with Power Trading Corporation in view of the specialized nature of renewable energy sector. Otherwise the Power Trading Corporation

could be asked to create the necessary wherewith to undertake this for the renewable energy sector".

3.10 A representative of ASSOCHAM during evidence stated:-

"……………..there is need to have a Power Trading Corporation for renewable. The present Power Trading Corporation is dealing with a bigger issue. If we are giving a Power Trading Corporation for renewable energy, then they can buy power from all the small projects all over the country, wherever they can, aggregate them and then sell it. These solar, wind are all like small farmers and if there is a larger agency, they can do justice to all the projects and reach the customers at the right price at the right time… ………… we suggest basically inclusion and creation of renewable energy Power Trading Corporation".

3.11 On the other hand, CII did not favour the formation of such an agency and stated that there is no need to create Renewable Energy Trading Corporation, as SERCs are capable enough to handle all the related issues for grid connected systems. For off – grid systems, state can evolve their own institutions **viz.** co-operatives, Panchayats, joint ventures etc.

3.12 The views of some of the State Governments in regard to formation of Renewable Energy Trading Corporation are as under: -

State Government of Tamil Nadu

"It may not be viable because power from renewable energy sources, especially wind power is infirm and seasonal."

State Government of Rajasthan

"We do not agree for formation of a renewable energy trading companies / corporation. This is keeping in view the fact that with present low level of installed capacity from renewables it may not be viable. Existing electricity transmission corporation in Rajasthan (Rajasthan Vidyut Prasaran Nigam – RVPN) can also do this job, notwithstanding whether the generation is from conventional sources or renewable sources. The demands of the capacity available from renewable sources today is adequately met by RVPN".

State Government of Gujarat

"It is not desirable to have a separate Renewable Energy Trading Company as it will be expensive. Even the present experience of the separate agency for renewable energy in the State-Gujarat Energy Development Agency which deals with Non-Conventional Energy is not exceptionally rewarding though it is quite good."

State Government of Uttaranchal

"In Uttaranchal UREDA is empowered to generate and distribute energy in remote rural areas. As such there is no requirement of a separate trading company. Renewable energy developers should be encouraged by way of waiver

of royalty and wheeling charges, even in case of sales to third parties within the State. However, this should not be made mandatory, and should be left to the discretion of the States".

State Government of West Bengal

"The Renewable Energy Trading Company may help in the marketing of the renewable energy. As a bulk resource company of this renewable energy the said trading company will be the nodal agency for interfacing with the grid management authority and purchaser. This will reduce the burden and risk of the small investors in the renewable or non-conventional sources."

B. Sale to the third party

3.13 When asked whether it should be made mandatory for States to give freedom to the Renewable Energy developers to sell their power to the SEBs or direct to the third parties or outside the State without any penalty in terms of royalty, etc., the CEA submitted as under:-

"It should be made mandatory for States to give freedom to the Renewable Energy developers to sell their power to the SEBs or direct to the third parties within the State without any penalty in terms of royalty. Outside the State, the Power Generated from Non-Conventional Energy Sources could be sold / traded".

3.14 CII on the other-hand stated as under:-

"We should leave it on the States to decide".

3.15 On the question of sale of renewable energy to third party, various State Governments expressed their views which are as under:-

State Government of Tamil Nadu

"It is not desirable to give freedom to renewable energy developers to sell their power to third parties. However, after enactment of the proposed bill, this can be considered for co-generation subject to levy of cross subsidy surcharge."

State Government of Rajasthan

"Out of the three types of consumers, i.e. the developer himself, RVPN and third party; the developer is free to use two channels for selling its power simultaneously. We support the proposed policy regarding sell of such power to buyers outside the State".

State Government of Gujarat

"No freedom should be given to Non-Conventional Energy generators to supply directly. They should be asked to sell it to the grid or the SEB as the case may be so that better power management can be resorted to. Further any incentive can only be worthwhile if the State is benefited from it."

State Government of Uttaranchal

"Renewable Energy developers should be encouraged by way of waiver of royalty and wheeling charges, even in case of sales to third parties within the State. However, this should not be made mandatory, and should be left to the discretion of the States".

NCT of Delhi

"Renewable sources of energy are located in states which are rich in water, wind or solar potential. It is desirable that the producers should be able to sell such power outside the state without royalty to promote investment in non-conventional energy sources of Power".

State Government of Chhattisgarh

"It would be highly detrimental to the interest of SEBs if they are made to purchase Renewable Energy. This would cripple the financial viabilities of SEBs. It is understood in the era of open and competitive marketing why it is being considered expedient to provide financial prop to Renewable Energy developers. It would be against the spirit of the Bill to forces SEBs to buy power from NCE".

State Government of Madhya Pradesh

"It is proposed that no third party sale be permitted to the renewable energy developers as it results in a loss of revenue from industries under higher tariff slabs. However in order to make mini/ small hydel schemes attractive and economically viable suitable subsidy / financial assistance linked with energy generation may be provided by the State / Central Government".

State Government of Karnataka

"In view of the poor financial position of SEBs and State power utilities, permitting direct sale by renewable energy developers to third parties will worsen the position. Hence, it should be left to the State Governments and SEBs/state power utilities."

State Government of West Bengal

"Renewable Energy Developers may have the right to sell their power to distribution or transmission company of the State or direct to the third party within the State without any transmission/wheeling or any other charges. But for sale of such power to third party outside the State or other distribution company outside the State may attract transmission/wheeling or any other charges depending on the agreement between the renewable energy company and the State where power is generated."

C. Provision for additional capacity generation through various non-conventional energy sources projects

3.16 When asked if it is appropriate that State Electricity Regulatory Commissions (SERCs) should explicitly prescribe and make it mandatory to have at least 10% of additional capacity generation through various renewable sources of energy. State Government of Tamil Nadu informed that they harnessed around 1028MW from Renewable Energy Sources which is more than 10% of this installed capacity. The views of other State Governments are as under:-

State Government of Rajasthan

"In Rajasthan a Policy directive has already been issued to Rajashtan Electricity Regulatory Commission (RERC) on 12.11.2001 providing for 10% coverage from renewable sources of energy under merit order dispatch regulations. Making 10% of additional capacity generation through various renewable sources mandatory would not help substantially, rather this should be the objective. Actual capacity addition from renewable sources would have to take into account resources available and cost of per unit energy generation".

3.17 While Government of Uttranchal agreed with the proposition, the State Government of Gujarat stated:-

"Additional 10% of the present generation capacity through Non-Conventional Energy Sources can be attempted as the target, but may not be made a mandatory goal as there will be natural and technical constraints which may at times be difficult to over come. Moreover, renewable sources of energy also require subsidization in the initial years."

NCT of Delhi

"Keeping in view the difference in cost between renewable and conventional energy sources including the initial cost of hydropower from new projects, 10% may be an ambitious target in the present circumstances, where SEBs are unable to pay even for the cheaper power available to them and the impact on the tariff may be unacceptable. These possible implications should be examined in detail before a decision is taken. It should, however, be possible to absorb the additional cost of renewable energy without unbearable impact on the tariff if distributing utilities are able to improve their commercial efficiency and reduce losses significantly. Here again, therefore, much will depend on the success of distribution reform".

State Government of Chhattisgarh

"It may not be proper to authorize SERC to make it mandatory to have atleast 10% additional capacity generation through renewable sources of energy. It should be left entirely to the wisdom of SERC to take a decision depending upon the potential, infrastructure & cost benefit ratio".

State Government of Madhya Pradesh

"It would be appropriate that State Electricity Regulatory Commission (SERC) should be explicitly prescribe and make it mandatory to have at least 10% of additional capacity generation through various renewable sources of energy"

State Government of West Bengal

"Mandatory target setting of 10% is unrealistic,. It shall be a policy matter of State Government and they will communicate their policy from time to time depending on the level of technology development and cost of such non-conventional sources. But a minimum target of 5% may be kept within 2011-12."

3.18 Expressing the views of the Ministry of Power on the above issue, one of the representatives deposed during the course of evidence as under:-

"There is an explicit provision that the Regulatory Commissions in the States could also prescribe minimum percentages of power, which must necessarily be purchased from renewable sources of energy. This is an enabling provision. It provides for flexibility. So, depending upon the circumstances of each State, a mandatory provision of a certain percentage of procurement from renewable sources could be undertaken".

3.19 Reacting to desirability of trading of renewable energy, the Ministry of Power in note submitted to the Committee stated as under:-

"The cost of electricity is a very important factor for Indian consumers. The capacity to absorb costly power is different for different States because of their financial position. This leads to a dynamic situation and fixation of a particular percentage in law will not be practical. Besides, different States are not equally placed in terms of availability of renewable sources of energy. Specifying of such quantum may therefore, lead to higher cost of electricity for consumers in the States where such sources of energy are not available. The Bill therefore, entrusts responsibility on the State Commission to promote co-generation and generation of electricity from renewable sources by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specifying when it considers appropriate, for purchase of electricity from such sources a percentage of the total consumption of electricity in the area of a distribution licensee".

3.20 One of the main objectives of the Bill is to address the concerns of power sector during 21st century. The Committee are well aware of the fact that the whole world, including India, would exhaust all its fossil fuel (like oil and natural gases, and coal up to a certain extent) by the year 2050. India has a population of over 1 billion and is expecting to keep her G.D.P. growth pegged at 8 per cent over the next 10 years. As such, the present demand and supply gap of power is bound to increase manifold. Moreover, as the Bill cast an obligation upon the Governments to electrify all the villages and hamlets, this will further aggravate and worsen the worsen the availability of power. Conditions are thus compelling for the country to attempt to meet its growing energy needs in a self- reliant and sustainable manner, through renewable energy. Renewable sources can ensure energy security to a large

extent. The Committee find that renewable sources of energy have been exploited only marginally. Some progress has, of course been made and a grid capacity of over 3400 MW, which is over 3% of the total installed capacity in the country, harnessed through various non-conventional energy sources. Resolve of the Government to secure 10% of the total electricity generated from renewable sources of energy and need for electrification of 18,000 unelectrified villages, which cannot be electrified through conventional grid power, by 2012 AD holds a promising future for this vital sector.

3.21 The Committee have observed that the State Governments are pursuing a policy to promote non-conventional energy programmes and plans commensurate with their own resources, potential and other economic parameters. The Committee have been urged by many of the States and Chambers of Commerce and Industry to prescribe at least 10% of power from non-conventional energy sources. In this context, the Committee would like to state that the Appropriate Commission has been conferred power under Clause 61 (i) to determine tariff which shall promote generation of electricity from renewable sources of energy. As energy from non-conventional sources is relatively costlier and cannot be traded in commercial market for conventional energy, it is recommended that regulators should fix a minimum percentage of power which a State procure from renewable energy sources, say 5% to 10% of the total energy consumption. In the event of any State not endowed with such resources, it may tie up with States which have such resources for supply of power. In most such cases transactions would be only an energy accounting exercise, but will go a long way in sustainable development of renewable sources. The Committee further desire that the share of any particular State in such accounting principle has to be on energy basis and quantum should be such that it does not lead to any perceptible tariff increase. Further, as the present capacity of non-conventional energy is about 3% of the total installed capacity in the country, it would be in fitness of things that the States are encouraged to procure at least 5% of their energy demand from renewable sources at the earliest. This limit should be raised to a level of 10% by the end of 11th Plan in phases. The Committee are hopeful that with such a regulation, trading in non-conventional energy will be acceptable to the market at a rate different from the conventional energy. The Committee further hope that Power Trading Corporation (PTC) which is already in the business of trading of power will be able to take up this assignment with full endavour. As trading of non-conventional energy is a small activity, there is no need to have a separate agency and PTC be charged with the responsibility of trading of renewable energy also. The Committee also desire that for promotion of non-conventional energy, preferential tariff be determined for them and unrestricted third party sale and waiver of royalty and wheeling charges be admissible to them. The Committee also desire that for the promotion of renewable energy, the Union Government should formulate a Renewable Energy Policy in consultation with the State Governments. Once the policy is formulated it should be adopted and implemented by all the States in letter and spirit within the mutually agreed time-frame.

CHAPTER-IV

RURAL ELECTRIFICATION

Rural Electrification is one of the most important issues which require some concerted action on the part of the Government and non-Government bodies. Inspite of more than 50 years of planned development, there are about 80,000 villages which are yet to be electrified. Out of these 18,000 villages are such which can not be connected to any grid supply as these are in far flung areas and are inaccessible due to geographical reasons. The supply of power in these areas is likely to cost much more than in urban and other areas connected with the grid power. But paying capacity of the population in these areas is very low. This makes it difficult for any private sector participation in this field. Thus, this burden has to be shared by the Central/ State Governments as a social responsibility. This Bill makes the following provisions in the matter:

Clause 4:National Policy on Stand Alone Systems for Rural Areas and Non-Conventional Energy System

This Clause aims at addressing the requirements of and cater to the needs, of rural areas without connectivity to grid, and in the process encouraging non-conventional energy sources. This Clause 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 other non-conventional sources of energy) for rural areas".

Clause 5: National Policy on Electrification and local distribution in rural areas.

In addition to giving thrust to rural electrification, this Clause also seeks to encourage bulk purchase of power and management of local distribution in rural areas through Panchayat Institutions, users' association, co-operatives, NGOs, etc. This Clause provides " 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, users' associations, co-operative societies, non-governmental organizations or franchisees".

Clause 6: Obligation to Supply Electricity to Rural Areas

This Clause entrusts an obligation on the Government to ensure extension of supply of electricity to all areas including villages and hamlets. The Clause provide"The Appropriate Government shall endeavor to supply electricity to all areas including villages and hamlets".

A. Formation of Rural Electricity Authority

4.2 To accelerate the process of rural electrification, a suggestion was made for setting up of Rural Electricity Authority. When asked about the for such on the Madhya Pradesh Electricity Consumers Society in a note stated as under:-

> "We are convinced that rural electrification with the present organisational structure will not function. The rural electrification as an activity is a socio-

economic activity and can never assume a commercial form for several years to come. Thus rural electrification should remain as a function of State Government. The Bill should provide that each State Government will form a Rural Electrification Authority and this authority be charged for construction and Operation and Maintenance. Such areas which become economically viable could be disinvested and transferred to licensees."

4.3 Surya Foundation also stated in a Memorandum submitted to the Committee that the Bill should provide for setting up of Rural Electrification Authority (under the Government) to facilitate electricity development in rural areas.

B. Private Sector participation in rural electrification

4.4 The rural areas are proposed to be managed through NGOs. Panchayats, franchisees etc. who are not properly trained in management and operation of power system. There is thus there are risks of losses. The private sectors will not venture the risk of taking rural electrification.

4.5 When asked about the possibilities of undertaking rural electrification by private entrepreneurs, Central Electricity Authority (CEA) in a note stated that talks of bulk purchase of power and management of local distribution in rural areas through Panchayat institutions, users' associations, Co-operative Societies, non governmental organizations of franchisees. The provision has been made because rural electrification and related works would not be remunerative for a private entrepreneur. For the reforms in the Power Sector to be successful, it is expected that over a period of time, subsidies and cross subsidies will be progressively reduced and eliminated. Meanwhile, however, for some years government support for electricity supply to rural areas will be necessary. Such support can take the form of subsidy in tariff and also subsidy in renewable and non-conventional energy sources like solar and biomass. The concept of management of rural electricity supply through Panchayat institutions, users' associations, co-operative societies, non-governmental organizations or franschisees is based on the resolution adopted during the last Conference of Chief Ministers/ Power Ministers held on 3.3.2001.

4.6 The National Working Group on Power Sector opined that the present Bill for the first time since Independence prescribe a statutory divide between the two Indias – the urban and the rural India. "The do it yourself" and "manage yourself the loss making part of the system" "is the prescription for rural India! And the world class, ultra efficient privatised power system is the promise for urban India. It is a fact that separating rural and urban power system would enforce costlier power to the farmers and endangers national food security so carefully built up over decades. Even for experienced power engineers it is difficult to comprehend how the division between rural and urban power supply and/ or trading would be established and administered when in an interconnected grid power flows obey only the laws of physics.

4.7 Confederation of Indian Industry (CII) in a note stated in the event of this passage of the Electricity Bill 2001, the Government can continue to provide aid to the private entrepreneurs for undertaking rural electrification works. The onus of collection of revenue and pay back of such assistance could be designated as responsibility of the private entrepreneurs.

C. Role of State Governments, Panchayat Institutions and the possibilities of their success

4.8 Rural Electrification in India has suffered badly over the post few decades. There are more than half a million villages in India and the total rural population is over 700 million. The Planning Commission has recognized rural electrification as the prime requirement for rural development- for improving the quality of their life and their agriculture production. India initiated a large rural electrification programme in 1969 and has electrified 85 percent of the villages. 80,000 villages are yet to be electrified and a majority of them are in remote areas with no access to the grid power. There are 18,000 hamlets and settlements too which are likely to remain unelectrified due to their inaccessibility to the grid. In the process, it is proposed to involve State Governments, State Commissions, Panchayat Institutions, users' associations' co-operative societies, non-government organisations or franchisees through Clauses 4 and 5 of the Bill. Highlighting the need for rural electrification and involving various agencies, one of the representatives of Ministry of Power during evidence stated as under:-

> "This has been considered necessary as there is the problem of service in rural areas and also use of local resources of micro hydel, biomass and solar in remote habitations. It was felt that the legal framework should be more favourable to the development of these resources and also empowering the rural community to take decisions on their own. There is also a Clause for a National Policy on the decentralized management of electricity supply in rural areas through a National Policy to be prepared in consultation with the State Governments for management of local distribution through user associations, co-operatives, franchisees and Panchayat institutions. In the 73rd and 74th Amendments to the Constitution have listed subjects where responsibility can be devolved to the urban and rural local bodies and distribution of electricity is listed as one of those items. So, this provision takes that forward".

4.9 When asked about the role, the ability and the possibilities of their successes in electrifying all the villages and hamlets, various State Governments, Organisations, Associations expressed their views as under:-

4.10 Confederation of Indian Industry stated that Rural Electrification in India has suffered badly over the last decade mainly because of the poor operational and financial health of SEBs. Although 86 per cent of the total villages have got electrified over the years, nearly 80,000 villages are yet to be electrified. Moreover, use of electricity in rural areas for households and other productive purposes like small industries are rather limited. Rural people are often not in a position to afford the cost of electricity and they meet their basic energy needs through the use of energy sources like firewood, cow dung, agricultural residue and kerosene. However, inefficient exploitation of these resources has led to environmental degradation. Renewable can play a major role in rural electrification. In India, 18,000 villages, mostly in remote far-flung areas, can only be electrified by using renewable resources since they are not economically viable to connect through conventional gird system. The features of rural electricity viz. low and dispersed loads, high T&D costs and seasonality of the load favors decentralized (Small hyddro and biomass based) power plants for meeting rural electricity needs in a sustainable manner. Local institutions like Panchayat might play an important role in the implementation, operation and maintenance of such power plants provided logistics and

expertise would be provided to them at the initial stage. Such provisions will not only minimize transaction costs but also transmission and distribution losses.

4.11 On a point of involvement of Panchayat, Cooperative Societies, etc., in managing rural electrification works, the State Government of Tamil Nadu informed the Committee that the Panchayats and co-operative societies in Tamil Nadu will not be able to undertake this work. They have enough other functions to discharge.

4.12 The State Government of Punjab, however, opined that distribution of electricity by Panchayats, users, associations, co-operative societies, non-government organisation or from is not desirable because:-

(i) Electricity is not a goods which can be stored and handled by unskilled persons or associations.

(ii) Rural areas need good quality electricity for longer and uniform hours. Any variation in duration or quality of supply will cause problems which would be difficult to handle at any forum.

(iii) Handling of distribution lines, transformers and other equipment by work force employed by these small institutions may result into accidents and damage to their systems and reflection of this damage to the feeding system."

4.13 On the other hand, the State Government of Rajasthan stated that Panchayats and cooperative societies would not be able to undertake such works, we have tried in three places based on the cooperative structure in Todabheem, Mahua and Kotputali. However, it did not work. As already mentioned above the enabling provisions has to be in terms of providing additional grants.

4.14 The experience of State Government of Gujarat mixed. Gujarat has the experience of rural consumer cooperatives at Kodinar and Industrial Cooperatives some of which are still operating. The Kodinar Electricity Cooperative had to be taken over due to deteriorating assets. There was example of the Vadodara Municipal Corporation undertaking distribution in the municipal limits. Afterwards the Corporation requested GEB to take back the responsibility. It is found that even now municipalities and Panchayats are not able to pay for street lights and water. While there should be a specific policy to ensure that electrification which are of vital necessity is made functional by providing it as obligatory, the State should be free to innovate any organisation consisting of a large number of users who will be willing to take one point supply and distribute among themselves either by undertaking distribution responsibility themselves or contracting out to a technically and managerially qualified contractor by entering into agreement with such a contractor. The responsibility should be theirs. The idea of consumer participation in electricity distribution in any form should be encouraged to reduce T&D losses and improve efficiency. So, whether it is rural or urban electrification, everywhere there should be willingness to encourage consumers who want to participate in distribution through various for a and organizations provided they take full responsibility to receive supply at one point and pay for it. There is generally a lack of willingness on the part of consumers to take these up.

4.15 State Government of Chhattisgarh informed that Management of the rural distribution system through co-operative societies in the State has been experimented. These societies have proved a flop show event though they are supplied electricity at less than 1/10th of the generation cost. Effective electrification of the rural area can only be managed by the private developers with the active and able support of State Government. The State Government also informed that the Electricity Bill in no way prove helpful in electrifying all the villages which are not connected with the grid power. The cost of supply in case of non-conventional energy sources is very high as compared to others whereas the paying capacity of those who are expected to avail the supply limited. Therefore project would be univable. Rural electrification is highly unremunerative venture and economically unviable preposition because of the limited capacity of the rural public & also being highly theft prone area. The management may be given to the Panchayat.

4.16 State Government of Karnataka, carved out limited role for Panchayats and stated that Panchayats and Cooperatives Societies could be used for certain localized operations such as billing and collections. State Government has already committed to involve local bodies in arrears collection with appropriate incentive scheme.

4.17 State Government of Uttaranchal, opposed the move to involve Panchayats and local self institution and stated that Panchayats may not be well equipped for such responsibilities but it is essential to introduce an element of participation in the service sector. Very few Panchayats and Co-operative societies will be able to take the responsibility. For the rest, Central Government would have to provide 100% assistance.

4.18 State Government of Orissa was however, of the opinion that with little dose of technical support the Panchayat and other similar institutions can manage rural electrification for rural electrification programme. The State should provide adequate funds for incurring capital expenditure.

4.19 State Government of West Bengal was optismistic of involving Panchayats and co-operative societies may be able to undertake such work depending on the characteristics of an area. But certainly in some areas other alternatives may be better suited.

4.20 The Chief Secretary, Govt. of UP while deposing before the Committee submitted as under:-

> "The Panchayati raj experiment in managing the delivery system has so far not taken root. The criticism against the Panchayati raj system even today, at least in UP, is that people send their representatives to represent them in the Panchayati raj system but unless the rural Panchayati raj system is given direct control of the services, they just sit there and become redundant symbols of public representation."

4.21 Clarifying the role of Government in rural electrification, the Ministry of Power in a note stated:-

> "The Bill does not provide for formation of Rural Electrification Authority. The responsibility of ensuring supply of electricity to rural areas has been bestowed on the Appropriate Government. In discharge of this responsibility the State

Governments are enabled to consider various alternatives through policy interventions such as Panchayats, Co- operative Societies, user's Association, franchises, NGOs etc".

4.22 The intention behind Clause 4 empowering the Central Government to prepare a policy on stand alone systems for rural areas and non-conventional energy sources and Clause 5 requiring the Central Government to prepare a National Policy on Electrification and local distribution in rural areas – is to put more emphasis on the need for a concerted effort towards rural electrification and to ensure access of electricity to every household of the country. This is further reiterated in Clause 6, which makes it an obligation of the Government to supply electricity to rural areas. This does not in any way lead to rural/urban discrimination. The apprehension of rural/urban divide is unfounded. Thus, the provisions of stand alone systems for rural areas, licence free generation and distribution in rural areas only reflect the Government's commitment to address the problems afflicting the rural sector with all the more resolve. These specific provisions for rural areas are aimed at ensuring electricity to common man residing at appropriate cost. In absence of such provisions in the existing laws the rural electrification and access to electricity has been far below expectation. State Government will have a number of options to supply power in rural areas. The Bill does not restrict Government from supplying electricity to rural areas.

4.23 When asked whether there is any possibility of supplying electricity to all areas including villages and hamlets, particularly when the aim is to privatise distribution, Ministry of Power stated:-

"Privatisation of distribution does not run counter to the objective of supply of electricity to all areas including villages and hamlets. There is a flexibility available to the State Government either to privatise or not to privatise concentrated loads first or privatise a mix of urban, rural loads. Supply of power to all households in the country is a challenge which is supposed to be met through a number of interventions, policy, Non-conventional, stand alone systems etc".

4.24 When enquired the justification for not insisting licence for generation and distribution of power in rural areas and how Government would ensure safety of rural folk in such an eventuality, the Ministry of Power informed as under:-

"Provisions for licence entail lengthy procedures and compliance with a number of legal requirements. Freeing form licensing will provide a hassle-free environment for the Co- operatives / Panchayats / User Associations / Franchisees. If a licensee fails to supply power, there are recourses available to Regulatory Commissions to suspend/cancel the licence".

4.25 Recognising electricity as the harbinger of development in rural areas, India started a Rural Electrification Programme in 1969 for improving the quality of life and agricultural production in the rural areas. The Committee note that high cost of power supply and low paying capacity of the rural population make it difficult for any entrepreneur to venture into this field. The Committee find that this programme suffered badly and failed to provide assured supply of electricity in rural areas. What is more disheartening to note is that there are 80,000 villages which are yet to be electrified. Therefore, the Governmental support is essential for

many years to come if we are to achieve the goal of electricity to all by 2012. The Committee are happy to note that this Bill provides that the Union-Government shall prepare a National Policy on stand alone systems exclusively for the rural areas (Clause 4). Clause 5 of the Bill deals exclusively with the formulation of the National Policy on electrification and local distribution in rural areas. Clause 6, on the other hand, cast an obligation on the Government to ensure supply of electricity to all areas including villages and hamlets. The Committee feel that a provision should be made in the Bill to ensure that entire funding for rural electrification programme is made by the Central Government and that it is not left to the whims and fancies of the private entrepreneurs. The Committee feel that there is a need to strengthen and enlarge the role and scope of the Rural Electrification Corporation, which at present is concerned with providing funds for the rural electrification. The Committee suggest that the Corporation should be given a pro-active role in the implementation of rural electrification programme also. At the same time, the Committee desire that private sector should be under mandatory obligation to discharge its responsibilities towards rural electrification. In this connection, the Committee recommend that some incentives / exemption be thought of in Central / State taxation, for encouraging the private entrepreneurs to invest in rural electrification. The Committee also desire that funds from Pradhan Mantri Gram Udyog Yojna (PMGY), Kutir Jyoti, Accelerated Power Development and Reforms Programme and other such schemes should be made available for rural electrification programme.

4.26 Clause 5 mandates the Central Government to formulate a National Policy for rural electrification and for bulk purchase of power and management of local distribution in rural areas through Panchayat institutions, user associations, cooperative societies, NGOs or other franchisees. In the opinion of the Committee if rural supply is segregated from grid supply, rural electrification work will suffer on account of inadequate investment which will not be forthcoming in non-conventional energy sources as they will be required to supply electricity in non-remunerative areas. This in turn may adversely affect the development of non-conventional sources of energy. The Committee are in agreement with the views of the Government of Uttar Pradesh and desire that the rural supply should be a part of the grid system and only then 100% access to power/electricity would be realised in rural areas. At the same time, the Committee have taken note of the unremunerative nature of rural electrification which the State Government as a part of welfare scheme, has to undertake. The Committee, therefore, desire that Central Government should extend financial support to State Governments for rural electrification works. The Committee have taken note of distribution of electricity in rural areas through Panchayats and co-operative societies. The Committee are aware that such experiments were conducted in the past by various States and their experiences have not been a healthy one especially in Uttar Pradesh and Chhattisgarh. The experience of the Government of Gujarat in involving Panchayat and co-operative societies in rural electrification is mixed. The Government of Karnataka have not involved rural Panchayat and other local bodies in such ventures whereas Government of Tamil Nadu have objected to involvement of Panchayat and co-operative societies on the ground that they have other functions to discharge. In none of these States has the experiment involving these local bodies have proved to be a successful venture. While welcoming the endeavour of the Government to manage the distribution of power in rural areas through Panchayat

institutions, user associations, co-operatives, NGOs and other franchisees, the Committee desire that Government should provide necessary funds and other expertise for strengthening these institutions so that they are able to undertake such a work in future. As very few outside entrepreneurs are willing to go and work in rural areas, it is the people residing in those areas who should come forward and help themselves. The Committee are of the view that there is a need to examine in depth the proviso to Clause 14 which provide that "where a person intends to generate and distribute electricity in a rural area to be notified by State Government, such person shall not require any licence for such generation and distribution of electricity". It means that power supply to a large part of the country may likely to be dictated / governed by self serving vested interests which may lead to utter chaos and exploitation of poor consumers. There is every possibility that the private entrepreneurs who start generation and supply in notified rural areas may start exploiting the consumers by not allowing other entrepreneurs to supply in the areas of his supply and thus monopolising the supply. There is also a possibility of such an entrepreneur not supplying power to certain consumers on other considerations than economic, like political or religious beliefs and personal enmity etc. There is also a possibility of such entrepreneurs abruptly winding up their business and leaving the consumers in the lurch. As such persons are not bound down by the conditions of any licence, it may be difficult to check such malpractices. The Committee, therefore, feel that it is very essential to lay down in the Bill that such persons shall also be under some basic obligations and failure to observe those obligations would attract some penal action. The bill may be amended suitably.

CHAPTER-V

GENERATION OF ELECTRICITY

5.1 'Generation' is the most important part of the power sector. Addition of Generation Capacity is an important indicator of power sector development. However, 8th and 9th Five Year Plans failed to achieve the targets set for addition of generation capacity due to various reasons. Delay in getting various clearances has been the often cited reasons for such failures particularly by the private sector. With the policy of encouraging private sector participation in generation, transmission and distribution, generation is being delicenced under the present Bill.

5.2 Clauses 7 to 11 of the Electricity Bill, 2001 are related to the generation of electricity. These are being discussed in the succeeding paragraphs:

Clause 7: Generating Company and requirement for setting up of generating station:-

5.3 Clause 7 permits generating companies to establish, operate and maintain a generating station without obtaining a licence. It reads as us under:-

Any generating company may establish, operate and maintain a generating station without obtaining a licence under this Act if it complies with the technical standards relating to connectivity with the grid referred to in Clause (b) of section 73"
Clause 73(b) reads as under:-

> "The Authority shall perform such functions and duties as the Central Government may prescribe or direct, and in particular to specify the technical standards for construction of electrical plants, electric lines and connectivity to the grid".

5.4 Unlike in the Act of 1948, the Techno- Economic Clearance (TEC) by CEA has been done away with except in Hydel Projects in the present Bill.

5.5 The issues which have been taken up by the Committee are given in the succeeding paragraphs:-

A. Techno-Economic clearances

5.6 Presently the Central Electricity Authority (CEA) is performing the duties of giving Techno-Economic Clearance and concurrence of schemes submitted to it. This function is proposed to be dropped from the scope of work of CEA in respect of all but hydro projects.

5.7 The Committee received a large number of suggestions on the matter of licence free generation provided under Clause 7. Some Associations expressed their reservations on the issue of permitting generating companies to establish, operate and maintain a generating station without obtaining a licence. They fear that it will result in mushroom growth of small capacity power plants which ultimately would mean non-optimal utilization of national resources, under utilization of proposed national power grid, losing advantage of economy of scale, etc. In order to overcome these problems and also to facilitate the financial institutions, they suggested that the provision of techno- economic clearance of all generation projects, transmission and distribution lines and captive power plants should be done as in the past.

5.8 Expressing their views, against this move, an NGO. Indian Energy Forum (IEF) opined that it may have a serious impact on the operations of the incumbent licensees and suggested that the Clause under reference need to be amended to ensure that generating stations are installed only in conformity with the demand/ supply scenario, using appropriate fuel and optimally located. Such aspects will need to be examined by an appropriate authority for conformity with the National Electricity Plan. They further stated that Central Electricity Authority has sufficient experience and can play an important role especially in determining capital costs for thermal power plants. The Appropriate Commission should then be the final authority to permit or reject the application. This process is necessary to avoid problems like stranded capacity."

5.9 Agreeing with the arguments put forth by IEF, a representative of National Working Group on Power stated during evidence as under:-

> "It is very desirable that all schemes for generation should be vetted by an expert authority and only then permitted to be implemented. At the moment, we have the CEA. They have the experience, data and the expertise to vet the schemes. This Bill proposes to do away with this particular function of the CEA. I cannot imagine anybody putting up a plant anywhere one likes. Who is going to give him coal, fuel oil and consumers? It will practically become a confused situation. Our suggestion is that no investment should be made in power plants, transmission lines, until and unless it is considered essential by an expert authority, like the CEA."

5.10 One of the representatives of Power Engineers' Association during evidence stated as under:-

> "Till today we have cleared 58 private sector projects aggregating to about 30,000 MW and in the process of techno-economic appraisal we have saved more than Rs.10,000 crore of capital expenditure. If the Bill allows withdrawal of TEC from CEA, it will result in so many problems. There will be no agency to ensure that generating plants are being established as per the National Plan of the Government of India; there will be no agency to ensure the optimum utilisation of national resources and the plants are based on least cost options; and there will be no agency to ensure that all statutory clearances have been obtained by the generating companies. The dispensing of TEC would result in a haphazard and fragmented growth of small generating sets. Another important point is that a strange provision has been put in the Bill that generation will be delicenced but transmission and distribution will be licenced. Who is to ensure the match in generation and transmission? Whereas generation is free from any check and

balance, you are saying that there will be licensing for transmission. When we are generating something, it has to be transmitted because electricity is not a storable commodity. It is an on-line industry. Once it is generated, it has to be transmitted. When you are bringing some control on transmission and distribution, leaving generation without any check and balance, where is the match? So, this is a strange provision and it has to be looked into."

5.11 Commenting upon apprehensions expressed by Power Engineer's Associations, Central Electricity Authority (CEA) in a note stated:-

"The technical standards and regulations contemplated in Clause 73 of the Bill will take care of the issues mentioned above. Secondly the licensing system proposed in the Bill (part-IV) will ensure linkage (and control) with the plan. Thirdly no prudent entrepreneur making massive investment (required for setting up power plant) can be expected to disregard the saleability of power generated by him or set up a plant in a region surplus in energy. As such, power plants/ transmission lines are expected to be installed in tune with the requirement of the area / region. Fourthly, taking into account the prevailing conditions of huge gap between the demand and supply (both at present and in foreseeable future) it would only be prudent to have redundancies in thermal generation capacity. Fifthly, the private sector plants would be set up on the basis of tariff based competitive bidding (overseen by Regulatory Commissions) which will ensure that such plants are set up on least cost basis. Sixthly, the Electricity Bill,2001 encourages trading of electricity in future. As such, the investors would (have to) ensure that the new plants are put up on least cost basis failing which they would not be able to sell the power generated by them. (Clause 7 of the Bill states that "Any generating company may establish, operate and maintain a generating station without obtaining a licence under this Act if it complies with the technical standards relating to connectivity with the grid referred to in Clause (b) of section 73"). Seventhly, as regards the issue relating to imported fuel, this aspect has to be addressed by the Government policy relating to various fuels for all sectors of industry (industry as a whole) and not just for the power generating industry. Eighthly, in future as the electricity would be sold on free market basis (over the life of the project which spans 15-25 years)., the investor would have to take into account the risk of exchange rate variations in future and in this light would have to select proper fuels. This will inter alia address the question of foreign exchange outflow".

5.12 On the other hand, Confederation of Indian Industry (CII) opined:-

"There is no need to ensure that plants are set up as per national plan. States have to create enabling environment for investment. Since no fixed return is assured, so in order to survive, the investors have no other way than to select least cost option. Industrial units are paying higher power tariff, which reduces their global competitiveness. Unreliable supply of power coupled with frequency fluctuations hampers the production process besides damaging the sophisticated instruments. Under such circumstances, industries are compelled to set up captive power plants. Strict environmental regulations and emission norms must be followed to minimize environmental and ecological impacts".

5.13 The views of the State Governments on fear expressed by Power Engineer's Association are as under:-

State Government of Tamil Nadu

"The market will take care of choice of power plants, technology in terms of least cost. Appropriate regulatory commissions are there to take care of all these aspects."

State Government of Rajasthan

"There are different agencies already in place to watch compliance of Statutory provisions".

State Government of Uttaranchal:

"This is not directly relevant to Uttaranchal which is a hydro power State".

NCT of Delhi

"In the changed scenario of projects coming through the competitive bidding route and IPPs taking care of market risks on their own, it is justifiable that the CEA should confine its role in Hydro Projects only".

State Government of Chhatisgarh

"It is felt that in the event of deregulation of thermal & captive generation there may not be any agency to exercise the control on installation & running of the captive power plants. We also share the concern voiced by many organization on points mentioned at (i) to (vi). This may also lead to unhealthy competition, with no agency to check it. State Government may be vested with the power to ensure the statutory clearances to generating companies".

State Government of West Bengal

"The above concerns voiced by many organisations will be addressed by following actions:

(i) All statutory clearances will have to be ensured by the State Governments before giving clearance to its operation. Changes in the bill as considered necessary will have to be made for this purpose.

(ii) The project viability and fuel and economic security will also be ensured by Regulatory Authority on the basis of the policy directions from State Government time to time."

5.14 Views of various State Governments and Organisations / Association on the need to have TEC by CEA is as under:-

State Government of Kerala

"For establishing and operating new generating stations licence may be issued."

State Government of Maharashtra

"It is proposed that intimation to the appropriate State Government should be required".

State Government of Punjab

"Allowing freedom to establish generating plants without licence is not desirable. Having invested a major amount, generating plant will have to be allowed connectivity whether technical standards are being complied with or not. Provision of licence to generate would rather help remove the above said drawback."

State Government of Tamil Nadu

"In the case of hydel power stations there is need to get techno economic clearance. In the case of thermal stations techno economic viability will be taken care of by the developers and appraising financial institutions."

State Government of Rajasthan

"CEA's clearance would be desirable in case of projects where tariff is determined on cost basis whereas such clearance may be done away with in case of projects selected through competitive bidding".

State Government of Gujarat

"It is felt that any generating company desirous of establishing a generating station should obtain techno-economic clearance and concurrence from CEA and also should take prior approval of State Government. This is necessary in any economy, more so, in a developing economy like ours where there are serious resource constraints and where the social cost benefit analysis of any venture is a must".

NCT of Delhi

"In the changed scenario of projects coming through the competitive bidding route and IPPs taking care of market risks on their own, it is justifiable that the CEA should confine its role to Hydro Projects only".

State Government of Chhattisgarh

"It is felt that the present system of giving techno- economic clearance by the CEA in respect of the power hydro project & thermal project above 25 MW capacity may be continued. There does not appear any justification in doing away the present system".

Confederation of Indian Industry (CII)

"We do agree with this. Investors can select appropriate technologies and other factors to minimize the business risks and to maximize the profit. CEA can work as consulting body and provide services on commercial basis".

Central Electricity Authority (CEA)

"As a matter of policy, a view has been taken in the Bill that TEC by CEA need not be insisted upon as a statutory requirement except for hydro projects. Along with delicensing of generation this is expected to speed up the process of capacity addition in the country. It is natural that project promoters and other investors like lenders would, in any case, satisfy themselves through a techno- commercial appraisal by some other agency that the project would be viable before risking large sums of money".

5.15 When asked to comment on the above issue, the Ministry of Power in a note stated:-

"The intention is to provide enough freedom and flexibility in the system for promoters of power plants to put up generating stations. The Regulatory Commissions would ensure that the tariffs are competitive and reasonable. This is a continuation of the policy of the recent past where tariff based bidding for new IPPs has been prescribed. The objective is to get lower tariffs by promoting competition in the new liberal framework in place of the earlier system of centralized planning and detailed costs scrutiny by Central Electricity Authority.

The competitive process of development with Regulatory Commissions looking into the reasonableness of tariffs through a public process is expected to yield the lowest tariffs. This, in turn, would lead to optimal investment decision in terms of choice of technology, fuel, location etc."

Clause–8 Hydro–Electric Generation

5.16 Under Clause '8' of the Electricity Bill, 2001 a hydro generating station is required to obtain approval of the appropriate Government and concurrence of CEA it reads as under :-

"Clause 8(1) Notwithstanding anything contained in section 7, any generating company intending to set-up a hydro- generating station shall obtain approval of the Appropriate Government.

(2) Every company referred to in sub-section (1) shall prepare and submit to the Authority for concurrence, a scheme estimated to involve a capital expenditure exceeding such sum, as may be fixed by the Central Government from time to time, by notification.

(3) The Authority shall, before concurring in any scheme submitted to it under sub-section have particular regard to, whether or not in its opinion,-

(a) the proposed river-works will prejudice the prospects for the best ultimate development of the river or its tributaries for power generation, consistent with the requirements of drinking water, irrigation, navigation, flood-control, or other public purposes, and for this purpose the Authority shall satisfy itself, after

consultation with the State Government, the Central Government or such other agencies as it may deem appropriate, that an adequate study has been made of the optimum location of dams and other river-works;

(b) the proposed scheme meets, the norms regarding dam design and safety and for this purpose, the Authority shall consult the appropriate agencies specified by the Central Government.

(4) Where a multi-purpose scheme for the development of any river in any region is in operation, the State Government and the generating company shall co-ordinate their activities with the activities of the persons responsible for such scheme in so far as they are inter-related".

5.17 Existing provisions of the Hydro-Electric generation as mentioned above are already available under Clause 29,30 and 73 of the Electricity (supply) Act,1948 which are as under:-

"29, Submission of schemes for concurrence of Authority, etc,-

(1) Every scheme estimated to involve a capital expenditure exceeding such sum, as may be fixed by the Central Government, from time to time, by notification in the Official Gazette, shall, as soon as may be after it is prepared, be submitted to the Authority for its concurrence.

(2) Before finalisation of any scheme of the nature referred to in sub-section (1) and the submission thereof to the Authority for concurrence, the Board or, as the case may be, the Generating Company shall cause such scheme, which among other things shall contain the estimates of the capital expenditure involved, salient features thereof and the benefits that may accrue therefrom, to be published in the Official Gazette of the State concerned and in such local newspapers as the Board or the Generating Company may consider necessary along with a notice of the date, not being less than two months after the date of such publication, before which licensees and other persons interested may make representations on such scheme.

(3) The Board or as the case may be, the Generating Company may, after considering the representations, if any, that may have been received by it and after making such inquiries as it thinks fit, modify the scheme and the scheme so finally prepared (with or without modifications) shall be submitted by it to the Authority along with the representations.

(4) A copy of the scheme finally prepared by the Board or, as the case may be, the Generating Company under sub-section (3) shall be forwarded to the State Government or State Governments concerned:

Provided that where the scheme has been prepared by a Generating Company in relation to which the Central Government is the (competent government or one of the competent governments), a copy of the scheme, finally prepared shall be forwarded also to the Central Government.

(5) The Authority may give such directions as to the form and contents of a scheme and the procedure to be followed in, and any other matter relating to, the preparation, submission and approval of such scheme, as it may think fit.

(6) In respect of any scheme submitted to the Authority for its concurrence under sub-section (1), the Board or, as the case may be, the Generating Company shall, if required by the Authority so to do, supply any information incidental or supplementary to the scheme within such period, being not less than one month, as may be specified by the Authority".

30. Matters to be considered by the Authority :–

"The Authority shall before concurring in any scheme submitted to it under sub-section (1) of section 29, have particular regard to, whether or not in its opinion-

(a) any river-works proposed will prejudice the prospects for the best ultimate development of the river or its tributaries for power-generation, consistent with the requirements of irrigation, navigation and flood-control, and for this purpose the Authority shall satisfy itself, after consultation with the State Government, the Central Government, or such other agencies as it may deem appropriate, that an adequate study has been made of the optimum location of dams and other river-works;

(b) the proposed scheme will prejudice the proper combination of hydro- electric and thermo-electric power necessary to secure the greatest possible economic output of electric power;

(c) the proposed main transmission lines will be reasonably suitable for regional requirements;

(d) the scheme provides reasonable allowances for expenditure on capital and revenue account;

(e) the estimates of prospective supplies of electricity and revenue therefrom contained in the scheme are reasonable;

(f) in the case of a scheme in respect of thermal power generation, the location of the generating station is best suited to the region, taking into account the optimum utilisation of fuel resources, the distance of load centre transpiration facilities, water availability and environmental considerations;

(g) the scheme conforms to any other technical, economic or other criteria laid down by the Authority in accordance with the national power policy evolved by it in pursuance of the provisions contained in Clause (i) of sub-section (1) of section 3 (and such other directions as may be given by the Central Government)

73 Co-ordination between the Board's schemes and multi – purpose schemes-

"Where a multi purpose scheme for the development of any river in any region is in operation, [the Board and the Generating Company shall co-ordinate their

activities] with the activities of the persons responsible for such scheme in so far as they are inter- related".

5.18 From above, it is clear that:-

(a) as against the requirement of Techno-Economic clearance (TEC), the new Bill provides technical clearance of CEA on specified parameters and

(a) approval of appropriate Government has been mandated.

5.19 During the course of examination of the Bill, the Committee invited the views of various Organisation, Associations, State Governments on the Bill and held discussions with some of them. Various issues which have been taken up by the Committee are given in the succeeding paragraphs:

A. <u>Issues for consideration regarding Hydel genration:</u>

5.20 When asked about the issues on which concurrence or clearance of hydro projects are required, PHDCCI, New Delhi expressed their views as under: "the article provides for concurrence of CEA for schemes of hydro electricity generation. Issues on which concurrence or clearance is required must be specified in the Act."

5.21 A representative of Power Engineers Association expressed the following views as under:-

> "……………This is strongly felt that all hydro schemes which involve inter state utilisation of waters irrespective of their cost should be submitted to CEA for its concurrence as per the present laws/ notifications (ii) To ensure complete transparency and to allow representation, the provisions of section 29(2) and 29(3) of Electricity (Supply) Act 1948 need to be retained".

5.22 During evidence, one of the representatives of Power Engineers' Association submitted as under:-

> "Regarding hydro generation we strongly feel that all hydro projects should be appraised by CEA, irrespective of their cost and size because more than 90 % of our rivers flow inter-State."

5.23 At present the CEA is performing the duties of giving Techno-Economic Clearance (TEC) but the new Bill provides only technical clearance on specified parameters. When asked about the comments, the Tata Power Company Ltd. Stated:-

> "We believe that the CEA should continue the duty of giving techno-economic clearance of both schemes, thermal and hydro".

5.24 Commenting upon the role of CEA in the matter, the Ministry of Power in a note stated:-

> "With the creation of Regulatory Commissions, the role of CEA remains primarily on technical aspect. Hence the requirement of technical clearance only.

5.25 The issue was further clarified during evidence, when a representative of the Ministry of Power stated as under:-

> "The concurrence of Hydel Project by CEA is necessary because hydro projects involve issues relating to inter-State water rights, dam design, safety and seismicity. So, it was felt that scrutiny of hydro projects would still be necessary and this would be in the public interest".

B. Technical Competence of the generating companies

5.26 Following of the views of some of the Organisations / State Governments in respect of technical competence of the generating companies:-

Confederation of Indian Industry

> "Government alone need not do this. Independent consultants and FIs can also do the same. CII is ready to be a part of Technology Consulting Body".

State Government of Tamil Nadu

> "CEA will have to verify technical details and design aspects of dams that are constructed by hydel generating companies. PWD and Dept. of Environment & Forest also will take care of all these aspects."

State Government of Uttaranchal

> "The State Government through the concerned organization should ensure technical competence of the prospective Generating company, and also the accuracy of design and technical details".

State Government of Chhattisgarh

> "It would be proper that the generation company are made responsible for design and technical details of Hydel Project. The agency responsible for granting the approval should be made responsible to verify the technical competency, environmental impact, requirement of the plant as per natural need and other particulars".

State Government of Madhya Pradesh

> "We agree that the appropriate Government while granting approval for setting up of hydel plant should also ensure the technical competency of the generation company and the hydel generating company should be responsible for design and technical details. The State Government can ensure the above by utilizing the expertise available with Electricity Board / Narmada Valley Development Authority /Consultants".

5.27 On the other hand the Rajasthan Chamber of Commerce and Industry stated as under:-

"The authority should see that the norms regarding Dam Design and safety as laid down, have been followed by the Hydro Generation Company. The Generation Company should be responsible for the design and technical details. The appropriate Government while according approval for setting up of Hydro generation station shall also ensure the technical competency of the generation company".

Clause 9 Captive Generation

5.28 In line with the Government's policy to fully free Captive Generation, the proposed Bill stipulates an explicit provision in this regard which is enumerated as under:-

Clause 9(1) "Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines:

Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company.

(2) Every person, who has constructed a captive generating plant and maintain and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use:

Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be:

Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission".

5.29 The existing Act provides for permission for setting up Captive Generating plant under section 44 of Electricity (Supply), Act,1948, which is enumerated as under:-

44. "Restriction on establishment of new generating stations or major additions or replacement of plant in generating stations- (I) Notwithstanding anything contained in any other law for the time being in force or in any licence, but subject to the provisions of this Act, it shall not be lawful for a licensee, or any other person, not being the Central Government or any Corporation created by [a Central Act] {for any Generating Company} expect with the previous consent in writing of the Board, to establish or acquire a new generating station or to extend or replace any major unit of plant or works pertaining to the generation of electricity in a generating station:

Provided that such consent shall not, except in relation to a controlled station, be withheld unless within three months from the date of receipt of an application-

(a) for consent to the establishment or acquisition of a new generating station, the Board-

(i) gives to the applicant being a licensee an undertaking that it is competent to, and will, within twenty- four months from the said date, afford to him a supply of electricity sufficient for his requirements pursuant to his application; or

(ii) shows to the applicant that the electricity required by him pursuant to his application could be more economically obtained within a reasonable time from another appropriate source;

(b) for consent to the extension of any major unit of plant of works as aforesaid, the Board-

(i) gives to the applicant being a licensee an undertaking that within twenty- four months from the said date either the station to which the application pertains will become a controlled station in terms of section 34, or the Board will make a declaration to the applicant in terms of section 35 offering him a supply of electricity sufficient for his requirements pursuant to his application, or the Board will make a declaration to him in terms of section 36; or

(ii) shows to the applicant that the electricity required by him pursuant to his application could be more economically obtained within a reasonable time from another appropriate source or by other appropriate means;

(c) for consent to the replacement of any major unit of plant or works, the Board-

(i) gives to the applicant being a licensee an undertaking that within eighteen months from the said date either the station to which the application pertains will become a controlled station in terms of section 34, or the Board will make a declaration to the applicant in terms of section 35 offering him a supply of electricity sufficient for his requirements pursuant to his application, or the Board will make a declaration to him in terms of section 36; or

(ii) shows to the applicant that the electricity required by him pursuant to his application could be more economically obtained within a reasonable time from another appropriate source or by other appropriate means;

(2) There shall be stated in every application under this section such particulars as the Board may reasonably require of the station plant or works, as the case may be, in respect of which it is made, and where consent is given thereto, in acting in pursuance of such consent, the applicant shall not, without the further consent of the Board, make any material variation in the particulars so stated.

(2A) The Board shall, before giving consent under sub-section (1), to the establishment or acquisition of a new generating station or to the extension or replacement of any major unit of plant or works, consult the Authority, in cases where the capacity of the new generating station or, as the case may be, the additional capacity proposed to be created by the extension or replacement exceeds twenty-five thousand kilowatts.

(3) Any difference or dispute arising out of the provisions of this section shall be referred to the arbitration of the Authority".

5.30 The industrial sector was getting unreliable and inferior quality of power supplied by SEBs at unreasonable rates. The Bill now tries to meet their long awaited demand through this Clause by giving them the right to generate their own power at reasonable cost and for this licence will be required as has been required, unlike which had stimulated a licence for the purpose.

5.31 Various points arising out of the detailed examination on captive generation by the Committee are given in the succeeding paragraphs:-

A. Definition of captive generating plant

5.32 When asked about the views over the definition of captive generating plants, State Government of Maharashtra stated that "captive generation should be defined as that exclusively for self use and at the same premises. No transmission of captive power should be allowed except in case of mini-hydro and wind generation". The Federation of Andhra Pradesh Chambers of Commerce and Industry (APCC&I) have suggested that where the captive power plant is set up by a group of consumers who are members or shareholders of the association or companies formed for the purpose, the term captive generation plant should also include for generation of electricity primarily for use of such members or shareholders. They further stated that a captive generating plant is a generating company may be taken into consideration. It is submitted that a captive generating plant should be excluded from the definition of a generating company. The definition of "captive generating plant" in section 2(8) contemplates that the power plant is set up to generate electricity "primarily" for the persons own use. It is, therefore, possible that a person may set up a power plant primarily for ones own use, but at the same time have the ability to generate electricity which is surplus to his requirement. The situation may arise due to several reasons. In all such cases, the captive generating plant should be able to sell its surplus energy to any person in the same manner as a generating company could sell its energy. This will facilitate full and optimum utilization of installed capacity in the country.

5.33 Power Engineers Association have suggested that "captive plants and dedicated transmission lines have been proposed to be free from any approval / permission. In fact, captive generating plants should be planned and constructed considering their long- term impacts and hence should be in the purview of National Electricity Policy as well as National Electricity Plans. Suitable mechanism should be provided to ensure the same".

B. Provision for use of power within group companies

5.34 It has been suggested that there should be a provision for use within group companies under the same management for captive generation. Further, it has been suggested that there should be a provision for a "person" having captive generation stations to sell his excess power to a licensee or a consumer provided he satisfies the conditions as stipulated to a generating company for such a sale. When asked about the views on provisions for use of power within group companies, various Organisations/ Associations and State Governments expressed their views as under:-

NCT of Delhi

"There is no apparent harm in allowing group companies under the same management to use their captive generation. This should be seen in the larger perspective of encouraging captive power generation in a regime of shortages. In Delhi, the State Commission has recently notified regulations governing the setting up of captive power plants and their use, which are consistent with this approach".

State Government of Chhattisgarh

"The concept of the captive generation should be strictly enforced. The person/ entity having generation may not be allowed to sell excess power either to a licensee or to any other third party. Otherwise the main motto of the person having captive generation may change and he may indulge into generation & trading of power instead of captive generation. This would seriously affect the revenue earning of the licensee and also capacity of State Government to subsidize the weaker section of consumer".

State Government of Rajasthan

"We agree that the proposed action would affect State Govt's capacity to cross subsidise different set of consumers and this would lead to adverse implications for consumers at large."

State Government of Tamil Nadu

"This facility may be permitted subject to levy of cross subsidy surcharge by SERC".

State Government of Orissa

"Unhindered growth of Captive generation will definitely affect the capacity to cross-subsidise different classes of consumers. It will go against the principle of 'economy of scale' in utilisation of the generation assets. In other words will be a national wastage. Permission of CPP should therefore be granted only where the cost of generation is lower than the grid tariff and where reliability of power supply could not be assured by the licensee."

State Government of West Bengal

"As in this bill cross-subsidisation aspect has been treated as an diminishing component, thus the said provision will not be a detrimental one. Moreover, there is also provision of surcharge if such cross-subsidisation exist. Thus it will be not a significant problem. However, Government of West Bengal believes that to a certain level cross-subsidisation is to be kept for longer period in future in order to provide electricity for all in affordable price."

State Government of Karnataka

"This is already in practice in Karnataka. This should be regulated subject to technical feasibility and on payment of the charges to the grid operator."

Central Electricity Authority (CEA)

"The requirements mentioned above seem to be already covered by Clause 9 which provides for freedom and flexibility in putting up captive power plants and open access for transmission of power from such plants subject only to regulation by appropriate commission".

C. Right of open access to the captive generation plants

5.35 When asked about the views on the question of the right of open- access for the purpose of carrying electricity from the captive generation plants to the private destination, various Organisations submitted to the Committee in the form of Memorandum as under:-

Kerala State Electricity Board (KSEB)

"The Industry welcomes the open access provided under the act for captive power generation. Though this would not benefit the generation licensees but would certainly benefit the industry in the current power scenario" and proposed the following modifications.

A person may construct, maintain or operate a captive generating plant and dedicated transmission lines only with the approval of the Appropriate Government".

Karnataka Power Corporation Ltd.

"The right to open access imposed shall be at a cost payable for such service".

State Government of Assam

"Open access across the transmission system should be available to distribution companies, traders as also bulk consumers. Open access should not be restricted to captive generation only as has been provided for under Clause 9(2) provisio-- this would cater to the needs of only few bulk customers. We feel this would create competition in this sector beneficial to the consumer."

State Government of Rajasthan:

"The proposed open access, even after levy of surcharge may lead to several complications. Such an arrangement instead of promoting competition would in effect lead to uneven playing ground. On the one hand, while there would be generating/supply companies free to select bulk consumers there would be no such option for the existing distribution companies to abandon or even restrict expansion in difficult and unremunerative areas. Putting them at disadvantage **vis-a-vis** new supply companies would further impair their capability to serve the

consumers at large. This may lead to serious repercussions. Even a multi-buyer model, with one set of parties in advantageous position vis-à-vis others, is not going to succeed. The exit of existing or potential bulk buyers, most of whom are likely to be industrial consumers, would also lead to demand management problem. For a distribution company left with predominantly domestic and agriculture load spread over the entire length and breadth of the State, both of which are subject to high seasonal variations; per unit cost of catering to such a consumer profile would go up further and management would pose added problems. Open access on area basis may perhaps be more practical and feasible. Such an area may have appropriate mix of industrial, urban and rural loads".

State Government of Maharashtra

"The captive power producers may increase rapidly and it will be difficult to regulate them in the same manner as the generating station of a generating company(as envisaged in the Bill). Also, this will increase the duties of the transmission and local distribution licensees in terms of maintaining records, etc."

5.36 The Andhra Pradesh Electricity Regulatory Commission did not agree with the captive power generation policy, as envisaged in the Bill and stated as under:-

"A captive generator can produce electricity (primarily) for him and also sell electricity to others. These are significant changes in the scheme prevalent in the existing laws and will have far reaching implications (adverse) on the organized growth of electricity industry. The principle underlying is that the distribution licensee should have the universal obligation to supply energy to all the consumers in the area of supply and in view of the above obligation to supply, the consumers in the area of supply should be protected by the distribution licensee. The freely allowed captive generation and freedom to generating companies to directly sell electricity to consumers takes away the above protection but keeps the obligation to the licensee. Since captive generation and generating companies will have no such universal obligation (as in the case of the distribution licensee) they will cherry pick good paying higher value consumers and leave the others subsidised supply to the distribution licensee. This will create significant dent in the revenue of the distribution activity which is even now under serious financial strain.

5.37 It further stated:-

Central and State governments are experiencing enormous problem in privatizing distribution because of the load financial position of the distribution activity. If captive generation and direct sale by distribution companies are allowed, the Privatisation of Distribution will be a non-starter. There will also be no incentive for SEBs to unbundled as they can convert themselves consumers without a licence. Similarly, all industrial consumers will install captive and group captive units and will not take electricity from the distribution companies. The drastic consequences will be (a) no privatization (b) substantial tariff increase for other consumers who do not put captive units or cannot contract directly with generating companies(c) substantial increase in government subsidy. These drastic consequences cannot be saved only by providing surcharge etc., for a limited period as contained in Clause 42. Such surcharges are also leviable only

when the open access is sought and not when the captive units / generating companies built dedicated transmission lines. The larger public interest should be protected rather than allowing free captive and direct sale from generating companies to consumers.

5.38 The Commission desired that:-

These matters should not be mandated in the legislation but should be left to the State Commission to decided on a case to case basis. Only optimal solutions for Generation capacity additions duly considering all techno, economic and environmental issues should be allowed notwithstanding the deregulation 'Generation' contemplated. These should generally be dealt in power policies. 'Economic' should not mean the cost of captive generation relative to the tariff to the consumer but to the other supplied to the licensee's grid including losses because of the present distortions in tariff owing to huge inter-category cross subsidies".

5.39 Clause 11 deals with the extraordinary circumstances arising out of the threat to security of the State, Public order or a natural calamity which reads as under:-

Clause 11(1) The Appropriate Government may specify that a generating company shall, in extraordinary circumstances operate and maintain any generating station in accordance with the directions of that Government.

Explanation - For the purposes of this section, the expression "extraordinary circumstances" means circumstances arising out of threat to security of the State, public order or a natural calamity.

(2) the Appropriate commission may offset the adverse financial impact of the directions referred to in sub-section (1) one any generating company in such manner as it considers appropriate.

5.40 The Government of Madhya Pradesh suggested as under:-

It provides for a power in the appropriate Government to give direction to the Generating Company in "extra ordinary circumstances" which is very restrictive. The appropriate Government should have power to direct the Generating Company not to cease generating electricity, if it considers in public interest necessary to do so for maintaining the supply of electricity in the areas.

5.41 It is a new Clause to be incorporated into the Electricity Bill, 2001. When asked about the reasons for incorporation of this Clause into this Bill, the Ministry of Power stated as under:-

"It has been considered necessary to incorporate such a provisions to meet the emergent situations".

5.42 The Committee find that in terms of Clause 7, any generating company is entitled to establish and maintain a generating station without obtaining a licence subject to the condition that it complies with the technical standards relating to connectivity with the grid referred to in Sub-Clause (b) of the Clause 73. The Committee while welcoming this freedom given to the thermal units would like to stress that while ensuring that technical

standards relating to connectivity have been met, it should also be ensured that the generating plants are being established as per the National Plan and demand & supply scenario, use of appropriate fuel taken note of all statutory clearances obtained by the generating companies, dumping of outdated technology and second hand plants checked and optimisation of key parameters worked out. The Committee also desire that it should be ensured that a generation project not merely satisfy technical standards but it also make commercial and economic sense in the capital intensive industry like electricity. It is imperative that these matters are gone into carefully before a project is started. CEA should be apprised of power development schemes undertaken by the various players. The Committee are of the view that since CEA is the repository of technical know-how of power sector, an intimation of setting up of a thermal plant should be made available to CEA in prescribe manner, so that such data base is made use of while preparing and formulating National Plan and Policy for power sector. The Committee feel that there is also a need to provide in the Bill that if the CEA comes to a conclusion based on the information received from a generating company, that any particular company has not maintained the specified technical standard in the plant set up by it, it can advise the concerned State Government / Commission not to allow operation of any such plant. The Committee therefore, recommend that the Bill should be suitably modified accordingly.

5.43 Clause 8 of the Bill deals with Hydro-Electric generation. It provides for obtaining approval of the appropriate Government and concurrence of CEA for setting up Hydro-Electric generating station . As per Clause 8 (2) "every scheme estimated to cost more than the specified sum shall be submitted to CEA for concurrence and such a sum is to be fixed by the Central Government". The Committee feel that while fixing the limit, the Central Government should fix such an amount whereby Small / Mini Hydel stations may be exempted from such a concurrence to encourage the use of Non-Conventional Energy Sources. Under Sub-Clause 3(b) it has been stated that the Authority shall see that the proposed scheme meet the norms regarding dam design and safety and shall consult the appropriate agencies specified by the Central Government. The Committee feel that there is no need to provide in the Bill that the Authority should consult the agencies specified by the Central Government so that its responsibility is not diluted. It should be left to the discretion of the Authority to ensure that the scheme fulfill the prescribed parameters regarding design and safety and if any short comings are noticed later on, CEA would alone have to bear the blame and face the consequences. The Committee recommend that the relevant Clauses should be amended suitably.

5.44 The Committee note that Clause 2(8) of the Bill define the captive generating plant as a power plant set up by any person to generate electricity primarily for his own use. However, the Committee feel that in order to bridge a huge gap between demand and supply, the definition should be suitably amended to provide that captive generating plant would be for one's own use or for captive consumption of any industry or a group industries. This Clause may be amended accordingly.

5.45 Under Clause 9, any person can construct, maintain and operate a captive generating plant and dedicated transmission lines and he shall have the right to open access for the purpose of carrying electricity from his captive plant to the destination of his use subject to certain conditions. While most of the trade / industry organisations have welcomed the above provisions, it has been suggested that the captive generating plant should be allowed to sell its surplus power to any person in the same manner as a generating company could sell its energy. This will facilitate, it has been stated, full and optimum utilization of installed capacity in the country. However, most of the State Governments like Madhya Pradesh and

Chhattisgarh have desired that the concept of captive generation should be strictly enforced and they should not be allowed to sell excess power. Otherwise they may resort to generation and trading of power instead of captive generation. This would seriously affect the revenue earning of the licensee and hence the privatization of distribution. It has been pointed out by the Government of Madhya Pradesh that establishment of a large number of captive power plants will burden the State Load Despatch Centre for scheduling and paralleling of power generated by the captive power plants. The Committee feel that the decision on third party sale be left to individual States based on the ground realities in each State.

The Committee are of the view that there is a need to provide in the Bill that the persons maintaining captive generating units should provide relevant technical details to the concerned State Government before setting up such a plant so that the State government can correctly assess the demand and supply position and formulate its policies accordingly. The Committee, therefore, recommend that the Bill be amended suitably.

5.46 In terms of Clause 11, the Appropriate Government can specify in extra, ordinary circumstances that a generating company shall operate any generating station in accordance with the direction of that Government. However, as per the explanation the expression 'the extraordinary circumstances' means extraordinary circumstances arising out of threat to security or public order or of natural calamity. The Committee are of the opinion that Appropriate Government should have the power to direct the companies not to cease generating electricity if it considers in public interest necessary to do so for maintaining supply of electricity in that area. The Committee desire that suitable amendment may be made in the Bill itself.

CHAPTER VI

LICENSING

6.1 Clause 12 to 24 of Part-IV of the Electricity Bill, 2001 relate to licencing. Some of them have been taken up by the Committee in succeeding paragraphs:

Clause 12 Authorized persons to transmit supply, etc. electricity :-

Under Clause 12, trading along with transmission and distribution has been recognised as a licenced activity. Clause 12 reads as under:-

"No person shall -
(a) transmit electricity; or
(b) distribute electricity ; or
(c) undertake trading in electricity.

Unless he is authorized to do so by a licence issued under section 14, or is exempt under section 13.

Clause 13: Power to exempt

Clause 13 of the Electricity Bill,2001 is reproduced below:-

"The Appropriate Commission may, on the recommendations, of the Appropriate Government, in the public interest, direct, by notification that subject to such conditions and restrictions, if any, and for such period or periods, as may be specified in the notification, the provisions of section 12 shall not apply to any local authority, Panchayat Institution, users' association, co-operative societies, non-governmental organistions, or franchisees:

Provided that where such direction results in setting up of an electric line or electrical plant which would compete with any existing distribution system, such direction shall be issued having due regard to its effect on the distribution licensee owning such distribution system".

Clause 14 Grant of Licence

Clause 14 of the Electricity Bill, 2001 reads as under:-

"The Appropriate Commission may, on an application made to it under section 15, grant a licence to any person- (a) to transmit electricity as a transmission licensee; or (b) to distribute electricity as a distribution licensee; or (c) to undertake trading in electricity as an electricity trader in any area as may be specified in the licence:

Provided that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be licensee under this Act for such period as may be stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule, and

the provisions of the repealed laws or such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified, at the request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business;

Provided further that the Central Transmission Utility or the State Transmission Utility shall be deemed to be a transmission licensee under this Act;

Provided also that the Government company or the company referred to in sub-section (2) of section 131 of this Act and the company or companies created in pursuance of the Acts specified in the Schedule, shall be deemed to be a licensee under this Act;

Provided also that the grant of licence under this section shall not in any way hinder or restrict the grant of licence to another person within the same area;

Provided also that in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person, that person shall not be required to obtain any separate licence from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply;

Provided also that where a person intends to generate and distribute electricity in a rural area to be notified by the State Government. Such person shall not require any licence for such generation and distribution of electricity;

Provided also that a distribution licensee shall not require a licence to undertake trading in electricity."

Clause 15: Procedure for grant of licence

Clause 15 of the electricity Bill, 2001 reads as under:-

Clause 15(1) Every application under section 14 shall be made in such form and in such manner as may be specified by the Appropriate Commission and shall be accompanied by such fee as may be prescribed.

(2) Any person who has made an application for grant of licence shall, within seven days after making such application, publish a notice of his application with such particulars and in such manner as may be specified and a licence shall not be granted.

(i) until the objections, if any, received by the Appropriate Commission in response to publication of the application have been considered by it:

Provided that no objection shall be so considered unless it is received before the expiration of thirty days from the date of the publication of such notice as aforesaid;

(ii) until, in the case of an application for a licence for an area including the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the

Government for defence purposes, the Appropriate Commission has ascertained that there is no objection to the grant of the licence on the part of the Central Government.

(3) A person intending to act as a transmission licensee shall, immediately on making the application, forward a copy of such application to the Central Transmission Utility or the State Transmission Utility, as the case may be.

(4) The Central Transmission Utility or the State Transmission Utility, as the case may be, shall, within thirty days after the receipt of the copy of the application referred to in sub-section (3), send its recommendations, if any, to the Appropriate Commission:

Provided that such recommendations shall not be binding on the Commission.

(5) Before granting a licence under section 14, the Appropriate Commission shall -

(a) publish a notice in two daily newspapers, one of which shall be in English, stating -

(i) the name of the person to whom it proposes to issue the licence;

(ii) the time, not being less than thirty days from the date of publication of the notice, within which the suggestions or objections with respect to the proposed licence may be made;

(b) consider all suggestions or objections and the recommendations, if any, of the Central Transmission Utility or State Transmission Utility, as the case may be.

(6) Where a person makes an application under sub-section (1) of section 14 to act as a licensee, the Appropriate Commission shall, as far as practicable, within ninety days after receipt of such application, -

(a) issue a licence subject to the provisions of this Act and the rules and regulations made thereunder; or
(b) reject the application for reasons to be recorded in writing if such application does not conform to the provisions of this Act or the rules and regulations made thereunder or the provisions of any other law for the time being in force;

Provided that no application shall be rejected unless the applicant has been given an opportunity of heard.

(7) The Appropriate Commission shall, immediately after issue of licence, forward a copy of the licence to the Appropriate Government , Authority, local authority, and to such other person as the Appropriate Commission considers necessary.

(8) A licence shall, continue to be in force for such period as may be mentioned in the licence.

6.2 The equivalent provision for grant of licences that exists in the Indian Electricity Act, 1910 is as under:-

Grant of Licences :-

"(1) The State Government may, on application made in the prescribed form and on payment of the prescribed fee (if any) grant after consulting the State Electricity Board, a licence to any person to supply energy in any specified area, and also to lay down or place electric supply- lines for the conveyance and transmission of energy:-

(a) where the energy to be supplied is to be generated outside such area, from a generating station situated outside such area to the boundary of such area, or

(b) where energy is to be conveyed or transmitted from any place in such area to any other place therein, across an intervening area not included therein, across such area.

(2) In respect of every such licence and the grant thereof the following provisions shall have effect, namely:-

(a) any person applying for a licence under this Part shall publish a notice of his application in the prescribed manner and with the prescribed particulars, and the licence shall not be granted

(I) until all objections received by the State Government with reference thereto have been considered by it;
Provided that no objection shall be so considered unless it is received before the expiration of three months from the date of the first publication of such notice as aforesaid; and

(II) until, in the case of an application for a licence for an area including the whole or any part of any cantonment, (aerodrome) fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for defence purposes the State Government has ascertained that there is no objection to the grant of the licence on the part of the Central Government;

(b) where an objection is received from any local authority concerned, the State Government shall, if in its opinion the objection is insufficient, record in writing and communicate to such local authority its reasons for such opinion;

(c) no application for a licence under this Part shall be made by any local authority except in pursuance of a resolution passed at a meeting of such authority held after one month's previous notice of the same and of the purpose thereof has been given in the manner in which notices of meetings of such local authority are usually given;

(d) a licence under this part-

(I) may prescribe such terms as to the limits within which, and the conditions under which, the supply of energy is to be compulsory or permissive, and generally as to such matters as the State Government may think fit; and

(II) save in cases in which under section 10 Clause (b) the provisions of section 5 and 6 of either or them, have been declared not to apply, every such licensee shall declare whether any generating station to be used in connection with the

undertaking shall or shall not form part of the undertaking for the purpose of purchase under section 5 or section 6;

(e) the grant of a licence under this Part for any purpose shall not in any way hinder or restrict the grant to licence to another person with the same area of supply for a like purpose;

(f) the provisions contained in the Schedule shall be deemed to be incorporated with and to form part of, every licence granted under this Part, save in so far as they are expressly added to, varied or excepted by the licence, and shall subject to any such additions, variations or exceptions which the State Government is hereby empowered to make, apply to the undertaking authorised by the licence;

Provided that where a licence is granted in accordance with the provisions of Clause IX of the Schedule for the supply of energy to other licensees for distribution by them, then, in so far as such licence relates to such supply, the provisions of Clauses IV, V,VI, VII,VIII and XII of the Schedule shall not be deemed to be incorporated with the licence".

6.3 The following changes have been brought in the Bill:

(i) In place of State Government, the Appropriate Commission has been given the powers to issue licence.
(ii) Consultation with SEBs is not required.
(iii) CTU/STU/ successor entities of SEBs would be deemed licensees.
(iv) It also provides for circumstances under which a person is not required to obtain licence for undertaking distribution or generation and distribution.

6.4 Justifying the reasons for changes, the Ministry of Power stated:-

(i) "As part of the policy of the Government to distance itself from regulation, the power to grant licence has been given to Regulatory Commission.
(ii) The concept of deemed licensees is to ensure smooth transition to the new systems."

6.5 The detailed examination by the Committee of various provision of licensing is given in the succeeding paragraphs:-

A. Requirement of Licence

6.6 Kerala State Electricity Board (KSEB) suggested that licensing should be insisted upon and generation, transmission, distribution and trading. Even for captive generation, it should be made compulsory. On the other hand, POWERGRID desired that:-

"Central Trade Union (CTU) / State Transmission Utilities (STUs) should not require any licence to transmit energy".

B. Exemption from licence to local authorities etc.

6.7 On a question of exempting local authorities etc. from obtaining licence, a suggestion was made that no exemption from licence to be given to local authorities,

etc., so as to maintain order and discipline in distribution and, even more so, for trading. At the most, temporary exemption could be given from certain provisions of licences".

6.8 Northern Railway, New Delhi desired exemption from licensing under Clause 12 of the Bill on the grounds that Railways erect, maintain and operate electric traction equipment, power supply distribution installations in connection with the working of the Railways. The provisions of the Railways Act, 1989 have overriding effect in case the provision contained in the Electricity Bill – 2001 are inconsistent or contrary to the provisions of the former Act (Railway At 1989). It is mandatory for the State Electricity Boards or the corresponding authorities to facilitate the Railway Administration to erect and maintain transmission lines for operating the Railways. Therefore, Railways be treated as deemed licensee under the Electricity Bill, 2001."

6.9 The Andhra Pradesh Chamber of Commerce & Industry was of the opinion that:-

> "The question of exempting franchisees as defined in section 2(27) on the recommendation of the appropriate government does not arise in view of the definition in section 2(27) and the fourth proviso to section 14. Further, in view of the nature of the institutions or organisations contemplated in section 13 (local authorities, etc.), it may be considered whether it is necessary to give any discretion to the commission when the appropriate government has made a recommendation for exemption. It may also be noted that section 108 gives power to the government to issue directions".

6.10 On the question of granting exemption to the Panchayati Raj Institution, Sh. Madhav Godbole, former Home Secretary, Government of India, in a Memorandum submitted to the Committee opined:-

> "Clause 13 Gives power to the ERC to exempt local authorities, Panchayat institutions, user's associations, cooperative societies, non-government organizations or franchisees from obtaining approvals. This special dispensation is difficult to understand, particularly in view of the doubtful capacity of such institutions to discharge the responsibilities. Any proposals of such institutions need therefore, need therefore to be scrutinized closely if future burden on the consumer is to be kept to the minimum and the minimum standards and quality of service to him are to be ensured".

6.11 Federation of Indian Chambers of Commerce & Industry (FICCI), Utkal Chambers of Commerce & Industry (UCC & I) suggested that nobody should be authorised to transmit and distribute electricity without licence in view of technical nature of job, safety to workman and public. Hence the Clause 13 should be deleted.

6.12 On the other hand, Neyveli Lignite Corporation, a PSUs under the Ministry of Coal Mines suggested that the generator may also be considered for exemption from getting a separate licence for the consumption by them for meeting their internal requirements like supply to township, associated mines, etc.

6.13 The State Government of Haryana of the view that permitting Local Authority, Users Association, etc., to generate and distribute electricity without licence may create conflict of control on the distribution system. As on today, the SEBs have laid the distribution lines in rural areas and any operation of ESCOs could not be without taking over of the distribution facility. It seems that the Bill does not intend to allow distribution

of electricity in an area by more than one operator. No such relaxation exists in Haryana Electricity Reforms Act where every person intending to sell electricity has to obtain a licence. Accordingly, the provision of this Clause needs modifiction.

6.14 As regards the exemption of licence for transmission and distribution of electricity in the rural areas some of the organisation expressed their reservations saying that the ¾ part of the country would be governed by self- serving vested interests leading to utter chaos and also exploitation of millions of rural consumers and poor farmers.

6.15 Jagaran Manch was of the view that such piecemeal dispensations without spelling out the checks and balances may prove to be counter-productive and militate against the very objectives underlined by the Bill.

6.16 Andhra Pradesh Chambers of Commerce & Industry (APCC&I) stated that such an exclusion may not be in the interests of the rural consumers in view of the fact that the conditions of licence would normally provide significant protection of consumers and the framework and conditions within which supply is to be made. It may also be considered as to whether, in such cases, there would not be a possibility for undue exploitation of rural consumers as tariffs would not be subject to any kind of regulation."

6.17 the Chairman, Uttar Pradesh Electricity Regulatory Commission (UPERC) submitted as under:-

> "The requirement of licence has been waived off for distribution in the rural areas (proviso of section 14). Does it mean that the rural tariffs are not to be determined by any agency and that there are not to be any service standards for rural supply. If this is not so, then waiving off the licence requirement makes little sense".

6.18 Sh. P.C.Sharma from Guwahati in a written Memoranda submitted as under:-

> "It is mentioned that no licence is required for generation and distribution of electricity in rural area. Some form of permit/ licence may be desirable so that such a entities may have powers and obligations of a licence for execution of its 'works' as incorporated under Clause 67 and 68 of part(viii) of the bill".

6.19 Government of Punjab was of the view that licensing for generation and distribution of electricity in rural areas is also necessary to avoid complication later on.

C. Extension of Existing Licence

6.20 As regards the extension of existing licence provision of the Bill, Rajasthan Chambers of Commerce & Industry stated:-

> "Some existing licences are valid for the next 10 to 15 years. However, the new Bill permits existing licence provisions to continue for a maximum period of only one-year following notification of the Act. This change could have serious implications for existing licences that have entered into long term financing agreements with institutions like World Bank etc. which are based on the provisions and validity period of the subsisting licence. Hence, it is imperative that the validity period of any existing lilcence is honoured in totality in the new

Act. Furthermore, licences when granted should be for a minimum period of 30 years".

6.21 The Tata Power Company also agreed and strongly support the suggestion extended by Rajashtan Chambers of Commerce and Industry.

6.22 ASSOCHAM, UP suggested as under:-

"In all fairness, the repealed laws or acts referred to in the scheduled should continue to apply for the remaining period of the licensee or a period of three years from the commencement of this act, whichever is later.

6.23 NCT of Delhi stated as under:-

"The validity of the existing licence should be honoured. The period of licence should be substantially long say 25 to 30 years as otherwise it may discourage investors coming into this sector. The relaxation of the conditions of licence in extraordinary circumstances can be left to the appropriate commission to deal with".

6.24 State Government of Uttaranchal was also of the opinion that the validity of the existing licence should be honoured.

6.25 Expressing their opinion on the above issue the State Government of Chhattisgarh stated:-

"It is felt that the existing provisions in the Bill to continue the licence for a maximum period of one year may be retained. The provisions made earlier to continue the licence for 10-15 years were on the basis of the situation and that point of time. Considerable period has passed after licence was issued. Considerable feed back to available with each state regarding performance of the licensees. The Bill would provide an opportunity to the State Government to review the performance and take a decision to continue the licence or otherwise. As in case of Chhattisgarh many other new State which have come in existence in the month of November,2001 or thereafter, their power requirement scenario have gone under a radical change. Chhattisgarh State has become a surplus power state and many continue to be so for coming 10-15 years. As such it is not required to purchase power from the captive generation or any other private IPPs. The captive generation power is thrust on the CSEB which is highly unremunerative. With the provisions under Clause 14 of the proposed Bill, CSEB can review the agreement and absolve itself from the obligation of the purchase of costly captive power ".

State Government of Orissa

"Existing licensee's status may be recognised by the Bill. The regulatory authority may consider 30 years period for licensee at the time of granting/renewing licences."

State Government of Tamil Nadu

"Existing licences must be renewed every year and allowed to continue upto the validity period. Further licences can be granted for a maximum period of 30 years."

State Government of West Bengal

"The policy direction from State Government to Regulatory Authority will help the regulator to deal the case of licensee considering their commitment to FI's. Regarding validity period of licensee, no firm period shall be mentioned in the act. It shall depend on the policy of the concerned State Government."

D. Area of Supply

6.26 In regard to provision for grant of licence to more than one person, within the same area, Government of Haryana desired clarification "whether person operating on the same distribution system or would lay separate distribution system of their own".

6.27 Government of Maharashtra was of the opinion that with such a provision, the existing monopolies would be done away with in the long run. The State Government, however, cautioned that thought need to be given to the investment done by licence prior to enactment.

6.28 The Government of Kerala desired that only one distribution licensee for a geographical area and for a specified period.

6.29 Jagran Manch, an NGO, stated that while granting more than one licence, in a given area, care has to be taken so that there is no duplication of facilities and consequent wastage of National resources.

Clause 22: Provision where no purchase takes place

6.30 Clause 22 of the Electricity Bill, 2001 reads as under:

"If the utility is not sold in the manner provided under section 20 or section 24, the licensee referred to in that section may dispose of the utility in such manner as he may think fit.

Provided that, if the licensee does not dispose of the utility, within a period of six months from the date of revocation, under section 20 or section 24, the Appropriate Commission may cause the works of the licensee in, under, over, along, or across any street or public land to be removed and every such street or public land to be reinstated, and recover the cost of such removal and reinstatement from the licensee".

6.31 On the point of inability of the Commission to the dispose of the utility under Clause 21(a), the Federation of Andhra Pradesh Chambers of Commerce & Industry expressed their views as under:-

"The provisions of Section 22 are not clearly discrenable. It seeks to provide for the circumstance that the Commission is unable to dispose of the utility following

Section 20(1)(a). The licensee is then free to dispose of the utility by himself within the six months. If he should fail to do so, the Commission is empowered to cause removal and dismantling of the works of the licensee. It is not clear as to how the exercise of this power can at all sub serves the public interest or protect the interest of the consumers for continued supply of electricity. The consumers would have significantly contributed to a substantial part of the costs for setting up service lines and making investments for use of electricity. Dismantling an existing distribution system can never be a real or viable option".

6.32 On the other hand, Confederation of Indian Industry, stated as under:-

"Other options needs to be looked at as this might effect the consumer especially in case of single licensee for the area"

6.33 Keeping in view that dismantling the assets of the old licensee and installations of new assets by the new licensee may lead to national waste, Kerala State Electricity Board stated as under**:-**

"If the utility is not sold in the manner provided under Section 20 or Section 24, the Appropriate Commission may take over the utility at the value fixed by the Appropriate Commission and transfer the assets of the utility to the licensee".

6.34 The Committee find that the Central Electricity Authority, Commissions and various Committees have been conferred power to frame rules, regulations and guidelines, but no power has been delegated to them to create a machinery to oversee the compliance. In the opinion of the Committee, electricity supply and utilisation encompasses a very wide network which include millions of consumers. Without an effective inspecting and enforcement machinery, rules, regulations and guidelines will remain only on paper. This is all the more necessary in view of the fact that electricity industry may pass on to the hands of the private sector. The Committee, therefore, desire that necessary amendments may be made in the Bill.

6.35 The Committee find that generation has been de-licenced by virtue of Clause 7. The Committee further find that as per Clause 12, the transmission, distribution and trading of electricity has been licenced. The Appropriate Commissions have been given powers under Clause 15 to grant licence for transmission, distribution and trading of electricity. The Committee are of the view that generation, transmission and distribution are three distinct activities and for the sake of competition, they ought to be opened up in the interest of the power sector. Taking into consideration the economic condition of rural areas and other social sectors of the economy, the Government is not in a position to fully deregulate the transmission, distribution and trading of electricity. The Committee have also found that Government in the past have never given the due importance to transmission and distribution sectors as compared to generation. For instance, as against the thumb rule of investment in generation, transmission and distribution in the ratio of 1:1:2, the investments have been only in the generation side, leaving distribution and transmission to fend for themselves. As a result, the transmission and distribution remained a neglected lot. This is one of the reasons for underutilization of installed capacity of power. The Committee, therefore, desire that in order to provide power to all by 2012, it is imperative that transmission and distribution are also unshackled from the restricted use. The Committee desire that distribution and transmission too should have open access and subjected to non-discriminatory open access within a mandated time-frame. While recommending de-regulation of transmission and distribution regime, the Committee would like to emphasize that applicant's credentials like creditworthiness and experience and expertise to undertake electrification, should be ensured by Regulatory Commission in the

interest of consumers. The Committee desire that appropriate amendments may be made in the Bill for the purpose.

6.36 Clause 13 of the Bill provides that the Appropriate Commission on the recommendation of the appropriate Government and also in public interest is empowered to direct, subject to such conditions and restriction, if any, and for such a period or periods as may be specified in the notification that the provision of Section 12 shall not apply to any local authority, Panchayat institution, user associations, cooperative societies, NGOs or franchises. Clause 12 provides that a licence is required for transmission, distribution or undertaking trading in electricity. The Committee are of the view that there is no proper linkage between the two provisions referred to above. The Committee, therefore, desire that for the sake of clarity the words "in accordance with the National Policy of electrification and local distribution in rural areas notified under Section 5" may be added after the phrases the public interest appearing in Clause 13. The Committee also desire that necessary amendments may be made in the Bill.

6.37 The Committee note that as per the Bill, more than one licence can be given in any area of supply to a licensee for transmission, distribution and trading of electricity, by the Appropriate Commission(Clause 14, Proviso 4). The Committee find that it does not specifically define, what this area of supply would be in geographical terms – whether this will cover the area of an entire State or subdivision of the State, determined by the State Government specifically for offering it to the distribution licensee. Taking into consideration that there already exist discernible gaps between rural and urban India, in terms of infrastructure facilities, standard of living, growth opportunities, etc., the gap may further widen, if a licensee is given freedom to choose the area of the supply, in which he would like to operate. In such an event, all the new entrants would like to grab more lucrative and easy to manage urban/city areas, leaving the rural folk to fend for themselves. As rural electrification is one of the avowed objectives of this Bill, the Committee recommend that the area of supply for a licensee should necessarily include a mix of urban and rural or any composite remunerative and un-remunerative clusters. The State Government should carve out circles/divisions/centers, having a mixed load. This will ensure that both the rural and urban areas get equal opportunities in the development of infrastructure, including power.

6.38 1st Proviso to Clause 14 provide that any person engaged in the business of transmission of supply of electricity under the provisions of the repealed laws or any Act specified in the schedule on or before the appointed date shall be deemed to be licensee under this Act for such period as may be specified in the licence and the provisions of the repealed laws or such Act specified in the schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified at the request of the licensee by the Appropriate Commission and thereafter provisions of this Act shall apply to such business. Rajasthan Chambers of Commerce and Industry have pointed out that some existing licences are valid for the next 10 to 15 years. However, this Bill permit existing provisions to continue for a period of only one year following notification of the Act. This change, it has been stated, could have serious implications for existing licensees that have entered into long term financing agreements with institutions like World Bank etc. NCT of Delhi stated "The validity of existing licence should be honoured. The period of licence should be substantially long say 25 to 30 years as otherwise it may discourage investors coming into this sector……..". State Government of West Bengal have stated that "……….. Regarding Validity Period of licensee, no firm period should be mentioned in the Act. It shall depend on the policy of

the concerned State Government". State Government of Tamil Nadu have stated that "Existing licences must be renewed every year and allowed to continue upto the validity period. Further licences can be granted for a maximum period of 30 years". The Committee have considered these views and are of the opinion that the existing licences must be honoured in toto to avoid unnecessary litigation. The Committee desire that in order to provide certainity to the investor and also for reducing the scope for Regulatory uncertainity, the validity period of the licence should not be less than 25 years. The Committee, therefore, recommend Sub-Clause (8) of Clause 15 be amended suitably.

6.39 The Committee have also considered various views received by them regarding requirement of licence for transmission, distribution and trading in electricity to be granted under Clause 14 of the Bill. The State Government of Uttaranchal have stated that even if some categories are exempted from licence requirements, there should be system of registration with the Government or with the Commission. It has also been pointed out that the exclusion of persons generating and distributing electricity in rural areas from the requirement of a licence, may not be in the interests of the rural consumers as the conditions of licence sometimes provide significant protection to consumers. There is a strong possibility of exploitation of rural consumers as tariffs would not be subject to any kind of regulation. The Committee fully agree with the above views and feel that there is a need to provide for some standard guidelines which would be binding on any person engaged in the business of electricity generation, transmission and distribution whether or not he is required to have any licence under this Bill. This can be on the lines of provisions of Section 3(2) (f) of the Indian Electricity Act 1910. The Committee, therefore, recommend that the Bill may be amended accordingly.

6.40 The Committee find that weakness in sub-transmission and distribution network is one of the reason for depriving electricity to the consumers. The Committee are of the view that no useful purpose would be served of augmenting generation capacity, both in private and public sectors, unless commensurate investment is infused in transmission and distribution set up. Taking into consideration, that Public Sector Undertaking are required to undertake development works as a part of their social responsibilities, the Committee desire that organisations like NTPC, NHPC, POWERGRID etc., should diversify themselves, into distribution and transmission business, as well. This is more so when organisation like PowerGrid have forayed into Telecom Business and NTPC undertaking / managing captive power plants of steel / fertilizer sectors. As such there is no plausible reason, for them, not to venture into sub-transmission and distribution business. The Committee, therefore, recommend that such PSUs should also undertake sub-transmission and distribution of electricity.

6.41 In Section 15, there is a provision for publication of two notices inviting objections to grant of a licence, one by the applicant under Sub-Section –2 and other by the Commission under Sub-Section- 5. In the opinion of the Committee, this is an avoidable duplication particularly when the Commission has to dispose off the application within 90 days as provided in the Sub-Section – 6.

6.42 The Committee find that Railways are empowered to erect, maintain and operate transmission lines needed for the working of the Railways, in terms of Section 11(g) of the Railway Act, 1989. The Committee do not find any justification for the requirement of a licence for Railways for transmitting electricity provided under Section 12 of the Bill, if such transmission lines are not connected to the grid and erected for their own use only. The Committee, therefore, desire that Railways should be given exemption from licensing as required under Clause 12 of the Bill. The Committee desire that suitable amendments may be made in the Bill.

6.43 Clause 22 of the Bill provides that where the utility is not sold in the manner provided under Section 20 / 24, the licence referred to in that Section may dispose of the utility in such manner as he may think fit. It further provides that in the event where a licensee does not dispose of the utility, within a period of six months from the date of revocation under Section 20 / 24, the Appropriate Commission may cause the works of the licensee in, under, over, alongwith or across any street or public land to be removed and every such street or public land should be reinstated and recover the cost of such removal and reinstatment from the licensee. In the opinion of the Government of Kerala, the Appropriate Commission should have the authority to take over the utility of defaulted licensee and hand over to a new licensee at a value specified by the Appropriate Commission. The Committee concur with the views of State Government of Kerala and recommend that Appropriate Commission should be empowered to take over the utility of defaulted licensee and pass it to a new licensee at a value specified by them. The Committee desire that suitable amendment in this Clause may be made accordingly.

The Committee note that in pursuance to Section 20(1)(a), the Appropriate Commission is empowered to revoke licence, granted under Section 19 and it shall invite applications for acquiring the utility for the licensee where licence has been revoked and determine which of such applications should be accepted primarily on the basis of the highest and best price offered for the utility. The Committee are of the view that the commission should take into consideration all relevant consideration for securing the best price. The Committee, therefore, recommend that necessary action / amendment be made in the Bill for the purpose.

CHAPTER-VII

TRANSMISSION OF ELECTRICITY

Clause 25 to 41 of Part-V of the Electricity Bill, 2001 deal with the transmission of electricity. Some of these have been examined by the Committee in the succeeding paragraphs:

Clause 26. National Load Despatch Centre

A National Grid is being set up in the country. A new provision exist in the Bill, for setting up of a National Load Despatch Centre. The relevant Clause 26 of the Electricity Bill, 2001 reads as under:-

26(1) "The Central Government may establish a Centre at the national level, to be known as the National Load Despatch Centre for optimum scheduling and despatch of electricity among the Regional Load Despatch Centres.

(2) The constitution and functions of the National Load Despatch Centre shall be such as may be prescribed by the Central Government;

Provided that the National Local Centre shall not engage in the business of trading in electricity.

(3) the National Load Despatch Centre shall be operated by a Government company or any authority or corporation established or constituted by or under any Central Act, as may be notified by the Central Government".

Clause 27 to Clause 29

These Clauses of the Bill are related to constitution, function and directions issued by the Regional Load Despatch Centre (RLDC), which are enumerated as under:-

27(1) "The Central Government shall establish a Centre for each region to be known as the Regional Load Despatch Centre having territorial jurisdiction as determined by the Central Government in accordance with section 25 for the purposes of exercising the powers and discharging the functions under this Part.

(2) The Regional Load Despatch Centre shall be operated by a Government Company or any authority or corporation established or constituted by or under any Central Act, as may be notified by the Central Government:

Provided that until a Government company or authority or corporation referred to in this sub-section is notified by the Central Government, the Central Transmission Utility shall operate the Regional Load Despatch Centre;

28(1) The Regional Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in the concerned region.

(2) The Regional Load Despatch Centre shall comply with such principles, guidelines and methodologies in respect of wheeling and optimum scheduling and despatch of electricity as the Central Commission may specify in the Grid Code.

(3) The Regional Load Despatch Centre shall-

(a) be responsible for optimum scheduling and despatch of electricity within the region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region;
(b) monitor gird operations;
(c) keep accounts of quantity of electricity transmitted through the regional gird;
(d) exercise supervision and control over the inter- State transmission system;
(e) be responsible for carrying out real time operations for gird control and despatch of electricity within the region through secure and economic operation of the regional grid in accordance with the Grid Standards and the Grid Code;

(4) The Regional Load Despatch Centre may levy and collect such fee and charges from the generating companies or licensees engaged in inter- State transmission of electricity as may be specified by the Central Commission.

29(1) The Regional Load Despatch Centre may give such directions and exercise such supervision and control as may be required for ensuring stability of grid operations and for achieving the maximum economy and efficiency in the operation of the power system in the region under its control

(2) Every licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall comply with the directions issued by the Regional Load Despatch Centrers under sub-section (1).

(3) All directions issued by the Regional Load Depatch Centre to any transmission licensee of State transmission lines or any other licensee of the State or generating company (other than those connected inter-state transmission system)or sub-station in the State shall be issued through the State Load Despatch Centre and the State Load Despatch Centres shall ensure that such directions are duly complied with by the licensee or generating company or sub-station.

(4) Subject to the provisions of this section , the Regional Power Committee in the region may , from time to time, unanimously agree on matters concerning the stability and smooth operation of the integrated grid and economy and efficiency in the operation of the power system in that region and every licensee and others involved in the operation of power system shall comply with the decision of the Regional Power Committee in respect of such matters.

(5) The Regional Load Despatch Centre shall enforce the decision of the Regional Power Committee referred to in sub-section(4).

(6) If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the regional grid or in relation to any direction given under sub-section (1) it shall be referred to the Central Commission for decision:

Provided that pending the decision of the Central Commission the directions of the Regional Load Despatch Centre shall be complied with by the State Load Despatch Centre or the licensee or the generating company, as the case may be.

(7) If any licensee, generating company or any other person fails to comply with the directions issued under sub-station (2) or sub-section (3) he shall be liable to a penalty not exceeding rupees fifteen lakhs."

7.2 Section 55 of the Electricity (Supply) Act, 1948 too provided Constitution of Load Despatch Centre. The present Bill is improvement over Section 55 of the 1948 act, which reads as under:-

Compliance of directions of the Regional Electricity Board etc., by licensees or generating companies(1) Until otherwise specified by the Central Government, the Central Transmission Utility shall operate the Regional Load Despatch Centres and the State Transmission Utility shall operate the State Load Despatch Centres.

(2) The Regional Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in the concerned region.

(3) The Regional Load Despatch Centre may give such directions and exercise such supervision and control as may be required for ensuring integrated grid operations and for achieving the maximum economy and efficiency in the operation of the power system in the region under its control.

(4) Subject to the provisions of sub-section (3), the State Load Despatch Centre in a State may give such directions and exercise such supervision and control as may be required for ensuring the integrated grid operations and for achieving the maximum economy and efficiency in the operation of the power system in that State.

(5) Every licensee, transmission licensee, Board, generating company, generating stations, sub-sections and any other person connected with the operation of the power system shall comply with the directions issued by the Load Despatch Centres under sub-stations(3) and (4).

(6) All directions issued by the Regional Load Despatch Centres to any transmission licensee of State transmission lines or any other licensee of the State or generating company (other than those connected to inter- state transmission system) or sub-station in the State shall be issued through the State Load Despatch Centre and the State Load Despatch Centres shall ensure that such directions are duly complied by the transmission licensee or licensee or generating company or sub-station.

(7) Subject to the above provisions of this section the Regional Electricity Board in the region from time to time may mutually agree on matters concerning the smooth operation of the integrated grid and economy and efficiency in the operation of the power system in that region and every licensee, transmission licensee and others involved in the operation of the power system shall comply with the decision of the Regional Electricity Board.

(8) The Regional Load Despatch Centre or the State Load Despatch Centre, as the case may be, shall enforce the decision of the Regional Electricity Boards.

(9) Subject to regulations made under the Electricity Regulatory Commissions Act, 1998(14 of 1998) by the Central Commission, in the case of Regional Load Despatch Centres or the State Commission in the case of State Load Despatch Centres, any dispute with reference to the operation of the power system including grid operation and as to whether any directions issued under sub-section (3) or sub-section (4) is reasonable or not shall be referred to the Authority for decision:

Provided that pending the decision of the Authority, the directions of the Regional Load Despatch Centres or the State Load Despatch Centres, as the case may be, shall be complied with.

(10) Until the Central Commission is established, the Central Government and thereafter the Central Commission in the case of Regional Load Despatch Centre and until the State Commission is established, the State Government and there after the State Commission in the case of the State Load Despatch Centre of that State may, by notification specify the fees and charges to be paid to the Regional Load Despatch Centres and the State Load Despatch Centres, as the case may be for undertaking the load despatch functions entrusted by the Central Government or by the State Government, as the case may be.

(11) The provision of sub-section (3) of section 4B shall apply in relation to any notification issued by the Central Government or the Central Commission as the case may be under sub-section (10), as they apply in relation to the rules made by that Government under Chapter- II"

7.3 Under Clause 27 following changes have been brought about in the Bill

(i) Substantives provision for constitution of RLDC

(ii) operation of RLDC by a Government company or authority or corporation established or constituted by or under the Central Act and

(iii) RLDC not to trade in power.

7.4 When asked about improvements brought about in the present Bill, the Ministry of Power furnished the following information:-

(i) It is an improvement
(ii) Scope of operator of RLDC enlarged and
(iii) Operation of RLDC will only with a Government agency.

7.5 Various issues on transmission have been examined by the Committee in details. These are given in the succeeding paragraphs:

A. Load Despatch Centre

7.6 It has been found that the constitution of the National Load Despatch Centre (NLDC) has not been specified in the Bill. CEA like body having operational experience has been performing continual discharging of such functions. In this context, Power

Grid Corporation of India Ltd. Urged before the Committee that the national load despatch centre should be operated by Central Transmission Utility and desired that Clause 26(3) be suitably amended.

7.7 On the other hand, Central Electricity Authority (CEA) stated that Clause 26 is an enabling provision, necessary action could be taken by the Central Government when we are in position to operate a national grid.

7.8 State Governments of Uttaranchal desired that the Central Load Despatch Centre should be created under CEA. State Government of Madhya Pradesh was of the view that there should be an independent system operator to deal with the national or regional load dispatches.

7.9 Assistant Engineer Association desired that RLDC should be operated by a company as per Clause 27 (2) but under the overall supervision and regulation by CEA.

7.10 The Central Electricity Authority (CEA) expressing their views on the subject submitted as under:-

> "Under Clause 27(2) it is suggested that the Regional Load Dispatch Centers should be operated only by an entity having no commercial activity or interest in transmission business. It may be mentioned that earlier RLDCs were operated by CEA but subsequently they were transferred to Power Grid Corporation of India limited (PGCIL) which is a commercial entity and would lead to conflict of interest. Under Clause 38(1) it has been mentioned that CTU shall not engage in the business of trading in electricity. We are of the opinion that functions of RLDC and CTU should not be assigned to an organization having commercial interests in transmission or trading of power"

7.11 Confederation of Indian Industry (CII) proposed that a time frame of 2 years be given for operation of Load Despatch Centre by Central Government and desired that amendment be made in Clauses 27 and Clause 31 in the following manner:-

> "27 (2) The Regional Load Despatch Centre shall be operated by Government company or any authority or corporation established or constituted by or under any Central Act, as may be notified by the Central Government not later than two years from the appointed dated.
>
> 31(1) The State Load Despatch Centre shall be operated by a Government company or any authority or corporation established or constituted by or under any State Act, as may be notified by the Central Government not later than two years from the appointed date".

7.12 On the other hand, FORUM OF INDIAN REGULATORS commenting upon Load Despatch Centre desired that Government could be charged with the responsibility of operating RLDCs for a period of one year, coming in to force of this Act, whichever is earlier".

7.13 Commenting on the role of the Central and State Regulatory Commission **vis-a-vis** National and Regional Load Despatch Centres, the Surya Foundation, New Delhi in a note submitted to the Committee as under:-

> "Clause 26,27,31 & 37: The role of the Central and State Regulatory Commission **vis-a-vis** National, Regional, State Load Dispatch Centres have not been brought out in the bill. As important issues in operation like grid discipline/ code, merit order. Dispatch, availability based tariff, development of electricity market, rules for settlement are involved, regulatory directions to these centers will have to be provided in the Bill".

7.14 On the role of Government on transmission, Uttar Pradesh Electricity Regulatory Commission in a note furnished to the Committee stated:-

> "The Bill provides for private transmission licensees. However, a State owned company would remain State Transmission Utility (STU), responsible for planning and co-ordination of intra-State transmission system. The despatches would be coordinated by NLDC, RLDC and SLDC – all State owned entities. There appears to be no justification for the STUs as this would perpetuate Government control over a key resource. This provision should be deleted so that the States may, if they so desire, privatize transmission. As regards, coordination and planning of the State transmission network, this function may be performed by the RLDC in consultation with the SLDCs".

7.15 The Western Regional Electricity Board, was of the view that the functions assigned to CTU (S-38), NLDC (S-26) and CERC (S-76) be assigned to CEA, which was already doing the identified functions of these agencies under the proposed act to the full satisfaction of all.

7.16 The Government of Madhya Pradesh was of the view that it is absolutely necessary that Load Despatch functions are performed by a Government company in order to ensure proper grid discipline……Subject to technical feasibility, the NLDC / RLDCs functions should be undertaken by an independent system operator. At this stage, it may not be possible to segregate the system operation from transmission function. This seems to be the recommendation of Shankraguruswamy Committee Report, on the basis of which electricity Laws were amended in 1998. The only way to ensure that there are no disputes, is to constitute an independent system operator and segregate the function of CTU from RLDC. The independent system operator can enforce grid discipline and ensure stability and smooth operation of grid.

7.17 The Government of West Bengal was of the view that the operation of National Load Despatch Centre (NLDC), Regional Load Despatch Centre (RLDC) and State Load Despatch Centre (SLDC) should be under entities who have no commercial or business interest. NLDC may be made under CEA, RLDC under REBs and SLDCs under an authority named State Electricity Authority (SEA). The task of SEA should be to advise the State Government in overall power planning, providing technical advice to the State Government and the SERC and operate SLDC. The planning and coordination of transmission in National and Regional Level should be left to CEA rather than Central Transmission Utility (CTU). Similarly, at State level, this should be with SEA. The open access issued at the State level should be dealt with by SLDC.

7.18 The Govenrment of Uttar Pradesh in a note submitted to the Committee stated:-

“(i) The proposed Act provides for the establishment of State and Central Transmission Utilities (CTU). CTU will be responsible for planning and coordination of Inter-State Transmission System whereas State Transmission Utility (STU) will be responsible for planning and coordination of Inter-State Transmission System, expansion / investment in transmission facility. The Act envisages that the STU will remain largely in the public sector hence will remain a State responsibility while there would be increasing State private participation in generation and distribution. In this, the State investment in the transmission system has to be matched with adequate safeguards because they have to be in accordance with increasing private sector investment coming in / proposed in distribution and generation. This role of matching and providing financial coverage for State investment vis-à-vis proposed private investment has to be specifically entrusted to Central body because investments in generation can be for outside the State as well, while transmission would be within the State.

(ii) The transmission activity which is to remain under the State control requires large amount of investments spread over a long period and has comparatively longer gestation period and low profitability. The future planning for transmission network will have to cater to the worst possible scenario to account for even hourly variations a part from seasonal variations. Under worst possible scenario it may not be possible for the transmission utility to generate enough revenue in the form of wheeling charges to recover interest, depreciation, return on capital and meet normal establishment and O&M charges. In such a scenario, the burden will be on the State for which adequate mechanism needs to be put in place so that meager financial resources of the States are not strained further”.

B. <u>Functioning of Regional Load Despatch Centres (RLDCs)</u>

7.19 Regional Load Despatch Centre is to be responsible for optimal scheduling and dispatch of electricity within a region in accordance with contracts entered into with the licensee or generating companies operating in the region.

7.20 Commenting on function of RLDCs, Jagaran Manch in a note stated:-

“The optimum scheduling and dispatch should be based on merit and not in accordance with contracts entered in to with the licensee or generating companies in the past. Where necessary such contracts shall be mutually discussed and modified in the national interest so that earlier mistakes are not repeated and corrective action is taken”.

7.21 Confederation of Indian Industry (CII) was of the view that Grid discipline should be strictly followed. Today, Power Grid Corporation has no power to punish the defaulter, this needs to be corrected. The proposed Electricity Bill should clearly define the roles and responsibilities for State Transmission Utility and Central Transmission Utility, NLDC, RLDC and SLDC with clarity on the line of command.

7.22 Government of Delhi in a note submitted to the Committee state that Grid discipline is required to be maintained and heavy penalties for over drawal during the under frequency regime would address the issue. Appropriate provisions have been made in Availability Based Tariff, which is likely to be implemented shortly. All the

stakeholders need to be members of the committee with would frame the rules and regulations in respect of scheduling and dispatch.

7.23 State Government of Maharashtra was of the opinion that RLDC should be responsible for optimal scheduling and dispatch of imported power and in accordance with the contracts entered in with the licensee and generating companies.

7.24 State Government of Madhya Pradesh submitted that as per present arrangement, scheduling and dispatch of inter regional import is being done by RLDC. However no guidelines have been laid down in the bill or in IEGC regarding scheduling and dispatch of electricity of Region surplus, among the constituents of the reign. RLDC has to keep accounts of quantity of electricity transmitted through the regional grid. This may result in overlapping of function if account means regional energy accounting, if it means data management then transfer of correct and sufficient data to REB is another disputable area in the present form of arrangement. This dispute has already been noticed in southern region and the matter has been solved with intervention of CERC. Similar disputes may arise in future.

C. Regional Power Committee

7.25 Clause 29 of the Electricity Bill, 2001 provides for formation of Regional Power Committee. Central Electricity Authority (CEA) objected to creation of such Committee and expressed their views as under:-

> "Clause 29(4) intends to replace the Regional Electricity Boards by Regional Power Committee whose constitution and functions are not defined in the bill. Regional Electricity Boards have been performing the functions which go to facilitate smooth operation of the systems identified for the REB and inter-alia include planning, protection, accounting, inter-state transfer of power etc. of the regional grids. Due to neutral nature of REBs, it is felt that this arrangement if retained will be in the interest of smooth and efficient functioning of the grid".

7.26 On the other hand, Delhi Vidyut Board wanted the function of REBs to be retained and expressed their views as under:-

> "The composition of the Committee and its Powers are required to be elaborated as its decisions relating to the grid are proposed to be binding. How this Committee will fit into the proposed structure is also not very clear. Another suggestion for consideration is that the composition of the Regional Power Committees could be the same as that of the REBs, in principle and should include representative of all licensees and generating companies (say of 300 MW and above). The Committees' power should be similar to those presently being enjoyed by the REBs".

7.27 When the Committee enquired about the desirability of RPC, the Government of Punjab, in a note stated as under:-

> "There is no mention of Regional Electricity Boards (REBs) in the proposed electricity Bill including Part V concerning transmission of electricity. However, Regional Power Committee (RPC) has been proposed in the Bill but is Constitution and functions have not been defined.

REBs were constituted in 1964 in pursuance of Government of India resolutions to promote integrated operation of the power systems with a view to deriving maximum benefits from the available power resources. Since then REBs have been providing an indispensable and effective interface between SEBs on one hand and Central Sector PSUs, etc., on the other hand. All the constituents have relied upon REBs for regional grid operation till date because the REBs function on the basis of collective decision making for maximum possible benefits to the region as a whole. Through years, REBs have established themselves as institutional and policy making bodies where experts of different stake holders of the region with conflicting commercial interests interact and formulate policies for effective grid operation and commercial issues under competent, reliable and neutral umbrella. Any change in the existing set up of REBs is likely to affect the smooth functioning of the regional grids adversely. If the Clause 29(4) of the Bill intends to replace the REBs, it is felt that existing functioning of REBs could be retained due to its neutral nature and continued confidence of the State in their functioning. This will be in the interest of smooth and continued confidence of the regional grid".

7.28 When asked about the remedy for the lack of unity amongst the members of the Regional Power Committee on the matters concerning stability and smooth functioning of the grid. Various State Governments / Organisations expressed their views as under:-

7.29 Central Electricity Authority (CEA), in a note stated in view of the conflicting commercial interests of various constituents, unanimous decisions may not be arrived at every time. In such cases, majority decision which is in the best interest of stability and smooth operations of the grid, should prevail. On the other hand, Confederation of Indian Industry (CII) desired that the regulations should provide for a majority view to be implemented. However, Tata Power Company Ltd., stated that the regulations should provide for a majority view to be implemented.

7.30 The State Government of Madhya Pradesh was of the opinion that the only way all these issues can be sorted out is to appoint an independent system operator who has no conflict and can, therefore, enforce grid discipline and ensure stability and smooth operation of the grid. The State Government of Chhattisgarh the matter can be referred to the appropriate Commission, whose decision shall be final.

7.31 The State Government of Punjab was of the view that unanimous decision in a forum of Constituents with clashing interest is not possible and therefore, the decision should be on the basis of majority as in the case at the present in REBs. They further stated that Regional Electricity Boards, particularly NREB has been a useful and effective forum where all the SEBs of the region can resolve problems, disputes etc. with Central Sector Generating Cos. / Transmission Cos. The Bill proposes to replace the REB with the Regional Power Committees" which is a move to dilute the effectiveness of REBs which are the policy-making body for guiding the operation of RLDC. As originally envisaged (a) REB would decide policy, (b) RLDC would be a mere operator under the Bill, (c) CERC/SERC would be the regulator, (d) RLDC would act as per directions of CERC and, (d) REB to be replaced by RPC would be having a reduced effectiveness role. Condition of 'unanimous' decisions, Clause 29 (4) amounts to giving veto power to every constituents.

7.32 Government of Maharashtra in a note stated that in the present system, the default has not been properly quantifiable and hence raises dispute. The State was of the opinion that the penalty mechanism should be implemented with proper qualification of default on the part of the individual constituents of the integrated system. The Appropriate Commission should formulate appropriate procedure to qualify such defaults.

7.33 On the other hand, State Government of Madhya Pradesh desired that Central Commission should not be charged with responsibilities of resolution of disputes, as matter relating to integrated operations are highly technical, and cannot be effectively decided by the Commission. The State Government urged that CEA be entrusted with such a responsibility which they are undertaking **vide** Clause 55 of 1948, Act.

D. Intervening Transmission Facilities

7.34 Clause 35 of the Bill reads as under:-

> "The Appropriate Commission may, on an application by any licensee, by order require any other licensee owning or operating intervening transmission facilities to provide the use of such facilities to the extent of surplus capacity available with such licensee".

7.35 Commenting upon Clause 35, Reliance Power Limited stated that it need to be clarified as to who would determine whether surplus capacity is available or not for open access. Whether it would be the system operator (RLDC / SLDCs) or the licensee who own and maintains those transmission lines or the Appropriate Commission or the CTU / STUs. Here, it is also pertinent to understand as to what is the ultimate model envisaged by the Government for the transmission sector. Whether the transmission licensees would own, maintain and also operate the transmission or whether they would just own and maintain the lines and the operation, scheduling and despatch would be taken care of by the system operator (RLDC / SLDCs). There has been empirical evidence and the Federal Energy Regulatory Commission in USA has gone on record that if the transmission licensees are also allowed to operate the lines, then open access on lines become a very difficult proposition to implement in actual practice.

7.36 The Government of Haryana in a note submitted to the Committee stated:-

> "The additional / surplus capacity maintained by a licensee to ensure reliability / redundancy in its system, to cover any exigency or pending requirement, cannot be directed to be used by another licensee who may not take any interest in developing its own system one the requirements have been arranged to be met on interim basis. The suggested arrangement can be resorted to in real emergency and not as a routine".

7.37 Power Trading Corporation (PTC) desired that following additional provision may be included, as Sub-Section 2 of Section 35:-

> "The Regional Load Despatch Centre, on an application by a generating company or a trading company or a licensee, shall require any other licensee owning or operating intervening transmission facilities to provide the use of such facilities for sale or trading of bulk power and the other licensee shall provide the same to the extent that such additional flow do not cause a problem of grid security and

such power can be transmitted within the technical capability of the integrated transmission system including the intervening transmission facilities".

Central Transmission Utility and Functions

A. Function of Central Transmission Utility (CTU)

7.38 Clause 38, inter-alia, provides for functions of CTU including non-discriminatory open access to transmission system. This clause reads as under:-

"Clause 38 (1) The Central Government may, notify any Government company as the Central Transmission Utility:

Provided that the Central Transmission Utility shall engage in the business of trading in electricity:

Provided further that, the Central Government may transfer, and vest any property, interest in property, rights and liabilities, connected with and personnel involved in transmission of electricity of such Central Transmission Utility, to a company or companies to be incorporated under the Companies Act, 1956 to function as a transmission licensee, through a transfer scheme to be effected in the manner specified under Part XIII and such company or companies shall be deemed to be transmission licensees under this Act.

(2) The functions of the Central Transmission Utility shall be -

(a) undertake transmission of electricity through inter-State transmission system;

(b) discharge all functions of planning and co-ordination relating to inter-state transmission system with -

(i) State Transmission Utilities;
(ii) Central Government;
(iii) State Governments;
(iv) generating companies;
(v) Regional Power Committees;
(vi) Authority;
(vii) licensees;
(viii) any other person notified by the Central Government in this behalf;

(c) ensure development of an efficient, co-ordinated and economical system of inter-State transmission lines for smooth flow of electricity from generating stations to the load centres;

(d) provided non-discriminatory open access to its transmission system for use by

(i) any licensee or generating company; or

(ii) any consumer as any when such open access is provided by the State Commission under sub-section (2) of section 42,

on payment of the transmission charges and a surcharge thereon as may be specified by the Central Commission:

Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced and eliminated in the manner as may be specified by the Central Commission:

Provided also that such surcharge may be levied till such time the cross subsidies are not eliminated:

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the Central Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

7.39 Commenting upon the functions of CTU, CII in a note furnished to the Committee stated:-

"It is provided that CTU / STU would be licensees under the Act, which thereby means that they would be allowed to undertake transmission of electricity. In fact transmission of electricity has been listed as the first functions of CTC / STUs.At the same, Second proviso to Section 38(1) and 39(1) has provided for such a situation where if CTU /STUS ARE Government companies then over a period of time, there transmission function would be stripped from them and vested in a separate transmission licensee. This indicates that ultimately CTU /STU would only perform planning and coordination. It should be clarified as to what is the ultimate role of CTU and STUs envisaged by the Government. The primary function of CTU / STUs as transmitters of electricity conflicts with their more important role of planning and coordination. If the Government envisages that ultimately the primary function of CTU and STUs would be planning and coordination then, changes need to be made at various places in the draft Bill to reflect that".

7.40 Power Grid desire that that beside listed functions, the following may also be added:-

"(i) To approve the applications for grant of transmission licence by Central Commission.
(ii) To exercise supervision and control over the inter-State transmission system".

7.41 The Government of Haryana pleaded that STU be allowed to undertake trading of electricity [Clause 38(1)]. Explaining the rationale, it reasoned as under:-

> "In the case of Haryana, the trading function has been entrusted to HVPN, which is working as a bulk seller. To this extent, it contradicts the provisions of Haryana Electricity Reforms Act and the proposed Bill. In actual practice, any agreement between the generator and the distributor would not be operational unless the transmission licensee makes available adequate transmission facility. Any constraint on transmission would make it impractical for performance of the agreements".

7.42 State Government of Karnataka and West Bengal pleaded that STU be allowed to trade in electricity, since a State Board, may become 'STU', in terms of Section 39(1). In fact, State entities, KPTCL in Karnataka and WBPDL in West Bengal are already engaged in trading of power.

7.43 State Government of Andhra Pradesh also shared the similar views and stated that in the current set up, it is desirable to permit existing transmission licensee which is a Government owned companies to perform the functions. STU shall not engage in the business of trading electricity. But the STU may be allowed to trade in the business of trading electricity with the permission of State Commission.

Open Access

7.44 Clause 38(2)(d) and 39(2)(d) provide non-discriminating open access to transmission system, to CTU and STU respectively.

7.45 Recognizing the importance of open access in transmission system, Shri Gajendera Haldea, Chief Adviser and Head of National Council of Applied Economic Research (NCAER) stated during evidence as under:-

> "Transmission is again very critical. If the generators can carry power freely and the Highways are unrestricted all over the country then if cheaper power is generated in Chattisgarh or Orissa, I can get it in Delhi. This Bill has not provided many of the Clauses which we had recommended in the NCR Draft after a national debate and after a lot of international consultation which allowed for free flow of power so that it is produced in the cheapest areas and sent out in the rest of the country to benefit all industry and consumer".

7.46 Arguing their opposition of open access in State transmission, the Government of Andhra Pradesh stated:-

> "Non-discriminatory open access cannot be provided to its transmission system unless the adequacy of such transmission is ensured. If the transmission system is to be augmented based on system studies to provide non-discriminatory open access to any licensee or generating company or any consumer, the cost towards such augmentation of the system is to be paid to the State Transmission Utility or they have to build the necessary transmission system and interconnected the same to the transmission system of STU".

7.47 Government of Haryana, too expressed their reservation over open access and recorded as under:-

> "Free access to all and sundry cannot be allowed. Coordination between company whose power is being transmitted over the transmission system can be permitted and that too where necessary".

7.48 Welcoming the concept of open access, Government of Assam stated that the electricity transmission system should provide for open access on non-discriminator basis. The wires and content aspects should be separated. This should however not be left as a declaration of intent but should be introduced within a time frame prescribed in the Bill. This should be provided for not only for intra-State but also inter-State transmission. Open access across the transmission system should be available to distribution companies, traders as also bulk consumers. Open access should not be restricted to captive generation only as has been provided for under Clause 9(2) proviso.

7.49 The Federation of Andhra Pradesh Chambers of Commerce and Industry (APCC&I), pointed out as under:-

> "Section 38(2)(d)(ii) provides for a surcharge in respect of the transmission charges to be utilized for the purpose of meeting the requirements of current level of cross subsidy. It is not clear as to what cross subsidies currently exist and the basis and rationale for any existing cross subsidy. A cross subsidy in respect of inter-State transmission may amount to a discrimination which may not be lawful or permissible".

7.50 Government of Andhra Pradesh pointed out that there are enabling provisions to have private transmission licence also. In such cases, there should be a provision not to have any ownership interest in generation and distribution business, as otherwise this may lead to collusion between transmission and generation. / distribution thereby abusing market power.

7.51 When the Committee point out that transmission companies should not be owned or controlled by generating or distribution companies. This may lead to serious conflict of interest that would prevent competition and fair play. There should be cross ownership restrictions and owners of transmission companies – whether public or private should be prohibited from having any interest in either generation or distribution. This should apply equally to intra-state as well as inter-state transmission licensees, clarifying the position, Ministry of Power in a note stated:-

> "The Bill does not envisage any such provision. It only restricts transmission company from trading in power. The Bill does not prohibit cross ownership".

7.52 In terms of Clause 26(1) the Central Government may establish a Centre at the national level to be known as National Load Despatch Centre(NLDC) for optimum scheduling and despatch of electricity among Regional Load Despatch Centres (RLDC). But the Constitution of NLDC has not been defined clearly in the Bill which needs to be done. Clause 27(2) provides that RLDCs shall be operated by a Government company or any authority or corporation established or constituted by or under any Central Act as may be notified by the Central Government. Clause 38(1) provides that the Central Government may notify any company as the central transmission utility. It has been pointed out by the State Governments of

Uttaranchal and Chhattisgarh that CEA can handle these functions effectively. In the opinion of the Committee there is no need for creating multiple organisations. The Committee, therefore, recommend that CEA should be entrusted to discharge the functions of NLDC. As far as RLDC is concerned it may be operated by CTU for the time being.

7.53 Under Clause 27, it has been stated that no "Regional Load Despatch Centre (RLDC) shall engage in the business of trading in electricity". In the opinion of the Committee, such a stipulation gives an impression that RLDC could engage in the business of other commercial activities like generation and transmission. As the task assigned to RLDC is for real time operations for regional grid, the Committee feel that it should not have any commercial interest which may lead to bias functioning of RLDC. The Committee, therefore, desire that word 'transmission and generation' should also appear at the relevant place in Clause 27.

7.54 The Committee find that under Clause 29 (4) the Regional Power Committees (RPCs) are required to unanimously agree on matters concerning the stability and smooth operations of the grid and economy and efficiency in the operations of the power system in the region. It further states that every licensee and others involved in the operation of power system would be required to comply with the decision of the Regional Power Committee in respect of such matters. The Committee find that the Regional Electricity Boards (REBs) which are being replaced by the Regional Power Committees in the present Bill were constituted in the early 1960s to promote integrated operations of power system with a view to deriving maximum benefits from the available power resources. Since then, these Regional Electricity Boards have been providing an indispensable and effective inter-face between the State Electricity Boards on the one hand and the Central Sector PSUs on the other. All the constituents rely upon the Regional Electricity Boards for regional grid operations because they (REBs) function on the basis of collective decision-making for maximum possible benefits to the region as a whole. Through the years REBs have established themselves as policy-making bodies where expertise of stake-holders with conflicting commercial interests interact and formulate policy for collective grid operation and commercial issues under a competent, reliable and neutral umbrella. In the opinion of the Committee any change in the existing set up of REBs is likely to affect the smooth functioning of the regional grid adversely. If Clause 29 (4) of the Bill intends to replace the REBs by RPCs, it is felt that existing functions of REBs should be retained due to its neutral nature and continued confidence of the States in their functioning. These will be in the interest of the smooth and efficient functioning of the regional grid. However, the Government can make the Regional Electricity Boards more broad based by allowing the inclusion of various stake holders in it. It has been further stipulated in this Clause that decision of RPCs must be unanimous. The Committee feel that as unanimous decision from constituents with clashing interests may not be possible. However, the Committee desire that in the interest of smooth operation and stability of grid, the decision of RPCs should be unanimous as far as possible. The Committee find that at times there can be occasions where RLDCs may receive contradictory directions emanating from CERC as well as Regional Power Committees. This will have a telling effect on the operation of the grid system. The Committee, therefore, desire that to take care of contradictions and in the interest of ensuring smooth operation of the grid, the expression "subject to the provision" of Section 29 (4) be deleted. At the same time, the expression " every licensee and others involved in the operation of power system shall comply with the decision of Regional Power Committee

in respect to such matters, may also be deleted. Consequential changes may be carried out.

7.55 One of the functions assigned to Central Transmission Utility is to provide non-discriminatory open access to its transmission system for use by i) any licensee/generating company or (ii) any consumer as and when such open access if provided by a State Commission on payment of transmission charges and surcharges thereon as specified by Central Commission{Clause 38(2)(d)}. However, such surcharges shall not be leviable in case open access is provided to a person who has established a captive generation plant for carrying the electricity to the destination of his own use. Various State Governments have pleaded against the open access. For instance, State Government of Madhya Pradesh has opined that the in the event of H.T. consumers opting to avail supply directly from the generating company, through transmission company, it will adversely affect revenue stream of distribution companies who are at present facing financial crunch. They have further stated that the question of extending facility of open access arise only when the State reaches a power surplus scenario which is not the case at present. The State Government of Rajasthan views that the proposed open access, even after levy of surcharge may lead to several complications. Such an arrangement instead of promoting competition would in effect lead to uneven playing ground. On the one hand, while there would be generating / supply companies free to select bulk consumers there would be no such option for the existing distribution companies to abandon or even restrict expansion in difficult and unremunerative areas. Putting them at disadvantage vis-à-vis new supply companies would further impair their capability to serve the consumers at large. This may lead to serious repercussions. Even a multi-buyer model, with one set of parties in advantageous position vis-à-vis others, is not going to succeed. The exit of existing or potential bulk buyers, most of whom are likely to be industrial consumers, would also lead to demand management problem. For a distribution company left with predominantly domestic and agriculture load spread over the entire length and breadth of the State, both of which are subject to high seasonal variations, the per unit cost of catering would go up further and management would pose added problems. Open access on area basis may perhaps be more practical and feasible. Tamil Nadu Electricity Board has stated that the discrimination against the old distributing companies can only be eliminated by ensuring levy of cross-subsidy surcharge by the State Electricity Regulatory Commission. Open access may be introduced in a phased manner. In the opinion of the Committee the non-discriminatory open access to transmission system is panacea for ushering power sector reforms especially for private sector participation to a large extent. The Committee while welcoming the non-discriminatory open access to transmission system would like to put a word of caution that Government should ensure that there is proper co-ordination between transmission and distribution and there is no cause of associated problems in maintaining the grid system.

7.56 Clause 35 provides for intervening transmission facilities. As per this Clause "the Appropriate Commission may, on an application by any licensee, by order require any other licensee owning or operating intervening transmission facilities to provide the use of such facilities to the extent of surplus capacity available with such licensee". The Committee find that it has not been specified as to which agency will determine whether any surplus capacity is available or not. The Committee desire that for the sake of clarity this Clause may be suitably amended.

7.57 Clause 36 provides that in compliance order made under Clause 35 the licensee shall provide the transmission facilities at rate charges and terms and conditions as may be usually agreed upon. Sub-Clause 2 of Clause 36 reads " rates, charges and terms and conditions referred to in Sub-Section 1 shall be fair and reasonable and may be proportionately allocated to such facilities". The Committee desire that in order to make clarity in the expression the words "proportionately

allocated to such facilities" may be replaced by the expression "proportionately to the use of such facilities". The Committee desire that suitable changes may be carried out in the Bill.

7.58 By virtue of Clause 38, the Central Government is empowered to notify any Government company as Central transmission utility. Similarly, under Clause 39 the State Governments are also empowered to notify the State transmission utility. These enabling provisions would encourage private companies to enter into the transmission sector. The Committee find that there is no check on the part of the Government to prohibit these companies from having ownership interest in generation and distribution companies. The Committee desire that these entities should not be allowed to undertake generation, distribution and trading business as it will lead to collusion between transmission and generation/distribution/trading thereby abusing the market power. The Committee, therefore, desire that such an amendment may be carried out in the Bill.

7.59 'Dedicated transmission lines' as defined in the Bill [Clause 2(16)] means 'any electric supply-line for point to point transmission which are required for the purpose of connecting electric lines or electric plants to any transmission lines or generating stations, as the case may be'. In the opinion of the Committee, a dedicated transmission line, ought to be outside the Grid. However, the present definition lacks the basic meaning assigned to a dedicated transmission line. The Committee recommend that definition be modified accordingly. The Committee also find that transmission line, as defined in Clause 2(72), is too wide and include operating staff also. The Committee are of the view that the definition of transmission line should be akin to distribution system, as defined under Clause 2(19). The Committee, therefore, desire Government should recast the definition of transmission line also.

CHAPTER-VIII

DISTRIBUTION OF ELECTRICITY

Clause 42 to 56 under Part-VI of the Electricity Bill, 2001 deals with the distribution of electricity. Some of these have been examined by the Committee in the succeeding paragraphs:

Clause 42 : Duties of Distribution Licensee

8.2 It has been felt necessary to make explicit provision delineating duties of distribution licensees. This Clause also provides that open access in distribution shall be introduced in phases by the State Commission and it (open access) can be allowed before elimination of cross- subsidies on payment of surcharge to take care the requirements of cross – subsidy and obligation to supply. This is a new Clause which is enumerated as under :-

"42(1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.

(2) Where any person, whose premises are situated within the area of supply of a distribution licensee, requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access to its distribution system:

Provided that the open access shall be introduced in such phases and subject to such conditions, including the cross subsidies, and other operational constraints, as may be specified by the State Commission and in specifying the extent of open access in successive phases and in determining the charge for wheeling, the State Commission shall have due regard to all relevant factors including such cross subsidies, and other operational constraints;

Provided further that such open access may be allowed before the cross subsidies are eliminated, on payment of a surcharge in addition to the charges for wheeling as may be determined by the State Commission;

Provided also that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee;

Provided also that such surcharge and cross subsidies shall be progressively reduced and eliminated in the manner as may be specified by the State Commission.

(3) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of

wheeling, as may be specified by the State Commission to meet the fixed cost of such distribution licensee arising out of his obligation to supply.

(4) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for rederessal or grievances of the consumers in accordance with the guidelines as may be specified by the State Commission".

A. <u>Open access</u>

8.3 As regards the introduction of open access in phases, the Federation of APCC&I stated as under:

> "Section 42 provides for the wheeling of electricity by a distribution licensee at the request of any person connected to the distribution system of the distribution licensee from a generation company or any other licensee. It is not clear as to why the open access is necessary to be introduced in phases when there is already a provision with regard to a surcharge in respect of cross subsidies (if that be the main reason). The restriction arising out of operational constraints will, in any case, be limiting factor at all times. Open access should be made available from the appointed day without leaving the matter to the discretion of the State Commission".

8.4 Shri Gajendera Haldea, Chief Advisor and Head, Centre for Infrastructure and Regulation, National Council of Applied Economic Research (NCAER) expressed his views during evidence as under :-

> "We need functional unbundling. Haryana is a good example. You separate generation, transmission and distribution. Once you separate them, it does not matter whether you privatise them or not, that brings in efficiency, that bring in accountability, that improves the sector and it allows you to grow. Next to that step is that once you unbundle, you should allow open access. It means a producer should be allowed to access bulk consumer and he should be allowed to sell power directly. Sir , I wish to submit for your pointed attention that electricity is the only sector in India where all producers must sell to the State or to the SEBs alone. ……….. in electricity we have created a situation that if you produce electricity you must sell to the State –owned organisations that are bankrupt. So you cannot produce. If you cannot produce, you starve all people of an elementary commodity like electricity……….Open access is a critical thing………….. In the NCAER draft, we had provided open access to be introduced no later than three years. But in the Government Bill which is pending before you, that limit has been removed. So, some State may take ten years, another State may take 20 years. As a citizen, or as a producer, I will have no right to open access. Open access has to be made enforceable. It has to be made justiciable".

8.5 Commenting upon the issue of 'Open Access' the Department of Energy, Government of Rajashtan, stated as under:-

> "The proposed open access, even after levy of surcharge may lead to several complications. Such an arrangement instead of promoting competition would in

effect lead to uneven playing ground. On the one hand, while there would be generating / supply companies free to select bulk – consumer there would be no such option for the existing distribution companies to abandon or even restrict expansion in difficult and un-remunerative areas. Putting them at a dis-advantage vis-à-vis new supply companies would further impair their capability to serve the consumers at large. This may lead to serious repercussions. Under such a situation the efforts to privatize distribution companies in Rajasthan or in any other State may become extremely difficult. Even a multi- buyer model with one-set of parties in advantageous position **vis-a-vis** others, is not going to succeed. The exit of existing or potential bulk buyers, most of whom are likely to be industrial consumers, would also lead to demand management problems. For a distribution company left with predominantly domestic and agriculture load spread over the entire length and breadth of the State, both of which are subject to high seasonal variations per unit cost of catering to such a consumer profile would go up further and management would pose added problems. Open access on area basis may perhaps be more practical and feasible. Such an area may have appropriate mix of industrial, urban and rural loads".

State Government of Andhra Pradesh

8.6 Non-discriminatory open access cannot be provided to its transmission system unless the adequacy of such Transmission system is ensured. If the Transmission system studies to provide non-discriminatory open access to any licensee or generating company or any consumer, the cost towards such augmentation of the system is to be paid to the State Transmission Utility or they have to build the necessary transmission system and interconnected the same to the Transmission system of STU.

8.7 **State Government of Kerala was of the view that** Open access to the generating company by the Consumer may lead to poor co-ordination of the power system, hence section 42(2) may be deleted.

8.8 As Bill leaves the determination of the phased open access of the distribution system to the SERC concerned, subject to cross- subsidy and operational constraints. Confederation of Indian Industry (CII) desired a fixed timeframe for the propose.

42(2)"………… Provided that the open access shall be introduced in such phases and subject to such conditions, including the cross – subsidies, and other operational constraints, as may be specified by the State Commissions not later than [ ] years from the appointed date and in specifying the extent of open access in successive phases…………"

8.9 On a point of Surcharge and cross- subsidies Federation of APCC&I, stated,

"The provisos in section 42(2) contemplate and deal with wheeling charges alongwith surcharge to meet the requirements of current level of cross subsidy. It is envisaged that the cross subsidies shall be progressively reduced and eliminated and thereby the need for surcharge will also get eliminated. No time frame is specified or fixed for the elimination of cross subsidy. This may enable a State Commission to either unduly defer the elimination of cross subsidy or to make the

process of reduction painfully and interminably slow. When it is universally authorized that the current level of gross subsidies are untenable resulting in irrational tariffs to the detriment of both industry and the electricity section, it is submitted that a fast roll down of the substantial part of the cross subsidy should be done in a time bound manner of say, within three years. Further, whatever be the current level of cross subsidy, the Act should provide for a certain maximum limiting amount of cross subsidy that may be recovered in the tariff of any category of consumer and such a limit should come into operation immediately on the appointed date".

8.10 Welcoming the levy of a surcharge, it was submitted to the Committee as under:-

"It meets transitional requirement of cross subsidy without ruling competition in bulk supply. However leaving it to state governments to implement takes away from effectiveness. It would have been better to link pan national option for direct access and to implement the option immediately. However surcharge is wrongly levied only on self-supply while captive generation is exempted from surcharge. The idea should be that any one who self supplies and hence bypasses the retail supplies escapes the cross-subsidy which is detrimental to transition arrangements. Hence the surcharge should be levied on self- supply per se including both captive generation, which is currently exempted, and on bulk purchase other than from the retail supplies. In fact, anyone consuming electricity supplied by anyone other than the monopoly retail supplier should be levied this surcharge. The only exception should be the consumption of renewable energy which should be exempted from the surcharge. Hence, even if a large consumer wants to buy power from a generator owned by someone else should be free to do so but on payment of the surcharge. This should be implemented immediately. The surcharge cannot be levied on transmission because. Where there are multiple transmitters who will levy it, all, first or last? Better to therefore classify it as a surcharge on self- supply and charge it at the last point of transfer since the cross subsidy is related to the end point of distribution".

8.11 As regards the Clause 42 (3) relating to the payment of additional surcharge on the wheeling charges, it was submitted as under:-

"Section 42(3) provides for the payment of additional surcharge on the wheeling charges to meet the fixed cost of the distribution licensee arising out of his obligation to supply. The purport and the scope of the additional charges is not all clear from the provisions of section 43. Any fixed charge must also adjust for any amount paid by the consumer to the licensee towards expenses incurred for providing a service connection to him as in section 46. If the distribution licensee is to be compensated for the provision of infrastructure by way of a fixed charge, the provision for determination of a tariff for wheeling must clearly stipulate that it has to be based only on the costs incurred by the distribution licensee, reasonably, on the revenue account (variable only)".

8.12 It was further suggested in a Memoranda submitted to the Committee as under:-

"It will virtually kill all opportunities for actually purchasing from other than the monopoly retail supplier if in addition to the cross subsidy surcharge another surcharge is levied to meet the fixed cost of supply arising from the obligation of

the retail suppler to supply. This should be avoided. Firstly, leaving retail suppliers with the threat of competition will ensure that they served large consumers well and charge them reasonable rates. Secondly the fixed cost of power purchase can be traded away by the Retail Supplier thereby reducing his burden if demand falls. In any case where demand is growing at over 6% per annum earlier PPA's are not a stranded cost". It was also suggested that there was a need to clarify that such surcharge should be payable only till such time as the costs of the distribution licensee are recovered. Clause 42(4) envisages the formation of a forum for redressal of grievances of the consumers. It was suggested that, "Section 42(4) requires the distribution licensee to establish a forum for redressal of grievances. It may be appropriate to specify the minimum principles expected from such a grievance redressal procedure so that it is not an empty formality which will have the effect only of delaying remedy for the consumer. Some kind of Ombudsman scheme must be facilitated.

Clause 43: Duty to Supply on request.

8.13 A duty has been cost to supply electricity on request Every distribution licensee has to provide supply within one month and in cases requiring extension of distribution mains, commissioning of new sub-stations within six months. There is also a provision for penalty in the event of failure. The various provisions of the Electricity Bill, 2001 are reproduced as under:-

"43(1) Every distribution licensee, shall on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within six months, whichever is earlier.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1);

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within a period specified in sub-section (1),he shall be liable to a penalty which may extend to one thousand rupees for each day of default".

8.14 The equivalent clause of 1910 Act was Section 22. It reads as under:-

"Obligation on licensee to supply energy - Where energy is supplied by a licensee, every person within the area of supply shall, except in so far as is otherwise provided by the terms and conditions of the licence, be entitled, on application to a supply on the same terms as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply:

"Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of energy for any premises having a separate supply unless he has agreed with the licensee to pay to him such minimum annual sum as will give him a reasonable return on the capital expenditure, and will cover other standing charges incurred by him in order to meet the possible maximum demand for those premises, the sum payable to be determined in case of difference or dispute by arbitration".

B. Supply of Power Within stipulated Time

8.15 Clause 43 of the Bill provides that every distribution licensee, on an application by the owner or occupier of any premises, shall give supply of electricity to such premises within one month after receipt of the application. This Clause also provides that where such supply requires extension of distribution mains or commissioning of new sub stations, the distribution licensee shall supply electricity immediately after such extension of commissioning or within 6 months whichever is earlier.

8.16 The views of various organisations/ associations and State Governments as are under:-

State Government of Andhra Pradesh

It is felt desirable to drop this Clause as this aspect would be covered under performance standards of licensees to be prescribed by the competent Commissions.

State Government of Maharashtra

"The new connections for supply of electricity are based on the availability of power, the geographical location and the development of infrastructure for the supply up to the consumer premises. Licensees should therefore to be allowed to develop their own terms and conditions of supply and should abide by it. Any violation to this should then result into penalties."

State Government of Tamil Nadu

"The establishment of substation involves the process of purchase of land, procurement of equipments and execution of works which is time consuming process. Hence the outer limit of 6 months may be modified as "two years".

State Government of Uttar Pradesh

"The time limits should be prescribed on the basis of quantum of load and the voltage of supply. In case some arrears of electricity dues is outstanding against a previous connection which was existing in that premises, adequate mechanism needs to be put in place so that the defaulting consumer may not be able to avoid payment of old dues and obtain a new connection".

State Government of Madhya Pradesh

"The Act should not prescribe any time limit. These matters should be left to the appropriate commission to decide. The State Governments should have the powers to deviate from the orders of the Commission made in this regard".

State Government of Uttaranchal

"In principle, 6 months where extension/ commissioning is required and 1 month where the facility already exists, is acceptable. However, given the terrain of Uttaranchal, the backlog cannot be cleared within 6 months".

NCT of Delhi

"In the SEBs consumers in the electrified areas are provided connections within a period of four weeks. Wherever electrification is required to be carried out, the connections are released as soon as it is completed. The period six months specified may not be practical as the electrification of an area or a colony could take longer than six months, and it is not desirable for anyone to be able to demand electric supply in any illegal premises on pain of imposing a penalty on the utility for delay which is not its fault. For example in Delhi there exist a large number of unauthorized colonies requiring electrification which has both time and cost implications for the distribution licensee. Conservations in such areas can only be given progressively as the areas get electrified. These matters can be left to the appropriate Commission. In Delhi the State Commission is seized of this issue and has initiated action for framing regulations".

State Government of Chhattisgarh

"The entire obligation for supply of electricity within one month after receipt of application has been entrusted to the supplier. On the experience it has been observed that many hurdles in supplying electricity to the consumers such as leave way may not be available, applicant may not be legal owner of the premises, premises may be owing dues (electricity) on account of earlier supply. Therefore the Bill may also carries provision for carrying an obligation on the applicant to provide proof of legal occupancy, to provide leave way etc. and also subject to the condition that distribution mains are available upto the premises of the applicant. Backlog of pending connections can be cleared within the time limit prescribed in the Bill subject to fulfillment of the required formalities by the cultivators".

State Government of Rajasthan

"Clause 43 of the Bill pertaining to release of connection on demand is unimplementable. In Rajashtan, we have a long pendancy of around 2.3 lac applications for agriculture connection some of which are pending for 9-10 yrs. It would take many years to clear the backlog of such pending applications as the State has neither the resources nor the power to clear the entire back log in six months as prescribed in the Bill".

State Government of Orissa

"One month should be replaced by such time as the appropriate commission may lay down by regulation."

State Government of Karnataka

This needs to be modified as the issue may involve procurement of additional power, acquisition of land, right of way, mobilization of resources etc. which cannot be bound by time limits. Hence such provisions need not be made in the Act. However, the issue can be addressed through licence/ supply conditions by SERCs.

8.17 Forum of Indian Regulators suggested, "One month should be replaced by such time as the appropriate Commission may lay down by regulations. All other provisions of section 43 should be deleted. The existing provision is totally impractical. All States have long waiting lists for granting connection particularly in rural areas".

8.18 Confederation on Indian Industry, on the other hand, suggested, "Every distribution licensee shall on an application by the owner or occupier of any premises and upon compliance of all formalities and payment of all charges by the applicant, give supply of electricity to such premises, within one month therefrom".

8.19 Laghu Udyog Bharati suggested that 6 months for the supply of electricity in the case where extension or commissioning of substation are required should be reduced to 3 months.

8.20 Federation of APCC&I commented on the various provisions of Clause 43 of the Electricity Bill,2001 as under:-

"Section 43(1), on a plain reading, appears to deal with cases where a new connection for supply of electricity is applied for. The time limit and obligations specified therein should be made applicable also to applications for increase in the quantity of electricity contracted for by the consumer. Further, the licensees should be obliged to give or extend supply to such an applicant on the same terms and conditions as that on which supply is extended to any other consumer in the area of supply".

Clause 45 : Power to recover charges

8.21 Broad parameters for recovery of charges by the distribution licensees have been specified in this Bill which is enumerated as under:-

"45(1) Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.

(2) The charges for electricity supplied by a distribution licensee shall be-

(a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission;

(b) published in such manner so as to give adequate publicity for such charges and prices.

(3) The charges for electricity supplied by a distribution licensee may include-
(a) a fixed charge in addition to the charge for the actual electricity supplied;
(b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.

(4) Subject to the provisions of section 62, in fixing charges under this section a distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons.

(5) The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission".

8.22 A similar position in the Indian Electricity Act, 1910 Clause 23 exit in of 1910 Act reads as under:-

23. Charges for energy to be made without undue preference-(1) A licensee shall not in making any agreement for the supply of energy, show under preference to any person
(2) No consumer shall, except with the consent in writing of the licensee, use energy supplied to him under one method of charging in a manner for which a higher method of charging is in force.
(3) In the absence of an agreement to the contrary, a licensee may charge for energy supplied by him to any consumer-
(a) by the actual amount of energy so supplied, or
(b) by the electrical quantity contained in the supply, or
(c) by such other method as may be approved by the State Government.

(4) Any charges made by a licensee under Clause (c) of sub-section (3) may be based upon, and vary in accordance with, any one or more of the following considerations, namely-

(a) the consumer's load factor, or
(b) the power factor of his load, or
(c) his total consumption of energy during any stated period, or
(d) the hours at which the supply of energy is required".

C. Charges for electricity

8.23 As regard Clause 45 (3) CII suggested as under:-

" The charges for electricity supplied by a distribution licensee may include-

(a) a fixed charge in addition to the charge for the actual electricity supplied,
(b) Wheeling charges leviable in a manner to be prescribed a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee".

8.24 Surya Foundation desired that item (c) may be incorporated under Clause 45 (3) as under "(c) minimum charges which will normally be equal to fixed charge"

8.25 On the other hand, Haryana Chambers of Commerce suggested that fixed charges should be deleted from Clause 45(3).

Since the charges are not fixed by the distribution licensee, the Clause 45 (5), as suggested by the CII, should read as---

> "The charge of the distribution licensee shall be in accordance with the provisions of this act and the regulations made in this behalf by the concerned State Commission".

8.26 Forum for Indian Regulators suggested,

> "As the tariff for supply of electricity is to be determined by the appropriate commission under Clause 62,sub- Clauses 2) to (5) of Clause 45 should be deleted."

Clause 46: Power to recover expenditure.

8.27 It is a substantive and explicit provision allowing a distribution licensee to recover costs on capital expenditure which is enumerated as under:-

> "The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply".

Recovery of expenditure

8.28 As regards the recovery of costs of Capital expenditure incurred in providing materials for the purpose of supplying electricity Utkal Chamber of Commerce and Industry, in a Memorandum, submitted as under:-

> "The appropriate commission shall determine viability norms for extensions of lines /substations when extensions are made under para 43,the consumers shall be required to pay such amount by which the scheme falls below the viability norms. The amount collected in such a way is not be added to investment made to increase capital assets"

8.29 It was stated in a Memorandum submitted to the Committee as under:-

> "Section 46 provides for regulations authorizing the recovery by the distribution licensee of expenses reasonably incurred in providing materials for the purpose of giving supply of electricity in pursuance of Section 43. It needs reconsideration as to whether, even though an authorization may be given by regulations, the rates at which such recovery should be made and a standard table of charges ought to be determines as part and parcel of a tariff having regard to normative costs and normative engineering practices. Provisions need be made also for ensuring that the licensee is not allowed to claim any return on assets paid for by consumers".

8.30 It was further submitted, in a Memorandum to the Committee, as under:-

> "As per section 62 (d) of the Bill, one of the principles of determination of tariff shall be recovery of cost of electricity. At the same time, section 46 authorizes the Licensee to charge the consumers in respect of expenses incurred in providing electric lines or plant. That means part of the expenditure for capital assets of the licensee is borne by the consumers. Hence the licensee may be required to pay interest for the amount incurred in providing electric lines and plants. Alternately, these lines and plants shall not be taken as capital assets of the licensee for the purpose of determination of tariff. Section 46 and 62 of the Bill may be modified suitably as in section 47 (4)".

Clause 47: Power to require security

8.31 This provision allow a distribution licensee to seek reasonable security from any person who requires supply of electricity subject to certain conditions. The various provisions of the Clause 47 as mentioned in the Electricity Bill,2001 is as under:

> "47(1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him-
>
> (a) in respect of the electricity supplied to such person; or
> (b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to such person, in respect of the provision of such line or plant or meter.
>
> and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.
>
> (2) Where any person has not given such security as is mentioned in sub-section (1) or the security given by any person has become invalid or insufficient, the distribution licensee may, by notice, require that person, within thirty days after the service of the notice, to give him reasonable security for the payment of all monies which may become due to him in respect of the supply of electricity or provision of such line or plant or meter.
>
> (3) If the person referred to in sub-section (2) fails to give such security, the distribution licensee may, if he thinks fit, discontinue the supply of electricity for the period during which the failure continues.
>
> (4) The distribution licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on security referred to in sub- section (1) and refund such security on the request of the person who gave such security.
>
> (5) A distribution licensee shall not be entitled to require security in pursuance of Clause (a) of sub-section (1) if the person requiring the supply is prepared to take the supply through a pre- payment meter."

D. Amount of security deposited and interest, thereon

8.32 CII in a Memorandum, submitted to the Committee, suggested as under:-

"Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43 to give him such reasonable security not being less than the sum equivalent to three months energy bills, as may be determined by regulations, for the payment to him of all monies which may become due to him and the distribution licensee in conformance with appropriate commission shall be entitled to revise the amount of such security from time to time".

8.33 As regards the Clause 47 (4),it was suggested informed by the CII,

"The Supreme Court in its judgment on the issue of payment of interest on security deposit has also held that since the nature of deposit is to secure revenue no interest on security deposit needs to be paid. The provision for payment of interest should be deleted".

8.34 It was further informed by the CII,

"A distribution licensee shall not be entitled to require security in pursuance of Clause (a) of sub- section (1) if the person requiring the supply is prepared to take the supply through a pre-payment meter and the licensee is in a position to provide the supply through such a meter".

8.35 BSES submitted in its memorandum as under:-

"It should be specified in this Act that security for the purposes of energy consumption be equivalent to three months energy bill amount. The Supreme Court has held that such a quantum is reasonable. The Supreme Court in its judgment has also held that no interest on Security Deposit needs to be paid. The provision for payment of interest should be deleted".

8.36 The Federation of APCC&I suggested as under:-

"The requirement in section 47 (1) (b) to provide security should be subject to the condition that no security shall be demanded in respect of any electric plant or meter for which the consumer has paid either under section 46 or otherwise.

8.37 As regards the provision of 47 (4) the Federation of APCC&I suggested as under:-

"The provision of section 47 (4) with regard to interest on security furnished appears to predetermine that the security should be furnished only in cash. It is submitted that there is no reason why the security should be only in cash alone. It is reasonable that bank guarantees, call deposits of scheduled banks and such other instruments would also afford reasonable security to the distribution licensee without unduly burdening the consumer. Section 47 (4) envisages the payment of interest on cash security at least at the "bank rate" . In banking

parlance, the “bank rate” is the rate at which the Reserve Bank of India lends to scheduled banks. It does not appear that this is the rate of interest that is envisaged. It is reasonable to specify that the interest should be paid at the rate of interest applicable to fixed deposits placed with the State Bank of India”.

8.38 In a Memorandum submitted by Shri K.A.Joseph, it was suggested as under:-

“Section 47(4) – the part of the security as per sub-section (1) (a) is for the supply and the licensee is not entitled to this if the supply is taken through a prepayment meter as per sub-section (5). This shows that the purpose of the security is to make up for the delayed payment of the supply consequent on the delay in billing and the actual realization of the money. In such a situation the part of the security is the payment due to the licensee for the supply availed. Hence it is not fair to demand interest for it. Then the other part of the security is for the price of the meter and for the payment towards the cost of works to be got done as per sub-section (1)(b). Here also the price of the meter is payment due for the supply of meter by the licensee and the only advance payment is that set apart for the works. If the works are not executed within the time frame as stated under section 43(1) then interest shall be paid. This position has been confirmed by the highest court of law in the country on more than one occasions and it is only because of the ruling that electricity boards in the country do not pay interest for the security. Hence the sub-section (4) may be recast as the distributing licensee shall pay interest, equivalent to the security which is set apart for the specified by the state commission, on that part of the schedule specified in section 43(1)”

8.39 It was suggested by Shri K.Gopal Choudary in a written Memorandum submitted to the Committee as under:-

“Section 47 (4) envisages the payment of interest on cash security at least at the “bank rate” . In banking parlance, the “bank rate” is the rate at which the Reserve Bank of India lends to scheduled banks. It does not appear that this is the rate of interest that is envisaged. It is reasonable to specify that the interest should be paid at the rate of interest applicable to fixed deposits placed with the State Bank of India. It may be noted that similar provision is also made in the telegraph rules in respect of deposits made for telephone connections”.

8.40 Laghu Udhyog Bharati suggested ,

“Security deposit should be payable within 3 months before refusal of power supply. There should be no security deposit demand on increase of load expansion, if pre-payment meter facility is availed by consumer in beginning”.

8.41 All Bengal Electricity Consumer Associations suggested,

Clause 47 (1) should be read as :

“Subject to the provisions of this section, licensee may require any person, who requires a supply of electricity inpursuance of section 43, to give him one month’s Bill as security (including loan factor)”

(a) in respect of the electricity supplied to such person; or

(b) where any electric line or electrical plant or electric meter is to be provided for supply of electricity to such person, in respect of the provisions of such line or plant or meter.

Clause 55 : use, etc. of meters

8.42 Clause 50 regarding the State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity, tampering, distress or damage to electrical plant, electric lines or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter entry for replacing altering or maintaining electric liens or electrical plant or meter.

8.43 Various provisions of Clause 55 regarding the use, etc. of meters reads as under:-

55(1) "No person shall supply electricity, after the expiry of two years from the appointed date, except through a meter to be installed and operated in accordance with the regulations to be made in this behalf by the Authority"

Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.

Provided further that the State Commission may by notification, extend the said period of two years for a class or classes of persons or for such area as may be specified in that notification.

(2) For proper accounting and audit in the generation, transmission and distribution or trading of electricity, the Authority may direct the installation of meters by a generating company or licensee at such stages of generation, transmission or distribution or trading of electricity and at such locations of generation, transmission or distribution or trading, as it may deem necessary.

(3) If a person makes default in complying with the provisions contained in this section or the regulations made under sub- section (1), the Appropriate Commission may make such order as it thinks fit for requiring the default to be made good by the generating company or licensee or by any officers of a company or other association or any other person who is responsible for its default"s.

8.44 The corresponding provision of Clause 26 of I.E. Act, 1910 is reproduced as under:-

26, Meters-(1) "In the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter:

Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.

(2) Where the consumer so enters into an agreement for the hire of a meter, the licensee shall keep the meter correct, and, in default of his doing so, the consumer shall, for so long as the default continues, cease to be liable to pay for the hire of the meter.

(3) Where the meter is the property of the consumer, he shall keep the meter correct and, in default of his doing so, the licensee may, after giving him seven days' notice, for so long as the default continues, cease to supply energy through the meter.

(4) The licensee or any person duly authorised the licensee shall, at any reasonable time and on informing the consumer of his intention, have access to and be at liberty to inspect and test, and for that purpose, if he thinks fit, take off and remove, any meter referred to in sub- section (1); and, except where the meter is so hired as aforesaid, all reasonable expenses of, and incidental to, such inspecting, testing, taking off and removing shall, if the meter is found to be otherwise than correct, be recovered from the consumer; and, where any difference or dispute arises as to the amount of such reasonable expenses, the matter shall be referred to an Electrical Inspector, and the decision of such Inspector shall be final:

> Provided that the licensee shall not be at liberty to take off or remove any such meter if any difference of dispute or the nature described in sub-section (6) has arisen until the matter has been determined as therein provided.

(5) A consumer shall not connect any meter referred to in sub-section (1) with any electric supply –line through which energy is supplied by a licensee, or disconnect the same from any such electric supply-line (but he may be giving not less that forty –eight hours notice in writing to the licensee requires the licensee to connect or disconnect such meter and on receipt of any such requisition the licensee shall comply with it within the period of the notice)

(6) Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity:

> Provided that before either a licence or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days notice of his intention so to do.

(7) In addition to any meter which may be placed upon the premises of consumer in pursuance of the provisions of sub-section (1) the licence may place upon such premises such meter, maximum demand indicator or other apparatus as he may think fit for the purpose of ascertaining or regulating either the amount of energy supplied to the consumer or the number of hours during which the supply is given, or the rate per unit of time at which energy is supplied to the consumer or any other quantity or time connected with the supply:

Provided that the meter, indicator or apparatus shall not, in the absence of an agreement to the contrary be placed otherwise than between the distributing mains of the licensee and any meter referred to in sub-section(I).

Provided also that, where the charges for the supply of energy depend wholly or party upon the reading or indication of any such meter, indicator or apparatus as aforesaid, the licensee shall, in the absence of an agreement to the contrary, keep the meter, indicator or apparatus correct; and the provisions of sub-section (4) and (5) and (6) shall in that case apply as though the meter, indicator or apparatus were a meter referred to in sub-section (1)".

E. <u>Installation and up keeping of meter</u>

8.45 The following changes were brought about in the Bill:-

* Metering made mandatory. Two years period may be given for metering.
* The Appropriate Commissions may extend the period for a class of consumers.
* For energy accounting and audit, the CEA to direct stages and locations of installation of meters.

8.46 Comment upon the rationality of meters the Ministry of Power in a note stated

"This is as part of the policy of the Government to meter all supply of electricity within a specified time frame".

8.47 Commenting upon the justification for metered supply of electricity, Shri K.A.Joseph, in a note furnished to the Committee stated:-

Section 55(1) – "The financial arrangement set out under the first proviso of sub-section (1) is the same as that contained under section 26(1) of the Act 1910. Well the fundamental approach in this arrangement is that the consumer shall be supplied with a meter after realizing the price as security unless the consumer opts to purchase a meter from some other source. In any case the consumer has to meet the price of the meter the servicing charges are met by the monthly rent. Conditions have changed much in regard to the availability and servicing facility of the meters. Now meters are available in the open market. Servicing facility is also available. The provisions of the 1910 Act itself do not provide for free supply of the meter. Under the circumstances at least the onus of keeping the meter correct could be passed on to the consumer, simultaneously relieving them from the responsibility of paying a rent. Further there should be provisions to the effect that the amount of energy or the electrical quantity shall be ascertained (for billing purpose) by means of the meter. Hence, it is suggested to redraft the first proviso to the sub-section as, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter. The licensee shall, if required by the consumer, supply a meter by realizing the costs thereof. The consumer has the option of purchasing a meter from any other source. The consumer has to keep the meter correct and in default of his doing so, the licensee may after giving him 15 days' notice, cease to supply energy through the meter for so long as the default continues. Simplification of the procedures apart this will go a long way in reducing the incidence of theft of energy. In fact of all the changes brought about in this act to fight the menace of theft of energy, the one suggested here making the consumer responsible for the upkeep of the meter would be the most effective".

F. Requirement of Calibration Certificate

8.48 Under Clause 55, the provisions of meter has been made mandatory after expiry of two years. It has been brought to the notice of the Committee that where a consumer elect to purchase a meter of his own, calibration certificate from recognised testing laboratory should be made necessary. It has been observed that this provision probably does not exist in the Bill.

8.49 On the proposal of inclusion of suitable Clause in the Bill, various organizations and State Governments have expressed their views as under:-

The Tata Power Company Ltd.

"We agree to the inclusion of such a suitable Clause in the Bill".

Central Electricity Authority (CEA)

"These requirements can be taken the case while framing regulations under Clause 172 (2) (C)"

Confederation of India Industry

"Where the consumer elects to purchase a meter, such meter shall conform to the specifications provided by the licensee for such meter and such meter shall be tested and approved by the licensee and the licensee shall have the right to test the accuracy of such meter from time to time and if found defective, such meter shall be replaced by the consumer with another meter conforming to such specifications provided by the licensee and such testing by the licensee and so long the meter is not replaced, the supply to such consumer shall be liable to remain disconnected".

State Government of Rajasthan

"Consumer should either get testing undertaken in the laboratory of SEBs/licensee or else from recognised testing laboratory as proposed".

State Government of Gujarat

"When meters are purchased by consumers, they should have calibration certificates from a recognised testing laboratory. Arrangements for calibration certificate can be coordinated with Consumer Department by ensuring establishment of independent laboratories by the State Consumer Department or State Electricity Department. There is need for independent authorities."

State Government of Tamil Nadu

"The distribution company concerned can provide meters to the consumers. Hence, there is no need for consumer to purchase meter of his own. When such contingency arises the third party testing may be insisted in order to ensure the

accuracy of the meter reading. This aspect could be considered by the Regulatory Commission."

State Government of Orissa

"The consumer has to install a tested meter from recognised testing laboratory. There is a need to set up an independent authority to test, calibrate and seal the electricity meters."

State Government of Karnataka

"Instead of fixing the time limit in the Act itself, respective State Governments may be given the authority to decide the time limit in their own interest. Such a Clause will only benefit the States which have poor coverage of households but not State like Karnataka which has a very high coverage. Further, as suggested, the recognized laboratories should be permitted to test the meters to be fixed by consumers."

8.50 The Indian Energy Forum felt necessary to add the following:-

"In case the consumer elects to purchase this meter, Calibration certificate from recognised testing laboratory to ensure quality of such meters shall be necessary".

8.51 CII desired addition of wants to add a new provision under Clause 55 (1), which is given below :-

"Provided further that where the consumer elects to purchase a meter, such meter shall conform to the specifications provided by the licensee for such meter and such meter shall be tested and approved by the licensee and the licensee shall have the right to test the accuracy of such meter from time to time and if found defective, such meter shall be replaced by the consumer with another meter conforming to such specifications provided by the licensee and such testing by the licensee and so long the meter is not replaced, the supply to such consumer shall be liable to remain disconnected".

G. Role of Electric Inspector

8.52 On the question of empowering the Electrical Inspector to arrange to test the meters and take appropriate action, various organizations and State Governments have expressed their views as under:-

The Tata Power Company Ltd.

The provision in the existing laws for testing of meters by Electrical Inspector is ineffective. The meters shall be tested by the licensee. In terms of Clause 56, the distribution licensee is entitled to cut off the supply of electricity by giving 50 days notice in case of the default by consumer in making payment. It has been found that similar quick penalty has not been provided against the licensee for wrong billing and for failure to provide quality and reliability to the consumer.

Central Electricity Authority (CEA)

"They would be governed by the agreement between distribution licensee and the consumer and code finalized by the regulatory commission under Clause 50".

Confederation of Indian Industry (CII)

"The old powers should be retained by the E.I. However, the working of the Electricity Inspectorate needs major overhauled. Disputing parties can refer the case to accrediting agency".

State Government of Uttar Pradesh

"The existing provision relating to disputes regarding the accuracy of the meter between the licensee and the consumers need to be retained where it is to be referred to electrical inspector. Creation of an other independent authority to test and calibrate the meters may result in further disputes"

State Government of Rajasthan

"It could be through electrical inspector or independent testing laboratory."

State Government of Gujarat

"Electrical Inspector can be empowered to test the meter and act as per the provisions contained in section 26 of the Indian Electricity Act, 1910."

State Government of Tamil Nadu

"Electrical Inspector should also be empowered to inspect the testing premises."

State Government of Orissa

"Electrical Inspector should be empowered to arrange to test the meters and appropriate actions thereon. The electrical inspector should be the final authority, if any, disputes regarding functioning of the meters arises."

State Government of Karnataka

In addition to electrical Inspector others authorized by SERC can also be allowed.

State Government of Kerala

"Provided that if any dispute arises regarding the accuracy of the meters, the matter shall be referred to the Electrical Inspector. Upon receipt of application from either party the Electrical Inspector shall arrange to test the meter and estimate the energy consumed for the actual period during which the meter was faulty and/ or incorrect and the decision of the Electrical Inspector in this matter shall be binding on the consumer and the Distribution Licensee in the absence of any fraud".

H. Compensation to Consumer

8.53 There are instances, where the supply of a consumer has been disconnected without sufficient justification, whether any compensation should be paid in such cases various organizations/ institutions and State Governments expressed their views as under:-

The Tata Power Company Limited.

"These are the matters, which can be addressed by the Commission"

Central Electricity Authority (CEA)

"Clause 57 provides for standards of performance of licensee to be specified by the Regulatory Commission. Penalty is contemplated if the licensee fails to meet the standards specified. There is also liability to pay compensation to the person affected".

State Government of Uttar Pradesh

"The licensee is responsible to issue bills to consumers for the consumption of electricity. This makes the licensee responsible to issue correct bills. However, in case of the supply of consumer is disconnected without sufficient justification, he may be compensated in a token manner".

State Government of Rajasthan

"Such a provision would not be practicable in any case. Sufficient checks are already available with Regulatory Commission".

State Government of Gujarat

"A grievance redressal machinery at each utility is necessary. Provision of compensation at this stage may be premature. Arrangements for providing for calibration of meters should be made. All other grievances of the consumers can be settled through the consumer courts."

State Government of Tamil Nadu

"Adequate protections are provided under Consumer Protection Act and consumer redressal forums at National, State and District level are available for redressal of such grievances."

State Government of West Bengal

"There should be a provision of penalty for disconnection without valid reasons. In such cases the concerned officials and employees of utility related to disconnection shall also be penalised in appropriate form, which may include monetary penalty. This realised money shall be credited to concerned consumers account"

I. Tamper-proof meter

8.54 On the question of t tamper–proof metering introduced in near future possibilities, the CPRI submitted as under:-

> "Some of the common methods of pilferage of energy in conventional electromechanical meters include tampering the connection at the terminal block of the meters. This includes reversal of supply and load connections using earth as the return path partially or wholly. Under these conditions, the energy meters do not record consumption. Most of the present –day electronic meters provide means to indicate (through LEDs) the reversal of correct polarity and earth loading conditions. The meter also continues to record the correct energy consumption. With the provision in the meters to detect different tampering methods, about 20 sample conditions related to incorrect terminal connections can be overcome. Another method of tampering of meters is to influence its performance with a powerful magnet. By providing adequate shielded enclosure, this effect can be eliminated. Most of these anti-tamper features are incorporated in the meter developed by CPRI".

8.55 State Government of West Bengal favoured the a provisions for accuracy of meter and settlement of meter disputes to be incorporated into the Bill and stated that :

Specific provisions should be made in the bill to address the question of accuracy of meters. In case of identification of inaccuracy of meter by consumer the matter shall be brought to the notice of the utility for which the consumer can get benefit from the date of last but one reading in case of over billing. This can be done by rectified energy billing as per average bill or the bill of the corresponding period of last year, whichever is higher. However, in case of identification of inaccuracy of meter by the utility concerned, then also utility can be allowed benefit from the date of last meter reading in case of under billing. This can be done by energy billing as per average bill or the bill of the corresponding period of last year, whichever is higher. In case of complaint of inaccuracy of same meter subsequently second time within six months then consumer can opt for referred checking with deposition of prescribed cost of checking by Electrical Inspector. At the event of inaccuracy identified by referred checking, adjustment can be done as per principle of first complaint.

8.56 On the other hand State Government of Tamil Nadu was of the view that

> "Accuracy of meters and settlement of meter disputes can be taken care of by the SERCs. Time tested methods to assess consumption in respect of meter disputes are already in practice. In view of the above position, separate provisions need not be made in the Bill."

Clause 56 : Disconnection of supply in default of payment.

8.57 Clause 56 regarding the disconnection of supply in default of payment read as under:-

56(1) "Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in

writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

> Provided that the supply of electricity shall not be cut off if such person deposits an amount equal to the sum claimed form him, under protest or as security pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

8.58 Corresponding provisions as mentioned in the Clause 24 of I.E. Act 1910 are as under:-

24. "Discontinuance of supply to consumer neglecting to pay charge. (1) Where any person neglects to pay any charge for energy or any {sum other than a charge for energy} due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works being the property of the licensee, through which energy may be supplied and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer.

(2) Where any difference or dispute {which by or under this Act is required to be determined by an Electrical Inspector, has been referred to this Inspector } before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision"

> Provided that the prohibition contained in this sub-section shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the (Electrical Inspector) of the amount of the licensee's charges or other sums in dispute or for the deposit of the licensee's further charges for energy as they accrue, and the consumer has failed to comply with such request.

J. Protection to Consumes from arbitrary billings

8.59 It may be seen that similar provision exit in the Act of the present Bill except that now restrictions have been made for recovery of arrears pertaining to the period prior to two years from consumers unless the arrears have been continuously shown in the bills, justifying their stand the Ministry of Power in a note stated :

> "It has been considered necessary to provide for such a restriction to protect the consumers from arbitrary billings".

8.60 Pointing out the deficiencies in the existing provision the federation of AP Chambers of Commerce & Industry in a Memorandum furnished to the Committee stated:-

> "Proviso of section 56, sub-section 1 – there are two usual ways of harassing a consumer by the licensee. First, the bill for the energy supplied is not served to him for a long period (which would be limited to 2 years as per sub-section) or is bill exorbitantly high (wrongfully, willfully because of prevalent practices, or due to any other reasons). The amount of the bill may be beyond the consumer's paying capacity. Second, consumers are often penalized for having actual loads more than the contracted ones. In such a case, the penalty imposed by the licensee is usually more than the genuine one. Experience shows that the consumers grievances redressal forums established by the licensee, as required in section 42, sub-section 4, are not of much help. Thus, the proviso seems to be biased towards the licensee and also it would lead to the corrupt practices. To make it justified from the consumers points of view:- (a) the state commission should provide procedure for assessment of the amount to be deposited as security, till the dispute between a consumer and the licensee is disposed. (b) designated courts should be established at district levels, for quick or time-bound disposal of disputes between consumers and the licensee. (c) either laboratories, capable of certifying the ratings of electrical motors, should be established or the existing laboratories be enlisted. Also, these laboratories should be at approachable distances for every consumers".

8.61 It further stated suggested as under:-

> "Section 56 (1) provides for the disconnection of electricity supply in case of default in making payment of electricity charges or any other sums. While such a power has been remain as it is given, it is submitted that there ought to be provisions which provide that the licensee shall pay compensation to any person who has been effected by an unjust and improper disconnection to supply. The proviso requires deposit of the entire disputed sum pending disposal of the dispute between the consumer and the licensee. In view of the fact that there are several instances where huge sums are wrongly demanded from consumers which are genuinely disputed and the pre-deposit may cause undesire hardship, there must be a provision for not requiring pre-deposit till determination of the dispute, at least in the first instance. In fact, as the dispute settlement machinery is in the hands of the licensee, it would be proper to provide that dispute with respect to the charges or other sums demanded from a consumer shall be first disposed off before any disconnection of electricity supplier is resorted to. Therefore, there must be some pressure or onus on the licensee to expeditiously decide on the same before the extreme power to disconnect electricity is exercised"

K. <u>Commenting upon the Rationality to pay 100% of disputed bill:</u>

8.62 The various shads of opinion on this issue are given below:-

State Government of Tamil Nadu

> "The correctness of assessment is checked at the time of making the assessment itself. Further, if the consumer is allowed to remit only a part of the assessment in

case of dispute, then many consumers may resort to disputes to avoid full payment. Hence it becomes necessary that the consumer pays 100% of the bill in case of dispute. However, the suggestion given **viz.**, previous bill average can also be taken into account as one of the basis for resolving such disputes."

State Government of Uttaranchal

"The consumer supply should not be disconnected if she agrees to pay average of previous undisputed period. However, after a decision on the dispute by the competent authority, the consumer shall pay 100% of the settled amount".

NCT of Delhi

"The provision in the bill is for 15 days which appears to be reasonable. This issue can be suitably addressed by the appropriate Commission by way of regulations. In Delhi State commission is already seized of this matter".

8.63 Under the Clause 56 (1), a consumer is required to pay 100% of a bill under dispute. When asked about the rationality of making a consumer to pay 100% of disputed bill instead of on the basis of average of previous bills, the Tata Power Company Limited replied as under:-

"In the event of such disputed bills which are in excess of twice the normal bill, the consumer should be required to pay the average of the last six-months while the dispute is being settled".

8.64 On the other hand, the Government of Chhattisgarh, expressed their views as under:-

"The electricity is a commodity which is used/ consumed first and payment thereof is made later on at the end of prescribed period. Huge amount is involved in generating and taking the electricity to the premises of the consumer. Thus the expenditure is incurred first and payment thereof is claimed subsequently. In case consumer is not making the payment promptly by raising with one or other disputes, licensees shall suffer huge loss. In order to avoid this, consumers are asked to pay 100% of the bill first and disputes are settled later on which is totally justified and should not be changed".

8.65 State Government of Uttar Pradesh also expressed their views as under:

"The notice period of 15 days for disconnection should be reduced to 7 days. 100% payment of the bills to be made. The dispute should be resolved in time-bound manner otherwise unscripted consumers will take advantage of this provisions and withhold payment of bills on times grounds".

State Government of Karnataka

It is required. However, Utility will have to pay interest on the excess amount collected.

State Government of Gujarat

"Deposit of 100% is desirable to avoid frivolous disputes."

8.66 Aditya Spinners Ltd., Hyderabad submitted as under:-

"56(1): When a bill amount is disputed by a consumer, the provision that he shall pay 100% of the bill under dispute as security pending disposal of the dispute, certainly not fair on the consumer. Some reference to his previous bills average or previous highest bill amount or bill under dispute, whichever is lower as security either in cash or BG is more in line with consumer protection. In arriving at the dues, there should be a definition of what the normal dues are and what are the additional charges like additional claims due to FCA, deposits etc., that arise in one particular bill. There should clear provision that such dues as FCA, additional deposit etc. that arises should be leviable in instalments as may be determined by the ERCs. This provision is necessary to ensure that a given consumer specifically an industrial consumer is not faced with a cash crunch to meet entire arrears of additional deposit or entire FCA of an earlier period in one bill. While in this also there may be a dispute in respect of calculations in arriving at the bill unless resolved this should not attract the need for 100% deposit before dispute resolution. There should be a provision for bank guarantee pending dispute resolution."

L. Audit of Account of Licensee

8.67 It has been suggested that audit of account of licensee should be concurrent and if any recoveries are pointed out by audit, these should be explained to the consumer and a separate bill preferred. The Central Government have expressed the view that this can be covered in the Electricity Supply code. Various Organisations / Associations and State Government have expressed their views as under:

State Government of Madhya Pradesh

"The audit of accounts of licensee cannot be concurrent. It will take some time after the end of the financial year for the licensee to get their account audited. If there is a excess recovery the same shall get adjusted in the tariffs of the following year. These are matters relating to operations and should be left to the appropriate commission. If a provision is made for dealing with excess recovery, etc., to be returned to the consumers the same will become a subject matter of prolonged litigation".

State Government of Chhattisgarh

"The view of the Central Government in this regard is not acceptable. The Electricity Supply code maybe meant for prescribing the technical standard for supply of power. It may not touch upon the commercial aspect. It is suggested that an agreement may be finalized for supply of power by the licensee to the consumer where all these aspects may be covered. Appropriate Commission may be authorized to finalize the format of the agreement".

State Government of Uttar Pradesh

"A concurrent audit of each consumer's electricity bill is infeasible as it would place a big strain on the licensee. Such a requirement should be decided by the respective SERCs in consultation with the licensee's. On the other hand, State Government of Uttranachal, Chhattisgarh NCT. Of Delhi and Central Electricity Authority (CEA) agree with the views of Central Government."

8.68 **Clause 42(2) of the Bill provide that any person by notice may require the distribution licensee of his area to provide wheeling of electricity from a generating company of his choice. This will be done in accordance with the regulations made by the State Commission. The duties of the distribution licensee with respect to such supply shall be of a common carrier providing open access to its distribution system. It has been provided in this Clause that the open access shall be introduced in phases on payment of surcharge in addition to the wheeling charges to take care of cross subsidies. However, these cross subsidies and surcharge shall be progressively reduced and eliminated in a manner to be specified by the Commission. Sub-Clause(3) of the Clause 42 provide that where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than distribution licensee of his area of supply, such consumer shall pay an additional surcharge on the charges of wheeling to meet the fixed cost of such distribution licensee's obligation to supply. Sub-Clause (4) provide that every distribution licensee shall within six months from date of grant of licensee establish a forum for redressal of grievances of the consumers. The Committee after going through the views of various organisations and State Governments find that while on the one hand there is a demand to provide for complete open access from an appointed date, on the other hand it has been pointed out that providing free access would result into uneven playing ground for different players. Some of them would be free to select bulk consumers while for others there was no option to abandon or restrict expansion in difficult and unremunerative areas. Some of the distribution licensees would be left with domestic and agricultural load spread over length and breadth of the State. It has been therefore suggested that open access on area basis which may have appropriate mix of industrial, domestic, urban and rural may be more practical. The Committee feel provision of open access is key to the power sector reforms particularly on distribution. However, due to different ground realities in each State, it may not be possible to do so from an appointed date. The Committee, however, recommend that open access may be introduced in a phased manner, within a definite time-frame. It has also been brought to the notice of the Committee that the licensee may have to lay new lines and equipments and for this he should have all rights of way right to dig road, put up poles, etc. The Committee desire that suitable provisions may be made in the Bill.**

8.69 **The Clause 42(2) also provide that open access shall be provided on payment of surcharge in addition to the wheeling charges to take care of cross subsidies. It has been stated that these subsidies and surcharge shall be eliminated in a manner specified by the Commission. It has been brought to the notice of the Committee that no time frame has been specified for elimination of cross subsidies and surcharge. There is a need to specify some time limit. Similarly, there is a need to provide for maximum limit for subsidy. The Committee agree with the view that such a surcharge should be recovered till such time the costs of distribution licensees are recovered. The Committee feel that these matters may be decided by the State Governments within a period of six months of the passage of this Bill failing which provisions of this Bill may made by Central Government in this regard shall apply to the States concerned. The Committee further note that as per provision made in the Clause 42(2) a consumer may by giving notice require the distribution licensee in his area of premises to make available open access to his distribution system for wheeling of electricity from any generator of his choice. But the provisions of Clause**

42(3) talk of State Commission permitting a consumer to receive supply of electricity from a person other than distribution licensee of his area of supply. The Committee feel that there is some contradiction in these two sub-Clauses and the intention of the Government needs to be stated clearly by amending these two Clauses suitably. Clause 42(4) provides for setting up of a forum for redressal of consumer's grievances as per guidelines specified by the Appropriate Commission. The Committee note that these forums are to work under the licensees only. As such these forums may not be of much help to the consumers. The Committee, therefore, recommend that there is a need to formulate some kind of Ombudsman Scheme to safeguard the interests of the consumer.

8.70 The Committee note that Clause 43 of the Bill provides that every distribution licensee, on an application by the owner or occupier of any premises, shall supply electricity within one month after the receipt of the application. This Clause also provides where such supply requires extension of distribution main or commissioning of new sub-stations, the distribution licensee shall supply electricity immediately after such extension or commissioning or within 6 months, whichever is earlier. Failure to do so would lead to a penalty of Rs.1000/- for each day of default. After going through the Memoranda submitted by various organisations and State Governments, the Committee find that most of them agreed that the said provisions of the Clause 43 are unimplementable due to various reasons like unavailability of leave way, inability to provide proof of legal occupancy and gap in demand and supply as well as due to large pendency of applications and financial constraints. For example, in Rajasthan, there are about 2.3 lakh pending applications for agricultural connection only and some of them are pending for the last 9-10 years. The Committee, therefore, feel that there should be no rigid time-limit in the Bill for the supply of electricity in the unelectrified areas in the Bill. The Committee recommend that such a limit be fixed by the Appropriate Commission on a reference made by State Governments taking into consideration the ground realities. The Committee, however, recommend that the time schedule given under the Bill be adhered meticulously for an electrified area, failing which penalty as prescribed be imposed. The Committee also desire that while reckoning time period, it should be ensured that the applicant has completed all the formalities and paid all the prescribed fees, charges, etc. The Committee also agree with the suggestion made to the Committee that the time limit and obligation to supply should be applicable to the applications for increase in the electricity load also. The Committee find that the Bill, does not indicate the authority/agency, to whom the penalty amount shall accrue, in the event of default of supply of electricity. The Committee are of the view that since there has been deficiency on the part of the licensee, to provide service expected of him, the penalty amount should be collected by the Appropriate Commission and may be passed on to the aggrieved consumers. The Committee desire that Bill be amended suitably.

8.71 The Committee find that in terms of Clause 55 use of meters have been made compulsory. The meter is to be installed and operated in accordance with the regulations to be made by the Central Electricity Authority (CEA). The Committee, however, find that the provision for correct meter which existed under Section 26 of the Indian Electricity Act, 1910 does not find place in the present Bill. In the opinion of the Committee, the major dispute between service provider and consumer is on account of inaccurate meter, inflated electricity bill, etc. The Committee desire that the term 'correct meter' which existed in Section 26 of the Act of 1910 need to be retained in the present Bill. In the earlier Act, the Electric Inspector had an authority to periodically

inspect and test electrical installations of the licensee and power to settle the dispute between the licensee and the consumer. The new Bill now has no such provision. The Committee do not concur with the views of the Government that the Consumer Protection Act can provide quick settlement of disputes between licensee and consumer and there is no need to retain such functions of Electric Inspector. The Committee are in agreement with the views of a number of State Governments like Himachal Pradesh and recommend the retention of powers conferred on Electric Inspector as specified in the 1910 Act. The Committee, therefore, recommend that suitable amendments may be carried out in the present Bill.

8.72 It has been brought to the notice of the Committee that there is a need for an independent authority to test the meters to ensure the correctness of the meters. The Committee agree with the suggestion made to it that recognised laboratories should be allowed to test the meters to be fixed by the consumers.

8.73 Clause 56(1) provide for disconnection of supply in default of payment by the consumer after giving fifteen day's notice in writing to him. It has been brought to the notice of the Committee that some time the bill for energy supplied is not served to the consumer for a long time or it is exorbitantly high and the amount is beyond the paying capacity of the consumer. Then there are cases, where the amount of the Bill is disputed by the consumer. In such cases, it has been pointed out, disconnection on the grounds of non-payment may not be desirable. The Committee feel that there is a need for State Commissions to lay down guidelines for settlements of such disputes. Similarly, the consumer should not be allowed to escape his responsibility to pay on the ground, of disputed Bills. The Committee, therefore, feel that the consumer in such cases can be asked to pay average of last six months' bill while the dispute is being settled. If the consumer does not pay even that bill, then the licensee shall have the right to disconnect the supply. On the other hand, if the supply is disconnected without justification, the consumer should get sufficient compensation for the same. The Committee recommend that this Clause may be amended accordingly.

CHAPTER-IX

Consumer Protection

Clauses 57 to 60 of Part VI of the Electricity Bill, 2001 deals with the protection of consumers interest. Some of them have been examined by the Committee in the succeeding paragraphs.

Clause 57; Standards of performance of licensee

9.2 Clause 57 of the Electricity Bill, 2001 are given as under:-

57(1) "Appropriate Commission may, after consultation with the licensees and persons likely to be affected, specify standards of performance of a licensee or a class of licensees.

(2) If a licensee fails to meet the standards specified under sub-section (1), without prejudice to any penalty which may be imposed or prosecution be initiated, he shall be liable to pay such compensation to the person affected as may be determined by the Appropriate Commission;

Provided that before determination of compensation, the concerned licensee shall be given a reasonable opportunity of being heard.

(3) The compensation determined under sub-section (2) shall be paid by the concerned licensee within ninety days of such determination".

9.3 The following provisions in the Electricity Bill, 2001 have an indirect bearing on the interest of the consumers.

42(4) Every distribution licensee shall, within six months from the appointed date or date of grant of licensee, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

50 The State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity, tampering, distress or damage to electrical plant, electric lines, or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plant or meter.

56(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

161(5) There shall be a committee in each district to be constituted by the Appropriate Government-

(a) to coordinate and review the extension of electrification in each district;
(b) to review the quality of power supply and consumer satisfaction;
(c) to promote energy efficiency and its conservation.

Commenting upon measures initiated in the Bill to protect the interest of consumer, FAPCCI in a note stated that these are a few provisions guaranteeing consumer protection in the Bill but there are several provisions of the Indian Electricity Act, 1910 which are protective of consumer particular interests which have been deleted. The following is an illustrative list of such provisions:

- Publication of the annual accounts of a licensee and mandates its availability to any person (Section 11).
- The point of commencement of supply (Section 19a).
- Prohibition of any interference from the licensee with the manner of use of electricity by the consumer (Section 21).
- Power of the State Government to maintain essential services to the community by directions (Section 22A).
- Power of State Government to determine the manner of distribution energy in the event of shortages of electricity (Section 22B).
- Prohibition of undue preference that may be given to any consumer by a licensee in respect of any matter connected with electricity (Section 23).
- Obligation on the part of licensee to maintain a correct meter and for determination of the quantity of electricity consumed in the event of a dispute on the correctness of a meter by an independent electrical inspector (Section 26).
- Distribution of electricity by non-licensees (relevant in the case of industrial township, exhibitions, trade fares, etc. (Section 28).
- Electrical inspectors, their appointment and functions, delegation on functions of the State Government in certain matters to the electrical inspector as the guardians of public safety (Section 26).

9.4 Various points arising out of the detail examination by the Committee are given in the succeeding paragraphs:

A. Electricity Supply Code

9.5 It has been found that the Electricity Bill, 2001 envisaged the formulation of National Electricity Policy on Electrification and local distribution in rural areas (Clause 5). Therefore, it has been suggested that Electricity Supply Code should be different for rural and urban consumers.

9.6 Various Organisations / State Governments have expressed their views on the issue as under:-

National Capital Territory of Delhi

"Service standards and code need to be different for Rural and Urban consumers but these are best left to the regulator"

State Government of Chhattisgarh

“We agree to the view of the Government that stipulation of the supply code should be left to the regulator who will take a decision keeping in view geographical area, nature of load and population density & similar other factors which he may think fit”

Surya Foundation

“Under Section (50), it can be stipulated that the electricity supply code can be different for rural and urban consumers”

9.7 As regards the protection of the interest of both the consumers and the licensee, FAPCCI submitted as under:-

“Section 50 contemplates an Electricity Supply Code (by regulations to be made) to provide for certain specific matters enumerated in the section. Firstly, the enumeration of specific matters in the section may have the effect of restricting the contents of the Electricity Supply Code to only those matters enumerated. Secondly, the enumerated matters relate only to the protection of distribution licensee and completely ignores the rights and interests of the consumer. It is submitted that any Electricity Supply Code established should operate as statutory terms and conditions of supply incorporated into every agreement between a licensee and consumer of a electricity. Accordingly the rights and obligations of both the consumers and the licensee, duly protecting their respective interests, should be provided for in such a code. Section 50 should be modified accordingly. Also, in order to attain uniformity of rights and obligations, a model code should be made for the entire country and the Power of the State Commission to depart from the model must be subject to some limitations and for recorded reasons only”.

B. <u>On a point of Model Standards of Performance</u>

9.8 The Ministry of Power, however, was of the view of the view that stipulation of different electricity code for rural & urban areas be left to the Commission. The appropriate Commission’s be left to decide for themselves.

9.9 Aditya Spinners Ltd., Hyderabad in a Memorandum furnished to the Committee suggested as under:-

“57(1): Central Electricity Authority should be empowered to specify a “Model” of standards of performance for the country (like IS standards) in keeping with the

current international level and periodically updated. It should be mandatory for State Commission to follow the same. Wherever exceptions are necessary, time frame to reach “Model” standards should be with the approval of central commission. This should be reviewed periodically by CEA. State Regulatory Commission should publish periodically the standards achieved by licensees in their jurisdiction vis-à-vis model and state time frame to correct the deviation.”

9.9 Clarifying the Ministry of Power expressed their views as under:-

"The responsibility for specifying the standards of performance has been vested in the Regulatory Commission"

C. Compensation to consumers

9.11 Commenting upon compensation to consumers, FAPCCI in a note furnished to the Committee stated:-

"Clause 57(2) seeks to empower, the Commission to determine the compensation payable by a licensee failing to meet the specified standards of performance. It is submitted that it could be very difficult for every person affected, particularly small consumers located at distant locations, to prefer a claim for compensations and pursue the matter at the Head Office of the Commissions. It is necessary to evolve an alternative mechanism by which claims of compensations may be made and adjudicated upon keeping in view the convenience of the consumer as the paramount consideration. An Ombudsman scheme may be considered".

9.12 Confederation of Indian Industry (CII), on the other hand, suggested:-

"If the licensee exceeds performance standard specified under sub-section (1) he shall be entitled to such incentive as may be specified by the Appropriate Commission".

9.13 Rajasthan Chambers of Commerce & Industry also suggested:-

"To counter balance on penalty on account of under performance, incentives to be included if distributing licensee exceed performance standard set by the appropriate Commission".

9.14 Andhra Pradesh Electricity Regulatory Commission was of different view which is as under:-

"The Clause as worded would require the Commission to deal with compensation claims to consumers. The commission will be flooded with such claims and will not be able to deal with more important issue such as tariff setting. The individuals compensation claim should go to consumer forums".

D. Disputes between consumers and suppliers

9.15 As regards the disputes between consumers and suppliers, the Electrical Inspectorate Engineers Association, Thiruvananthapuram suggested as under :

"Disputes between consumers and suppliers occur very frequently. There should be a forum easily accessible to the consumers to get their grievance redressed.

Disputes most commonly reported are;
(1) On the correctness of meters and
(2) On unauthorised use / misuse of energy.
Section 26 (6) and Clause VI (3) of the schedule to I.E. Act 1910 authorise the Electrical Inspectors to take decision in such disputes. In Kerala, Electrical Inspectors are posted in all Districts. Same is the case with most other states.

Decisions of Electrical Inspectors are appealable to the Government. Again the decisions of the Government can be questioned in the High Court. Clause 127 (1) of the new Bill provides for appeal to an adjudicating officer against assessment to made under Clause 126. The adjudicating officer (Clause 143) is a member of the Regulatory Commission who has to carry out many other functions under the Bill. It is not practically feasible for a poor consumer in remote places of a State to come to the State capital to get his grievances redressed. The appeals against decisions of the adjudicating officer lie with the appellate tribunal situated at New Delhi or some other far away place (a Bench of the tribunal) Appeal against decision of appellate tribunal lie only with the Supreme Court. Hence in the interest of the Common Consumers, it is necessary to retain the provisions of section 26 (6), Clause VI (3) and section 21(1) and 21 (4) of I.E. Act, 1910 in the new legislation".

9.16 Suggesting further, Upbhokta Manch a consumer Organization stated that proposed Electricity Bill 2001 has not provided any safeguard to protect consumer interest. With the advent of private licensees there must be some authority to whom the consumer can approach for the redressal of his difficulties and complaints. The present Indian Electricity Act, 1910 which was framed with private licensees in mind has the following provisions in the proposed Electricity Bill 2001.

Section 26 of the Indian Electricity Act 1910- Meters- This section provides for the installation of correct meters at consumer premises for ascertaining the amount of energy supplied to the consumer and the testing and maintenance of such energy meters.

In case of dispute regarding the correctness of any meter the section provides that the matter can be referred by either party to the Electric Inspector who shall decide the correctness of meter and shall also estimate the amount of energy supplied during the period the meter ceased to remain correct.

Numerous disputes have been decided by Electrical Inspectors and the powers of Electric Inspector have been upheld in many High Court and Supreme Court judgments.

It is noteworthy that this section was amended and a ceiling of six months has been imposed for the period for which estimation of energy can be made. This provision has also been upheld by High Court and Supreme Court judgments.

The very purpose of imposing this ceiling is that basically it is the responsibility of the supplier to install and maintain the meter. Therefore, if a licensee fails to maintain his meter and the consumer is assessed for a longer period it may not be possible for the consumer to pay huge assessment amount for which no provision was made in earlier years. In case of manufacturing units this may put them to huge loss as they will not be in a position to recover any amount from their consumers. Besides Income Tax statements will also be effected. Therefore, the legislation has imposed ceiling of six months and this period of six months is a very reasonable time for a licensee to check the meter installed by him and to remove the defect, if any.

Meter disputes and inflated bills are very common these days. Therefore, the proposed bill should have similar provision so that in case of harassment by the

licensee the consumer may approach the Electrical Inspector for the settlement of dispute. If such provision is not made in the Act the consumers will have to pay whatever assessment is made by the licensees. It is noteworthy that the Electrical Inspectors all over India have proper meter testing Laboratories and have been conducting this work very successfully.

Section 36 A, Section 37 and Section 38 of the Indian Electricity Act, 1910 Central Electricity Board, Power of Board to make Rules and Provisions respecting Rules- These sections provide for the constitution of Central Electricity Board, the power of Board to make Rules and the process of making Rules. It is very essential that the country should have only one set of Electricity Rules for the whole country specially the safety norms. The present Indian Electricity Act, 1910 has following provisions which should be incorporated in the proposed Bill 2001:-

i) The members of the Central Electricity Board has representative of Central Government, each State Government, Union territories, licensees, Electricity Boards, Mines etc. The list is exhaustive and need be it can be modified to suit present requirements but constitution of Central Electricity Board is essential in order to frame such Rules which can protect the interest of Consumers, licensees, Central and State Government and above all the safety requirements in all electrical installations.

ii) The Central Electricity Board has been empowered to make Rules to regulate the electrical network in the country.

iii) The process of making rules also requires the publication of proposed Draft Rules for obtaining public objections and then to place the same in each house of Parliament and the Rule is enforced only after considering such objections. Thus the interest of everyone connected with the electrical system is safe guarded and everyone gets an opportunity to express his views. This is very essential because in the seal of expansion of big projects we cannot and should not ignore the interest of small and unorganised section of consumers.

Schedule VI of the Indian Electricity Act, 1910- The sub- Clause (3) of schedule VI of the Indian Electricity Act 1910 provides for the settlement of certain disputes between a licensee and a consumer by the Electrical Inspector. This provision is very essential specially with the advent of private licensees. If such provision is not made in the proposed Electricity Bill 2001 the consumer will not be able to get quick and easy settlement of disputes and will be left at the mercy of licensees.

Schedule XIII, Schedule XIV and Schedule XV of the Indian Electricity Act 1910- These schedules provide that every licensee shall have proper testing facilities and shall conduct proper test at prescribed interval and periodical inspection/ testing of electrical installations by Electric Inspector. This is very essential for the maintenance of proper supply to the consumer. Similar provision is required to be made in proposed Electricity Bill, 2001.

Section 19 of the Indian Electricity Act 1910- This section provides that the licensee shall make full compensation of any damage detriment or inconvenience

caused by him or by anyone employed by him. This provision is in the interest of consumers and public. Similar provision should be made the Electricity Bill 2001.

Section 16 and Section 17 of the Electricity (Supply) Act 1948- These sections provide for the constitution of "State Electricity Consultative Council" and Local Advisory Committee "Besides others the committee also have a representative of the Consumers of Electricity. This provision is not there in the proposed Electricity Bill 2001 which should be there to give protection to consumer interest.

Conservation Act - Provision of Energy conservation should be made in Electricity Bill 2001 and it should be mandatory not only for consumers but also for licensees to conserve energy and reduce losses in transmission, distribution and utilization of electricity. Energy auditing of licensees should be made compulsory on war footing so that the Wastage of energy can be reduced, Wastage of energy should be made criminal offence and heavy penalties should be imposed on the other hand incentive should be provided for consumers and licensees who conserve energy.

To meet out the gap between demand and supply, encouragement should be given for generation of Electricity from other sources such as hydel, wind and other natural resources etc".

9.17 Commenting upon the necessity of safeguards the interest of consumers right the CPRI demand that Clause 57 be amended to include the following additional provisions:-

"57(4) The consumer is not expected to maintain record of power quality. The onus of maintaining the records of the power quality as specified by the appropriate commission is mandatory on the licensee. The licensee shall maintain logged data of power quality parameters through tamper-proof real – time event recorders for recording abnormal system conditions which may cause any type of loss to the consumer.

In the event of the licensee not providing the quality power and its recorded parameters, it would be almost impossible for the consumer to prove that the loss is due to the poor power quality.

57(5) The energy charges payable by the consumer to the licensee are based mostly on energy meter reading. Hence the licensee shall ensure the correctness of the meter reading by periodic calibration.

57(6) The consumer shall have the right to information on the cause of interruption of power supply.

57(7) Extracts of rules pertaining to consumer rights shall be printed on the reverse side of the monthly bill in order to create awareness.

9.18 In regard to protection of consumer interest, the State Government of Orissa submitted as under:-

"(i) It should be statutorily mandate on the part of the Distribution licensee to provide effective consumer grievances redressal mechanism at grass root level by appointing designated Consumer Affairs Officers(CAO).

(ii) There should be statutory mandate for establishment of Bijuli Adalats by the distribution licensees at District Level.

(iii) The bill should provide appointment of legally/technically qualified Consumer Counsels at Bijuli Adalats and Electricity Regulatory Commissions to assist the poor, un-organised and helpless consumers for guidance and present their case before the authorities."

9.19 **M.P. Electricity Consumers Society also** suggested some measures to protect the interest of consumers.

a) By right every occupier of a premises shall be eligible to receive electricity whether the occupation is legal or illegal i.e. every premises have a right to have electricity. This will reduce theft and unauthorised use appreciably.

b) In a area of licensee, for new connections, no charge shall be made for laying lines on public streets. Where lines laid do not provide reasonable returns, the licensees will be authorised to charge special minimum charge to be decided by the Regulatory Commission.

c) The bill shall provide that if any poles or lines are required to be shifted in the interest of public and is required by the Municipal Authority, this shall have to be done at the expense of the licensee.

d) Special provisions have to be made in respect of introduction of insulated conductors in the distribution systems to avoid tree pruning or tree cutting in Municipal areas, as an obligation of licensees, specially in urban areas".

9.20 The Committee find that the Bill does not provide anything substantial to protect the interests of the consumers. Clause 50 of the Bill provides for the Electricity Supply Code which would contain matters regarding recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof and restoration of supply of electricity, etc., which are of great interest to the consumers at large. Clause 56(2) deals with recovery of the arrears of charges for electricity supplied, etc. The various State Governments have opined that Electricity Supply Code can be separate for rural and urban areas and that decisions in this regard should be left to the Regulatory Commissions. Clause 57 (1) empowers the Appropriate Commission to specify the standards of performance for licensees and Clause 57(2) enables the Commission to determine the compensation payable by a licensee failing to meet the specified standards. It has been suggested that a model standards of performance should be framed at the National level giving the State Commissions the powers to vary them and improve upon them. These can be periodically updated keeping in with the current international level. However, the Committee feel that it would be very difficult for every person affected, particularly small consumers located at distant locations to prefer a claim for compensation and pursue the matter at the Head-Office of the Commissions. It is also felt that the forum for redressal of grievances under Clause 42(4) may also not be of much help in such cases of compensation, etc. The Committee, therefore, recommend that an Ombudsman type of scheme may be

considered which should be independent of the licensee and whose decisions are binding on both the parties. It's accessibility at the grass-root level consumers should also be ensured. The Committee note that Section 26 and Schedule VI of the Indian Electricity Act 1910 provide for the settlement of certain disputes between a licensee and a consumer by the Electric Inspector. Schedules XIII, XIV and XV of the Indian Electricity Act, 1910 provide that every licensee shall have proper testing facilities and shall conduct proper tests at prescribed intervals and periodical inspection / testing of electrical installations by Electric Inspector. This is very essential for the maintenance of proper supply to the consumer. Similar provision is required to be made in the Electricity Bill, 2001. The licensee should also ensure the correctness of the meter reading by periodic calibration. Further, the extracts of rules pertaining to consumer rights shall be printed on the reverse side of the monthly Bill in order to create awareness. The Committee, therefore, recommend that the various Clauses of the Bill may be amended suitably in the light of the above observations.

9.21 Under Clause 57 standards of performance which a licensee is required to maintain have been prescribed. In the opinion of the Committee, there should be penalty for under-performance and at the same time, an efficient licensee be rewarded for the achievements. The Committee desire that such a stipulation may be incorporated in the rules and regulations to be framed for the purpose.

9.22 The organisations like Federation of Andhra Chambers of Commerce and Industry and Upbokta Manch have brought to the notice of the Committee that a number of provisions of 1910 and 1948 Acts which protected the interest of consumers, have been deleted in the present Bill. Further, Central Power Research Institute have pointed out certain measures, such as maintenance of logged data of power quality parameters by a licensee, right of consumers to know the cause of interruption of electricity supply, etc. The Committee desire that Government should reconsider the Clauses pertaining to protection of consumers' interest in the light of suggestions made by the aforesaid organisations and others and amend the Bill accordingly.

9.23 The Committee find that a consumer, has been defined "as any person who is supplied with electricity by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under the Act or any other law for the time-being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be". The Committee are of the view that a consumer need to be an end user and intend or availed services, for a consideration. By implication the present definition which existed in the Electricity(Supply) Act of 1910 includes intermediatories also. Further, there has been a host of judicial pronouncements, since 1970 as to who is an actual consumer. The Committee, therefore, desire that new definition of consumer, be evolved relying in particular to the definition of consumer, existing in Consumer Protection Act and MRTP Act etc.

CHAPTER X

A. Tariff

101 PART – VII of the Electricity Bill, 2001, as introduced in Lok Sabha is regarding tariff regulations and determination of tariff. Clause 61 of the Bill states that the appropriate commission shall, subject to the provisions of this act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following:-

a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licencees,

b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles,

c) the facts which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments,

d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;

e) the principles regarding efficiency in performance;

f) the multi year tariff principles;

(g) that the tariff progressively reflects the cost of supply of electricity at an adequate and improving level of efficiency;

h) that the tariff progressively reduces and eliminates cross-subsidies:

(i) the promotion of co-generation and generation of electricity from renewable sources of energy.

(k) the National Electricity Policy;

Provided that the terms and conditions for determination of tariff under Section 43 **A** of the Electricity (Supply) Act, 1948, the Electricity Regulatory Commission Act, 1998 and the enactments specified in the Schedule as they stood immediately before the appointed date, shall continue to apply for a period of one year or until the terms and conditions for tariff are specified under this Section, whichever is earlier.

102 The provision as regard to Energy Tariff as enumerated in Sections 28 and 29 of the Electricity Regulatory Commission Act, 1998 are as under:-

"Section 28: The Central Commission shall determine by regulations the terms and conditions for fixation of tariff under Clauses (a), (b) and (c) of Section 13, and in doing so, shall be guided by the following, namely:-

(a) the generating companies and transmission entities shall adopt such principles in order that they may earn an adequate return and at the same time that they do not exploit their dominant position in the generation sale of electricity or in the inter-state transmission of electricity.

(b) the factors which would encourage efficiency, economical use of the resources, good performance, optimum investments and other matters which the Central Commission considers appropriate;

(c) national powers plans formulated by the Central Government; and

(d) financial principles and their application as provided under Schedule VI to the Electricity (Supply) Act, 1948.

Section 29: (1) Notwithstanding anything contained in any other law, the tariff for intra-state transmission of electricity and the tariff for supply of electricity, grid, wholesale, bulk or retail, as the case may be, in a State (hereinafter referred to as the "Tariff"), shall be subject to the provisions of this Act and the tariff shall be determined by the State Commission of that State in accordance with the provisions of this Act.

(2) The State Commission shall determine by regulations the terms and conditions for the fixation of tariff, and in doing so, shall be guided by the following, namely:-

(a) the principles and their applications provided in Section 46, 57 and 57A of the Electricity (Supply) Act, 1948 and the Sixth Schedule thereto;

(b) in the case of the Board or its successor entities, the principles under Section 59 of the Electricity (Supply) Act, 1948.

(c) That the tariff progressively reflects the cost of supply of electricity at an adequate and improving level of efficiency;

(d) The factors which would encourage efficiency, economical use of the resources, good performance, optimum investments, and other matters which the State Commission considers appropriate for the purposes of this Ordiancne;

(e) The interests of the consumers are safeguarded and at the same time, the consumers pay for the use of electricity in a reasonable manner based on the average cost of supply of energy;

(f) The electricity generation, transmission, distribution and supply are conducted on commercial principles;

(g) National power plans formulated by the Central Government.

3. No consumer or class of consumers shall be charged less than fifty per cent, of the average cost of supply of energy.

Provided that if the State Commission considers it necessary it may allow the consumers in the agricultural sector to be charged less than fifty per cent, subject to the condition that the charges less than the said fifty per cent, shall not be allowed after expiry of a period of three years from the commencement of this Act.

4. If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under this section, the State Government shall pay the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licencee or any other person concerned to implement the subsidy provided for the State Government.

5. Subject to the provisions of sub-section (3), the State Commission while determining the tariff under this Act, shall not show undue preference to any consumer of electricity, but may differentiate according to the consumer's load factor, power factor, total consumption of energy during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

6. The holder of each licence and other persons including the Board or its successor body authorised to transmit, sell, distribute or supply electricity wholesale, bulk or retail, in the State shall observe the methodologies and procedures specified by the State Commission from time to time in calculating the expected revenue from charges which he is permitted to recover and in determining tariffs to collect those revenues."

10.3 The State Government of Andhra Pradesh has suggested that the Clause 61(a) be redrafted to authorize and mandate State Commission to notify the principles and methodologies for determination of applicable tariff for generators within the State, intra-State transmission licensee distribution within the State, traders etc. For inter-State transmission and generation stations supplying power to more than one State and the above to be prescribed by the Central Commission.

10.4 About the changes carried out in Clause 61 with respect to earlier provisions of Section 28 and 29 of CERC Act, 1998, the Ministry of Power have informed the Committee that these changes were necessary as some additional guiding principles with the objective of promoting efficiency, etc.

10.5 It has been argued by the Government that there is no need to incorporate in the tariff principles / guidelines, a provision where under tariff ought provide a reasonable return on investments made by utilities so as to facilitate internal generation of revenues that can facilitate reinvestment in the growth of the sector. The Government have opined that rate of return is a matter of policy and judgement of the Regulatory Commission.

10.6 However, the Electricity (Supply) Act, 1948 empowers the State Government to allow tariff to SEBs in such a way that they earn a minimum 3% return on the net fixed assets. The Central Government has even allowed 16% return on equity on power generation projects.

10.7 On the need to provide rate of return in a competitive economy, the State Government of Madhya Pradesh informed the Committee that the rate of return to the utility should be left to the appropriate commission to decide. The State Government

should have further powers to issue policy directives on the right of return. It is not necessary to fix the rate of return in the proposed act.

10.8 Asked about any need to provide any rate of return in a competitive economy, the Confederation of Indian Industry (CII) in a written note has submitted as under:-

"As long as tariffs are regulated, there is need to incorporate in the tariff principles / guidelines a provision wherein tariff shall provide a reasonable return on investments made by utilities so as to facilitate internal generation of revenues that can facilitate reinvestment in the growth of the sector. When the sector reaches the stage of pure competition then market forces may determine the tariffs and resulting return".

10.9 On Clauses 61(g) & (h), the Committee have been informed that there is no mention of any time frame to bring tariff in line with cost of supply to each consumer class. This may give wide discretion to different commissions to continue with existing distortion in price of electricity.

10.10 According to Federation of Indian Chambers of Commerce and Industry (FICCI), to bring the tariff in line with the cost of supply to each customer class, time frame should be mentioned A provision that tariff shall provide a reasonable return is required on investment made by utilities to be incorporated in the tariff principles.

10.11 FICCI has also suggested that the minimum period of continuance of such principles should be 3 years to enable the licensees to implement both the intermediate and medium- term plans and permit the transition to a new regime.

10.12 In regard to the tariff being progressively reduced and elimination of cross-subsidies, Kerala State Electricity Board (KSEB) has suggested that this should be subjected to review by the Appropriate Commission and the process of eliminating complete cross subsidies required re-consideration in the Indian context .

10.13 In this regard, the erstwhile Delhi Vidyut Board has commented upon as under:-

Sub-clauses(g) in particular and (f) and (h) of 61 in general may create uncertainty and investor's risk perception about profits and costs being recovered in the absence of a definite time frame. The provisions appear to mandate continuance of the cost plus tariff design as there is no clear intent to a new approach for tariff fixation such as performance incentive based regulation to generate investor confidence, sub-clause (g) have, therefore been suggested to be recast as under:-

> "that the tariff provides for the cost of supply and electricity in a manner which progressively reflects an adequate and improving level of efficiency";

10.14 According to Power Grid Corporation of India Limited, the appropriate commission shall, subject to the provisions of this act, specify the terms and conditions for the determination of tariff, and in doing so shall be guided by the tariff policy to be framed by the Central Government. It also focuses that under 61(c) economical use of the resources be replaced by economical use and generation of resources.

10.15 The Federation of Andhra Pradesh Chambers of Commerce and Industry (FAPCCI) has desired that in clause 61 – the phrase " terms and conditions" needs

better elaboration. It has also been submitted that the methodologies and the principles which will be followed in the determination of tariff (being part of the “terms and conditions”) must have a resonably uniform base throughout the country. It is necessary that the terms and conditions and the methodology and the principles for the determination of a tariff should be established on a uniform basis by way of schedule to the proposed enactment. Broadly, such schedule should be similar to the provisions of schedule VI of the Electricity (Supply) Act, 1948 and may further contain the guidelines and principles by which the tariff to recover the legitimate revenue requirement is determined. The State Commissions should be required to such uniform methodologies to the specific facts and circumstances in the cases before them for the determination of local tariffs. The discretion that may be available to the State Commission should be only to the extent that the commission is able to vary them to deal with variances in facts and location conditions. Such discretion however, should not be so wide as to permit different commissions in different States to adopt widely varying and divergent positions. It has been further submitted by FAPCCI that there are several factors enumerated in Clause 61 which are quite vague and can be capable of any interpretation. The question arises as to what are “commercial principles”. Principles of commercial expediency also provide for exploitation of opportunity based on need and demand and such commercial principles are not intended to operate in respect of a basic need and requirement of entire population. The tariffs applied by the licensee must be just and reasonable in respect of the services extended and must bear a true relationship to the costs of extending service. The legislative policy declared in the Act must set out the parameters (taking into account normative of efficiency) of what may be considered a reasonable return to a distribution licensee is allowed to recover.

10.16 According to Confederation of Indian Industry (CII), the maximum limit of cross-subsidy for any category needs to be mentioned. Safeguarding of consumers interest and at the time, recovery of the cost of electricity including a fair return on investment to the investors in a reasonable manner [Clause 61 (d)] is desirable.

10.17 On being pointed out that the generation, distribution, transmission and supply of electricity on commercial principles, competition, efficiency, economical use of resources, good performance, optimum investment, etc. as described in this bill as per 61(b) and (c), safeguarding of consumer’s interest as guided in 61(d) is just only a dream while considering last 3-4 years experience of reforms and all the States and SEBs, who have opted the reforms, are in crisis and suffering from heavy losses, the Government have stated that there are two important policies of the bill under (part VII – Tariff) which will have major impact on the poor and down-trodden class of society. These are 61(g) that the tariff progressively reflects the cost of supply of electricity at an adequate and improving level of efficiency and 61(h) that the tariff progressively reduces and eliminates cross – subsidies.

10.18 According to State Government of Haryana, the tariff fixation should be left to the State Regulatory Commission. No such provision should exist in the main Act. The Regulatory Commissions shall take full cognizance to the cost of service and the tariff structures thereof.

10.19 **The Committee find that under Clause 61, the Appropriate Commission is empowered to specify the terms and conditions for determination of tariff and in doing so, the Commission is to be guided by a certain parameters enumerated thereunder. The Committee desire that due cognizance should be taken to reduce the cost of delivered power by optimization studies. As privatization of power sector has been undertaken without commensurate optimization studies, the privatization is moving at a snail pace. The Committee, therefore, desire that due care should be taken by Commission in determining the tariff, to ensure that the delivered cost of electricity to consumers does not become inordinately high to such an extent that the electricity becomes a thing of luxury, instead of a basic human need. The Committee feel that cost reduction exercise should be key parameter while determining tariff. The Committee recommend that necessary amendments may be made in the Bill for the purpose.**

10.20 On Clauses 61(g) & (h), the Committee have observed that there is no mention of any time frame to bring tariff in line with cost of supply to each consumer class. The Committee feel that this may give wide discretion to different State Commissions to continue with existing distortions in price of electricity and therefore, desire that this may be rectified by incorporating a time frame where under tariff may be brought in line with cost of supply of power. This time limit can be notified by each State Government within six months time from the coming into force of this Act.

10.21 The Committee also note that at present honest metered consumers who pay their bills, are made to pay even for those who are not-metered and do not pay anything. The total cost of supply of electricity is recovered from only metered consumers, despite the fact whether they consumed that amount of electricity or not. They have to pay minimum fixed charges based on their sanctioned load, in addition to the charges for the electricity so consumed. They are thus made to pay for those who steal it. The Committee feel that there is an urgent need to check the exploitation of an honest consumers by making appropriate provision in the Bill.

10.22 Proviso to Clause 61 refer to 'terms and conditions' and period of their applicability. Certain Chambers of Commerce and Industries have desired that these need better elaboration. It has also been submitted that the methodologies and the principles which should be followed in the determination of tariff, being part of the "terms and conditions", must have a reasonably uniform base throughout the country. The Committee feel that the terms and conditions, methodology and the principles for the determination of a tariff should be established on a uniform basis by way of a schedule or through a regulation. Broadly, such schedule may contain the guidelines and principles by which the tariff to recover the legitimate revenue requirement is determined. The Committee feel that the State Commissions should adhere to such uniform methodologies with liberty to deviate taking into consideration specific facts and circumstances in the State while determining local tariffs. There are several factors enumerated in Clause 61 for determining tariff. Factors like "commercial principles" are quite vague and capable of any interpretation. The Committee observe that the principle of commercial expediency also provide for exploitation of opportunity based on need and demand and such commercial principles are not intended to operate in respect of a basic need and requirement of the entire population. The Committee, therefore, recommend that the tariffs charged by the licensee must be just and reasonable in respect of the services extended and must bear a true relationship to the costs of extending the service.

The policy outlined in the Act may therefore set out the parameters (taking into account normative of efficiency) of what may be considered a reasonable return to a distribution licensee which he is allowed to recover.

10.23 The Committee find the principle and methodology for determination of tariff are to be specified by the Central Commission for generating companies and transmission licensee under Clause 61(a). The Committee are of the view that to ensure consistency and uniformity of depreciation to be applied for preparing accounts and that allowed in the tariff, it is desirable that the Central Government be empowered to specify the accounting principles in accordance with the Companies Act, 1956.

B. **Tariff Determination**

10.24 About Determination of tariff, Clause 62 of the Electricity Bill, 2001 is reproduced below:-

"62. (1) The Appropriate Commission shall determine the tariff in accordance with provisions of this Act, for –

(a) supply of electricity by a generating company to a distribution licensee;

Provided further that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity.

(b) transmission of electricity ;

(c) wheeling of electricity;

(d) retail sale of electricity.

(2) The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.

(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

(4) No tariff or part of any tariff may ordinarily be amended more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.

(5) The Commission may require a licensee or a generating company to comply with such procedures as may be specified for calculating the expected revenues from the tariff and charges which he is permitted to recover.

(6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee."

10.25 On determination of tariff under Clause 62 of the Electricity Bill, 2001, the Kerala State Electricity Board has responded as under:-

"(i) Provision relating to tariff determination in the Bill should be worded in a manner that it empowers the Appropriate Commission to permit / introduce tariff determination by market forces, as and when it deems fit. Presently the use of the term "shall" in Clause 62 casts a mandatory duty on the Appropriate Commission to determine the tariff and does not leave it with any option of letting the same be fixed by market driven forces.

(ii) Similar to provision 62(6) a new provision should be added for consumers as this law should also cast on obligation on the consumer who use supply provided at a low tariff under any of the electricity classifications under provision 62 (3) for load, which attracts higher tariff".

10.26 According to Confederation of Indian Industry (CII) also, provision relating to tariff determination in the Bill should be worded in a manner that it empowers the Appropriate Commission permit / introduce tariff determination by market forces, as and when it deems fit. Presently the use of the term "shall" in Clause 62 casts a mandatory duty on the Appropriate Commission to determine the tariff and does not leave it with any option of letting the same be fixed by market driven forces. It has also suggested that, "in respect of generation, transmission, distribution and sale for determination of tariff should be added in end of Clause 62 (2)".

10.27 The Federation of Andhra Pradesh Chambers of Commerce and Industry (FAPCCI) has also suggested in regard to Clause 62(1)(d) that it should be made clear that the tariffs referred to is to be in relation to the retail sale of electricity only by a licensee to a consumer and not in respect of a generating company or a captive generating plant selling to any consumer.

10.28 It has further suggested that as in Section 62(3) – while factors such as load factor, voltage of supply, total consumption in a given period, time of the day are relevant and can be differentiated on the basis of costs incurred to provide supply, the term "nature of supply" is too wide. The "purpose for which supply is required" is an irrelevant factor and may facilitate the backdoor re-entry of cross subsidy; and therefore this basis of classification deserves to be deleted.

10.29 According to the State Government of Madhya Pradesh, these are matters to be left to the Appropriate Commission to be decided from time to time and the Appropriate Commission should frame transparent regulations. It may not be appropriate to mention in the Act itself that fuel surcharge shall be based on exact calculation. It is necessary to keep flexibility. In some circumstances it may not be possible for the utility to give exact figures. It has been suggested to replace installation based tariff by demand based tariff.

10.30 On Section 62(4) – FAPCCI has submitted that any fuel surcharge formula should be uniform throughout the country on a normative basis and the functions of any commission in this respect must be limited to determine the proper application to the particular facts in each case.

10.31 On Clauses 62(a), 63, 64 and 86 regarding control of tariff of generation, Andhra Pradesh Electricity Regulatory Commission has suggested as under:-

> "Generation as an activity need not be regulated. What is required to be regulated is the purchase of electricity by a licensee from the generation companies. Once the power purchase and procurement process of the licensee is properly regulated, it would be best to leave generation tariff outside the regulation. The commission should not get involved in commercial negotiation between the generating company and the licensee – purchaser . once the commercial negotiations are over, the licensee purchaser should approach the commission for approval of the purchase / arrangement for purchase. The commission can then scrutinize the agreement to see whether there is a need for power and if so whether the licensee – purchaser has done everything possible to get the power from the cheapest available source and further the price is fair. If the commission takes up the work of determining the generation tariff, the work be onerous and may also get into complication because of it's attempt to enter the field of commercial negotiation. Clauses 62(a), 63, 64, in so far as it deals with determination of generation tariff should therefore has been suggested to be deleted and the following provisions which appear in almost all State Reforms Act be substituted in place thereof".

A holder of a licence may, unless expressly prohibited by the terms of its licence or by a general or special order passed by the commission, enter into arrangements for the purchase of electricity from-

(a) the holder of another licence which permits the holder of such licence to supply electricity to other licencees; and

(b) any generating company or other supplier of electricity in accordance with the regulations prescribed by the Commission governing the power purchase procurement process. Any agreement relating to any transaction of the nature described in sub-sections……..unless made with, or subject to the provisions contained in the said provisions shall be void".

10.32 The Ministry of Power have informed the Committee that changes in the existing Section 28 and 29 of Electricity Regulatory Commission Act, 1998 have been considered necessary to provide for determination of tariff for supply of electricity by a generating company to a distribution licensee, through long term PPA as the rate would in turn determine consumer tariff. For short term agreements which are market based transactions price determination by Regulatory Commission would not be feasible. It has been provided that the Appropriate Commission may fix tariff ceiling, if necessary.

10.33 Further, instead of mandating functional desegregation of generation, transmission and distribution, the proposed Bill empowers the Appropriate Commission to require a licensee or a generating company to furnish separate details in this regard. This will help identifying inefficiencies even in the vertically integrated utilities.

10.34 **In respect of generation, transmission, distribution and for determination of tariff under Clause 62 (1)" it has been suggested to the Committee by the Confederation of Indian Industry (CII) and the Federation of Andhra Pradesh Chambers of Commerce and Industry (FAPCCI) that Clause 62(1)(d) should be amended to make clear that the tariffs referred to, is in relation to the retail sale of electricity only by a licensee, to a consumer and not in respect of a generating company or a captive generating plant selling to any consumer and the word 'sale' be added in Clause 62 (2) before the words 'for determination of tariff'. The Committee concurs with their views and feel that necessary amendment may be made in the Bill suitably.**

10.35 The Committee note that vide Clause 62(1)(a), an Appropriate Commission is saddled with the responsibility of fixing minimum and maximum ceiling of tariff for sale or purchase of electricity in case of shortage of supply. Taking into consideration that India is a power deficient country and there is a shortage of electricity on one time or the other, there is a need to define in clear cut term, the words "shortage of supply" of power. The Committee, therefore, desire that for the sake of clarity the word "shortage of supply" be defined so that it does not lead to any misinterpretations. The Committee also desire that the Appropriate Commission while determining tariff should fix a maximum ceiling which a licensee is empowered to charge from a consumer. However, freedom should be given to a licensee to charge any amount which is less than the maximum ceiling fixed for the purpose. In such an eventuality, the licensee need not seek prior permission of appropriate commission to charge a lesser amount.

10.36 The Committee also desire that while determining tariff, the appropriate commission should take efficiency into account and fix tariffs in a manner as would recognise and reward different level of efficiencies. Incentives for performance over and above the performance parameters prescribed should be rewarded. A comprehensive rational formula capable of being fairly implemented to reward efficiency gain, be incorporated in the rules/ regulations etc. to be formulated under the Bill. At the same time, the Committee desire that in order to promote Renovation & Modernisations of power plants, incentives and preferential tariff be set out for them.

10.37 Clauses 62(a), 63 and 64 provide for determination of tariff for generation, supply, transmission and wheeling of electricity, wholesale, retail, etc. It has been suggested to the Committee that generation as an activity need not be regulated. The regulation should be restricted to the purchase of electricity by a licensee from the generation companies. Once the power purchase and procurement process of the licensee is properly regulated, it would be best to leave generation tariff outside the regulation. The Commission should not get involved in commercial negotiations between the generating company and the licensee / purchaser. Once the commercial negotiations are over, the licensee / purchaser can approach the Commission for approval of the purchase / arrangement to purchase. The Commission can then scrutinize the agreement to see whether there is a need for further exercising its power and if so whether the licensee – purchaser has done everything possible to get the power from the cheapest available source, and the price is fair. If the commission takes up the work of determining the generation tariff, the work being

onerous, may get into complication because of it's attempt to enter the field of commercial negotiation. The Committee, therefore, recommend that generation tariff, excluding sale to a distribution licensee under long term agreement may not be determined by the Regulatory Commission.

10.38 **The Committee observe that one of the reasons for inadequate investment in the power sector has been the high risk perception amongst investors regarding uncertainty of orders by the Regulatory Commissions. The Committee feel that one of the avenues which need to be explored is the exemption of bilateral contracts between generators and bulk purchases from the purview of regulatory authorities. The Committee, therefore, recommend that to facilitate this, the Government should consider for inclusion in the Bill, a provision to ensure that where rates for sale or purchase of electricity are mutually agreed between a generating company and a bulk purchaser, being a distribution licensee or a direct consumer, such rates shall be excluded from the purview of tariff determination by the Appropriate Commission. The Committee desire that necessary amendment may be made in the Bill. The Committee also feel that it should be made mandatory for Commission to notify all the required regulations pertaining to the scope of their functions within one year of the Act coming into force. Accordingly, suitable provisions be made in the Clauses 79 and 86 of the Bill.**

C. Determination of tariff by bidding process

10.39 A new provisions has been provided in the Bill to determine tariff by process by bidding. Clause 63 of the Bill states that notwithstanding anything contained in section 62, the Appropriate Commission may adopt the tariff determined through process of bidding.

10.40 According to Confederation of Indian Industry (CII), the Bill has not enumerated a transparent procedure that shall be followed by the Electricity Regulatory Commission (ERCs) before adopting the bidding process including consultation with affected stakeholders in the electricity industry.

10.41 Federation of Andhra Pradesh Chambers of Commerce and Industry (FAPCCI) has submitted to the Committee that the proposal to adopt tariff process through bidding is not warranted. The provisions of section 63 is impossible to appreciate. It is not understood how a tariff in respect of transmission, wheeling or retail sale by licensee can at all be determined through a process of bidding.

10.42 In this connection, Rajasthan Chambers of Commerce & Industry have submitted that it should explicitly be stated in Clause 63 that competitive tariff bids may be used for grant of licenses.

10.43 The State Government of Gujarat has desired that adoption of tariff through bidding process should be dropped as the power market is highly restricted, monopolistic and there are a few players and open access does not seem to be feasible in the foreseeable future.

10.44 Regarding Appropriate Commission adopting the tariff determination through the process of bidding which may lead to formation of cartel forcing the tariff to rise

exorbitantly, the State Government of Chhattisgarh has responded that it is for the Regulatory Commission to take appropriate action to guard against such situation.

10.45 The Committee note that although a new provision in the Bill has been proposed to determine tariff by bidding process no mention has been made to determine tariff through process of bidding in a transparent manner. The Committee, therefore, recommend Government should make necessary amendment in the Clause 63, to have tariff determined through process of bidding in a transparent manner. A provision also should be made explaining the manner of determining tariff in respect of transmission, wheeling or retail sale by licensee through a process of bidding without leading to monopolistic tendencies and at the same time ensuring the free play of market forces.

D. **Procedure for tariff order**

10.46 Clause 64 of the Electricity Bill, 2001 relates to procedure for determination of tariff order which is reproduced below:

"64**.** (1) An application for determination of tariff under section 62 shall be made by a generating company or licensee in such manner and accompanied by such fee, as may be determined by regulations.

(2) Every applicant shall publish the application in abridged form as may be specified, in two leading daily newspapers circulating in India out of which one shall be in English.

(3) The Appropriate Commission shall, on receipt of the application under sub-section(1), publish in the manner as may be specified, the draft tariff order proposed to be made by it, inviting objections and suggestions on the draft tariff order from the public.

(4) The Appropriate Commission shall, within one hundred twenty days from receipt of an application under sub-section (1), after considering all suggestions and objections received from the public,-

(a) Issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order;

(b) Reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and rules and regulations made thereunder or the provisions of any other law for the time being in force:

Provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application.

(5) The Appropriate Commission shall, within seven days of making the order, send a copy of the order to the Appropriate Government, the Authority, and the concerned licensees and to the person concerned.

(6) Notwithstanding anything contained in Part X, the tariff for any inter-State supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor:

(7) A tariff order shall, unless amended or revoked shall continue to be in force for such period as may be specified in the tariff order."

10.47 This is a new provision in the Bill and according to Ministry of Power it is necessary to stipulate the broad procedure for determination of tariff by the appropriate commission.

10.48 On Sub-Clause 2 of the Clause 64, it has been argued to the Committee that notice shall also be in regional language. Similar views were expressed by different State Governments including the Government of Madhya Pradesh which states that the publication need not be in newspapers circulating in India. It should be a publication in one English language and one vernacular newspaper having circulation in the concerned area.

10.49 Regarding sub-Clause 4, it has been suggested to the Committee that in order to ensure transparency in tariff order, objection to draft order should be publicly heard from consumers as well as the licensee which at present does not exist in the Bill. The Federation of Andhra Pradesh Chambers of Commerce and Industry (FAPCCI) have stated that it is necessary to ensure that public participation by way of representation and also effective hearing and discovery processes precede any formation of any kind of opinion by a commission. After the process of hearing is completed, the commission should publish a draft order after considering all matters brought before it in the hearings and proceedings before it. Further representations are to be invited in respect of the draft order with a view to ironing out the increases and any inconsistencies. Minimum hearing procedure in respect of such a draft order may be allowed in case the commission is of the opinion that it is important and necessary to do so.

10.50 In this regard, the State Government of Haryana has opined as under:-

> "The process of tariff fixation by the Regulatory commissions already takes care of the system of inviting public objections. Once the tariff proposal is submitted by the licensee and made public before hearing by the Regulatory Commissions, there is no need for hearing objections to the draft orders. The Regulatory Commissions are quasi-judicial authority who after hearing the views of the licensee and the consumers decide about the most economical tariffs".

10.51 According to Forum of Indian Regulation, New Delhi, the following provisions of Clause 64(3) "publish in the manner as may be specified, the draft tariff order proposed to be made by it, inviting objections and suggestions on the draft tariff order from the public" should be replaced by. "scrutinise it for its completeness and seek further information / clarification before admitting and thereafter invite objections and suggestions from the public on the tariff proposals".

10.52 It further stated that there is no need to publish draft order. If draft order is published, it may lead to litigation at that stage itself delaying finalisation of tariff order. It is also necessary to scrutinize the tariff petition for completeness of data. The

commission may also seek additional information before proceeding further. This is the existing system, which is working satisfactorily and should continue.

10.53 The Committee note that Sub-Clause (2) of Clause 64 provide that for determination of tariff under Section 62 every applicant shall publish the application in two leading daily newspapers circulating in India, out of which one shall be in English. Sub-Clause (3) provide that the Appropriate Commission shall publish the draft tariff order proposed to be made by it inviting objections and suggestions on the draft tariff order from the public. From the provision stated above, the Committee feel that mandating the Regulatory Commissions to publish their draft order in the newspapers and then modify the same, in the light of objections and suggestions received from the public at large, does not go well with their quasi-judicial status. Secondly, the consumers also shall not know directly from the Commission, whether the order in question is final tariff order or not. It shall then be open to exploitation by the licensee, by way of mis-interpretation of the tariff order as the final order passed by the Commission, considering all objections and suggestions, although this may have no resemblance to the draft order. Thirdly, publication of application and then draft tariff order in the newspapers shall also lead to avoidable delays in issuing the final tariff order. The Committee, therefore, feel that the better way of doing this work will be that when the application by licensee is published, it can be accompanied by a note from the Commission inviting objections and suggestions from the public at large, to the proposal and after considering these objections and suggestions, the Commission can pass the final order which should then be published in two leading newspapers, one in English and another in vernacular daily particularly in the area of application of the order. The Committee, therefore, recommend that Clause 64 should be suitably amended accordingly.

E. <u>Provision of subsidy by State Government</u>

10.54 Clause 65 of the Electricity Bill, 2001 is about provision of subsidy by State Government. It states that if the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under Section 62, the State Government shall pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner. The State Commission may direct, as a condition for the licence or any other person concerned to implement the subsidy provided for by the State Government.

10.55 The Proviso to Clause 65 states:-

> "Provided that no such direction of the State Government shall be operative if the payment is not made in accordance with the provision contained in this section and the tariff fixed by State Commission shall be applicable from the date of issue of orders by the Commission in this regard".

10.56 According to Kerala State Electricity Board (KSEB), payment of subsidy in advance requires reconsideration. Since this provision affects the tariff being fixed by the state commission, the payment of the subsidy should be made obligatory on the government or some other provision should be made. Since the applicability of tariff being fixed from back date would lead to dispute / non-realisation, it has been suggested to the Committee that a subsidy corpus fund under the supervision and the control of the State Electricity Regulatory Commission ("SERC") be created, in which the government deposits the amount (approximate) relating to the quantum of subsidy in advance so as to enable the SERC to pay to the concerned licensee at the time of determining tariff or assessing the annual revenue requirement of the licensees as the case may be.

10.57 The Committee has been informed by different State Governments that the matter concerning the payment of subsidy, the time manner etc. should be left to the State Government, particularly, when the State Government is to compensate for the amount. Flexibility should be with the State Government in this regard so long the payment compensates the utility concerned.

10.58 According to Federation of Andhra Pradesh Chamber of Commerce and Industry (FAPCCI), the following points in respect of cross-subsidies should be considered and suitably legislated as part of the bill to overcome the major malady of electricity sector today viz. cross-subsidy:-

(i) The provisions relating to cross subsidies, their reduction and elimination, are repetitively made at different places in the Bill. It would have been more appropriate if they are comprehensively dealt with in the part relating to tariffs.

(ii) The bill requires that surcharges and cross subsidies shall be progressively reduced and eliminated. Though, the bill contemplates regulations be made in this behalf, the use of word "may" may be considered as giving the Central Commission discretion in the matter and a Central Commission may choose to make no reduction for indefinite periods of time. It is submitted that the bill needs to specify some definite time frame within which the reduction and elimination of cross subsidy is to be effected.

(iii) The provisions in section 42(2) contemplate and deal with wheeling charges along with surcharges to meet the requirements of current level of cross subsidy. It is envisaged that the cross subsidies shall be progressively reduced and eliminated and thereby the need for surcharge will also get eliminated. No time frame is specified or fixed for the elimination of cross subsidy. This may enable a state commission to either unduly defer the elimination of cross subsidy or to make the process of reduction painfully and interminably slow. When it is universally recognised that the current level of cross subsidies are untenable resulting in irrational tariffs to the detriment of both industry and the electricity sector, it is submitted that a fast roll down of the substantial part of the cross subsidy should be done in a time bound manner, say, within three years. Further, whatever be the current level of cross subsidy, the act should provide for a certain maximum limiting amount of cross subsidy that may be recovered in the tariff of any category of consumer and such a limit should come into operation immediately on the appointed date.

(iv) While the subject of fixing cross subsidies should be left to the State Commissions, the Central Act may only gave directions to minimize the cross subsidies over time. The Regulatory Commissions are expected to work on the valid principles of equity, economy and transparency.

10.59 When asked about the necessity to make advance payments of subsidy by State Governments, State of Haryana informed the Committee in a note as under:-

> "The provision for providing subsidy in advance is basically driven by the need for the licensee to get the subsidy amount in regular installments once he incurs the expenditure. In case the licensee is meeting the input expenses, the State has

to ensure that he is dully paid for the cost in a regular way. Therefore, once the subsidy amount is finalized, it should be released by the State Government in equal quarterly installments subject to final adjustments at the end of the year. Provisions of subsidy in advance will undoubtedly improve the cash flow position of the licensees. The objective of the provision should remain regular and timely payment of subsidy by government as per provisions of ERC orders".

10.60 On subsidy, the views of the State Government of Gujarat are as under:-

"It will be difficult to put any cap on subsidy in an Act. However, the State Regulatory Commission in tariff order has put a cap on subsidy. Advance payment of subsidy as provided in Clause 65 is not feasible as it will not be possible for the distribution company to calculate the same in advance."

10.61 In this regard, in a post-evidence reply, the Ministry of Power have stated that prescribing a definite time frame for reduction of cross subsidies, etc. seems difficult as different States are at different stages of reforms/levels of cross subsidies. It is necessary to obtain willing support of States and leave the flexibility with them.

10.62 It further states,

"Grant of subsidy is a social responsibility of the Government which it should discharge in such a manner as not to affect the commercial viability of the utility. Clause 65 seeks to make this point clear by providing for advance payment of subsidy, failure of which would mean implementation of the tariff as determined by SERC and not as directed by the Government. This is also based on the experience where the State Governments promise subsidy but fail to pay."

10.63 The Committee have been informed by the Government of Karnataka that there has been quantum jump in the subsidies made available in the power sector to the different shades of consumers during the last ten years. The State Government of Karnataka has, therefore, desired that a provision may be made in the Bill to address this issue. In this regard, it has been suggested to the Committee that the subsidy should be administered through concerned Departments/Ministries handling problems of the sector/consumer **viz.** agriculture, rural development, minor industries etc., based on the cost reflective tariff determined by the Appropriate Commission.

10.64 The State Government of Orissa has apprised the Committee that various State Governments are levying electricity duty and cess on the consumer and sale of electricity which are sometimes much more than the basic tariff. These taxes and duties undo the work of Appropriate Commission to prescribe cost based tariff. The Committee have been informed that power of taxation by States comes form the provisions of the Constitution of India and the Bill does not aim to amend / alter the Constitutional provisions.

10.65 The Committee observe that Clause 65 of the Electricity Bill, 2001 is about payment of subsidy by State Government. It states that if the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under Section 62, the State Government shall pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner, the State Commission may direct, as a condition for the licence or any other person concerned to implement the subsidy provided for by the State Government. The Committee feel that the applicability of tariff being fixed retrospectively

may to lead to dispute / non-realisation. To avoid such disputes, a subsidy corpus fund under the supervision and the control of the State Electricity Regulatory Commission ("SERC") can be created, in which the government deposits the amount (approximate) relating to the quantum of subsidy in advance, so as to enable the SERC to pay, to the concerned licensee at the time of determining tariff or assessing the annual revenue requirement of the licensees, as the case may be. However, the Committee are not convinced with the views of certain State Governments that the matter concerning the payment of subsidy, the time, manner etc should be left to the State Government, particularly, when the State Government is to compensate for the subsidy. Although the Committee stress on the need for flexibility with the State Government and more power with them in regard to the payment/ compensation for the subsidy, the Committee feel that the subsidy should be eliminated in a time bound manner and necessary provision be made in the Bill. The provision for providing subsidy in advance is basically driven by the need for the licensee to get the subsidy amount in regular installments once he incurs the expenditure. Therefore, once the subsidy amount is finalized, the Committee desire that either a subsidy corpus be established or it should be released by the State Government in equal quarterly installments subject to final adjustments at the end of the year. Provisions of timely payment of subsidy will undoubtedly improve the cash flow position of the licensees. The objective of the provision should remain regular and timely payment of subsidy by Government as per provisions of ERC orders. To ensure that the power to give directions are not misused to invalidate the tariff fixed by the State Commission, the Committee recommend that the proviso to Clause 65 may be amended to include the effective date of orders by the Commission. The Committee also desire that suitable amendment may be made to ensure that State Government is not able to avoid payment of subsidy through policy directive under Clause 108.

10.66 The Committee find that there has been quantum jump in the subsidies made available in the power sector to the different shades of consumers during the last ten years. The Committee are of the view that suitable mechanism need to be evolved in better targeting and directing subsidies to deserving consumers in a transparent manner. The Committee, therefore, desire that a provision may be made in the Bill to address this issue. In this regard, the Committee recommend that the subsidy should be administered through concerned Departments/Ministries handling problems of the sector/consumer viz. agriculture, rural development, minor industries etc. based on the cost reflective tariff determined by the Appropriate Commission. The concerned Departments should procure the power at such approved rates and in turn provide the same to the targeted consumers or by any other alternative mechanism through the direct payment by the Department or through the designated agency to the targeted consumers. This will ensure that power sector reforms succeeds in the States.

10.67 It has been brought to the notice of the Committee that in the guise of free power to agriculture sector, subsidy to farm sector is being misused/misappropriated, thus defeating the very purpose of introducing of such a system for farm sector. The Committee are also aware that such subsidy is being cornered by persons other than for whom it is intended. The Committee per-se are not against the concept of subsidy to farm sector. However, it needs to be regulated. It is in this context, the Committee desire that electricity supply to agriculture should be compulsorily metered and duly reflected in the monthly Bill raised for the purpose. It can be then decided by the State Government concerned as to how much free power is to be given to a beneficiary and for how much power he has to pay. It would also help in checking the theft of electricity by non-agricultural

sectors as at present SEBs are showing all their losses against agricultural sector because it is not metered. The State/UT Government should make arrangements for payment of such and or any amount as deemed necessary to licensees. The Committee also desire that in the interest of conservation of electricity, a reasonable limit of free power being supplied to agriculture and other social sector be fixed/formulated by the State Government beyond which beneficiary be required to pay for the electricity so consumed.

10.68 The Committee find that various State Governments are levying electricity duty and cess on the sale of electricity which are sometimes much more than the basic tariff. These taxes and duties undo the work of Appropriate Commission to prescribe cost based tariff. In the opinion of the State Government of Orissa such duties and cess should be imposed by State Government only in consultation with Regulatory Commission as it will help in prescribing cost based tariff. The Committee concurs with the views of the Government of Orissa and recommend that State Governments should impose such duties and cess, if any, only after approval by the Regulatory Commission. This can form part of final tariff order passed by the Appropriate Regulatory Commission. The Committee have been informed that power of taxation by States comes form the provisions of the Constitution of India and the Bill does not aim to amend / alter the Constitutional provisions. The Committee feel that benefit of rationalization of tariff may not reach the consumers, as any reduction in cost of supply of electricity may be off-set by the State Government's proposal to increase their taxes and levies proportionately. The Committee, therefore, also suggest that different constituents of tariffs like cost of supply and State taxes & levies should be shown separately in the Bill so as to bring awareness amongst consumers.

F. <u>Development of Market</u>

10.69 Clause 66 of the Electricity Bill, 2001 states that the Appropriate Commission shall endeavour to promote the development of a market(including trading) in power in such manner as may be specified. This is a new provision.

10.70 In a note furnished to the Committee, Chairman, UPERC has stated that the Commissions have been given the power to fix generation tariff. This is inconsistent with the object of promoting competitive market in generation. The other inconsistency is that while the bill aims to promote bulk electricity markets, there is no specific provision for that. On the contrary, this responsibility has been given to the State Commissions under Clause 66.

10.71 According to Confederation of Indian Industries, Delhi, the Appropriate Commission is required to "endeavour to promote the development of a market (including trading)" but there is no time-table laid down for developing the market. The same has been deferred and left to the discretion of all the Electricity Regulatory Commissions, which can hamper the integrated development of the market.

10.72 It has also been urged before the Committee that development of market(including trading) in power should be in such a manner that the consumers be given the benefit of least cost power particularly those of economically disadvantaged, weaker sections, rural areas and urban slums keeping in view of the fundamental rights and directive principles of state policy enumerated in the Indian Constitution.

10.73 The Jagran Manch, Delhi on development of market by Appropriate Commission has commented that the Regulatory Commission shall regulate and its functions should not include 'promoting market'.

10.74 In regard to new provision in Clause 66, the Ministry of Power has opined that the provision regarding development of market has been included in the new Bill in keeping with the responsibility of the regulatory commission to promote competition, efficiency in the electricity sector. The proposed Bill also empowers the appropriate commission to promote market development(including trading) in power.

10.75 According to ASSOCHAM, Delhi, the Appropriate Commission shall endeavour to promote the development of a market in power through trading including purchase of renewable energy by an appropriate Renewable Energy Trading Company for trading in bulk towards statutory purchase of Non-Conventional Renewable Energy by appropriate Transmission Companies/Distribution Companies in such manner as may be specified in the National Electricity Policy and Renewable Energy Policy.

10.76 Asked whether Power Trading Corporation (PTC) intended to trade in power obtained from non-conventional sources of energy also or would like to advocate creation of a separate agency for trading in power obtained from non-conventional sources, the Committee have been apprised by PTC in a Post Evidence Reply as under:-

> "PTC is keen to trade in power obtained from non-conventional sources of energy and firmly believes that there is a need to promote development of market for non-conventional energy.
>
> However, the energy from non-conventional sources of energy is relatively costly and cannot be traded in the commercial market for conventional energy. In order to promote environmental protection and conservation fuel, it would be advisable if Regulators or the Government could fix a minimum percentage of power procurement by States from renewable energy sources say 5% or 10%, of their total energy consumption. If a particular State is not endowed with such resources, it should tie up with the State (s) with such resources for supply of power. In most cases, such transactions would be only an energy accounting exercise but will go a long way for sustainable development of renewable resources. The share has to be on the energy basis and the quantum may be such that it does not lead to significant tariff increases".

10.77 It further states,

> "The country has an installed capacity of about 3000 MW from the non-conventional sources of energy, which is planned to be raised to a level of 10,000 MW by the end of 11th Plan. Since, the present capacity of non-conventional energy is about 3% of the total installed capacity in the country, it would be necessary that for full utilization, the State are encouraged to procure at least 3% of their energy demand from non-conventional sources. This limit can progressively be raised to a level of 10% by the end of 11th Plan.
>
> With such a regulation in force, trading of non-conventional energy will be acceptable to the market at a rate different from that of conventional energy. PTC

is already in the business of trading of power and it can take up this assignment with full endeavor. Trading of non-conventional energy would be a smaller activity and could better be handled by PTC than a separate agency".

10.78 The Committee note that trading has been recognised as a distinct activity. The Regulatory Commissions have been mandated to promote the development of market and empowered to fix trading margins. In the opinion of the Committee trading of power is an essential activity – especially in the context of the situation prevailing in the country – as this (trading) allows optimum utilisation of the installed capacity. For instance, in USA as against installed capacity of 7,20,000 MW, the peak demand met is of the order of 6,50,000 MW i.e. 90% of the installed capacity. In UK and the South African Power Pool consisting of twelve countries, the peak demand met as percentage of installed capacity is 83% and 88% respectively. On the other hand, in India, as against 1 lakh MW of installed capacity, the peak demand met is just 67,000 MW, which is 67% of the installed capacity. The Committee are, therefore, of the view that trading in power is inevitable, which not only help in improving availability but also reduce cost. The surplus capacity in one State can be useful in addressing deficit situation in other States. Considering that the National Grid is in the offing, the role of trading assumes greater importance. The Committee desire that Power Trading Corporation need to be strengthened further, so that power is made available to deficient regions expeditiously.

10.79 In the opinion of the Committee where trading take place by way of pooling, etc. there should be uniform and consistent policy for the entire country in the interest of integrated development of power market. This may perhaps be not possible if it is left to the individual Commission to decide. As the Bill does not lay any time frame within which the market is to be developed, the multiplicity of regulators and their discretion in ushering this market mechanism, may hamper a uniform and integrated development of market. The Committee desire that such an issue may be addressed in the Bill. The Committee also desire that trading should include purchase of electricity by an appropriate agency for trading in bulk towards meeting statutory purchase of renewable energy. Such a stipulation may be specified in the National Electricity Policy which include renewable energy policy also.

CHAPTER XI

Works of Licencees

11.1 Part VIII of the draft Electricity Bill, 2001 deals with the provisions relating to opening up of streets, railway, etc. over head lines and notice to telegraph authority. Clause 67, 68 and 69 of the Bill are reproduced below:-

“67. (1) A licensee may from time to time but subject always to the terms and conditions of his licence, within his area of supply or transmission or when permitted by the terms of his licence to lay down or place electric supply lines without the area of supply, without that area carry out works such as to -

(a) to open and break up the soil and pavement of any street, railway or tramway;

(b) to open and break up any sewer, drain or tunnel in or under any street, railway or tramway;

(c) to alter the position of any line or works or pipes, other than a main sewer pipe;

(d) to lay down and place electric lines, electrical plant and other works; or

(e) to repair, alter or remove the same;

(f) to do all other acts necessary for transmission or supply of electricity.

(2) The Appropriate Government may, by rules made by it in this behalf, specify, -

(a) the cases and circumstances in which the consent in writing of the Appropriate Government, local authority, owner or occupier, as the case may be, shall be required for carrying out works;

(b) the authority which may grant permission in the circumstances where the owner or occupier objects to the carrying out of works;

(c) the nature and period of notice to be given by the licensee before carrying out works;

(d) the procedure and manner of consideration of objections and suggestion received in accordance with the notice referred to in clause (c);

(e) the determination and payment of compensation or rent to the persons affected by works under this section;

(f) the repairs and works to be carried out when emergency exists;

(g) the right of the owner or occupier to carry out certain works under this section and the payment of expenses therefor;

(h) the procedure for carrying out other works near sewers, pipes or other electric lines or works;

(i) the procedure for alteration of the position of pipes, electric lines, electrical plant, telegraph lines, sewer lines, tunnels, drains, etc.;

(j) the procedure for fencing, guarding, lighting and other safety measures relating to works on streets, railways, tramways, sewers, drains or tunnels and immediate reinstatement thereof;

(k) the avoidance of public nuisance, environmental damage and unnecessary damage to the public and private property by such works;

(1) the procedure for undertaking works which are not reparable by the Appropriate Government, licensee or local authority;

(m) the manner of deposit of amount required for restoration of any railways, tramways, waterways, etc.;

(n) the manner of restoration of property affected by such works and maintenance thereof;

(o) the procedure for deposit of compensation payable by the licensee and furnishing of security; and

(p) such other matters as are incidental or consequential to the construction and maintenance of works under this section.

(3) A licensee shall, in exercise of any of the powers conferred by or under this section and the rules made thereunder, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.

(4) Where any difference or dispute arises under this section. the matter shall be determined by the Appropriate Commission.

Provisions relating to overhead lines

68. (1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).

(2) The provisions contained in sub-section (1) shall not apply-

(a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;

(b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or

(c) in such other cases as may be prescribed.

(3) The Appropriate Government shall, while granting approval under sub-section (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary

(4) The Appropriate Government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by it.

(5) Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequently to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.

(6) When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

Explanation. - For purposes of this section, the expression “tree” shall be deemed to include any shrub, hedge, jungle growth or other plant.

69. (1) A licensee shall, before laying down or placing, within ten meters of any telegraph line, any electric line, electrical plant or other works, not being either service lines, or electric lines or electrical plant for the repair, renewal or amendment of existing works of which the character or position is not to be altered,-

(a) submit a proposal in case of a new installation to an authority to be designated by the Central Government and such authority shall take a decision on the proposal within thirty days;

(b) give not less than ten days' notice in writing to the telegraph authority in case of repair, renewal or amendment or existing works , specifying-

(i) the course of the works or alterations proposed ;

(ii) the manner in which the works are to be utilised ;

(iii) the amount and nature of the electricity to be transmitted;

(iv) the extent to, and manner in which (if at all) earth returns are to be used ,

(v) and the licensee shall conform to such reasonable requirements, either general or special, as may be laid down by the telegraph authority within that period for preventing any telegraph line from being injuriously affected by such works or alterations:

Provided that in case of emergency (which shall be stated by the licensee in writing to the telegraph authority) arising from defects in any of the electric lines or electrical plant or other works of the licensee, the licensee shall be required to give only such notice as may be possible after the necessity for the proposed new works or alterations has arisen.

(2) Where the works of the lying or placing of any service line is to be executed the licensee shall, not less than forty-eight hours before commencing the work, serve upon the telegraph authority a notice in writing of his intention to execute such works."

11.2 Regarding provisions as to opening up of streets / railway, etc, the Committee have been informed by the Ministry of Power that the similar provisions existed in the Section 12 to 16 of the Indian Electricity Act, 1910. However, the appropriate Government have been given power to make specific rules in this behalf and the details has been avoided in the Bill. About over head lines similar provisions existed in Section 18 and 29(a) of the Indian Electricity Act, 1910. Further, existing provisions of Section 17 of Indian Electricity, Act, 1910 regarding notice to Telegraph Authority has been retained in the proposed Electricity Bill, 2001 under Clause 69. However, the scope have been reported to be expanded.

11.3 The Committee note that Clauses 67, 68 and 69 deal with the works of licensees, provisions relating to overhead lines and notice to telegraph authority, etc. The Committee feel that these matters should at best be left to the State Governments/Appropriate Regulatory Commissions to decide. The Committee, however, feel that there is a need to provide in clear terms certain obligations. The licensees while exercising their right to carry out works in their area of supply or outside that area should not cause any nuisance or damage to any private / public property and any damage done to the public area or private property should be set right by the licensee immediately and not later than one month from the date of completion of his works. The Committee, recommend that heavy penalties should be imposed on failure to observe these conditions and any repetition of such failures should lead to automatic cancellation of licence.

CHAPTER XII

Central Electricity Authority (CEA)

A. Constitution of CEA

12.1 Clause 70 of Part IX of the Electricity Bill, 2001 which is about constitution of Central Electricity Authority is reproduced below:-

"70. (1) There shall be a body to called the Central Electricity Authority to exercise such functions and perform such duties as are assigned to it under this Act.

(2) The Central Electricity Authority, established under section 3 of the Electricity (Supply) Act, 1948 and functioning as such immediately before the appointed date shall be the Central Electricity Authority for the purposes of this Act and the Chairperson and Members, Secretary and other officers and employees thereof shall be deemed to have been appointed under this Act and they shall continue to hold office on the same terms and conditions on which they were appointed under the Electricity (Supply) Act, 1948.

(3) The Authority shall consist of not more than fourteen Members of whom not more than eight shall be full-time Members to be appointed by the Central Government.

(4) The Central Government shall designate one of the full-time Members as Chairperson of the Authority.

(5) The Members of the Authority shall be appointed from amongst persons of ability, integrity and standing who have knowledge of, and adequate experience and capacity in, dealing with problems relating to engineering, finance, commerce, economics or industrial matters, and at least one Member shall be appointed from each of the following categories, namely:-

(a) engineering with specialisation in design, construction, operation and maintenance of generating stations;

(b) engineering with specialisation in transmission and supply of electricity;

(c) applied research in the field of electricity;

(d) applied economics accounting, commerce or finance.

(6) All the Members of the Authority shall hold office during the pleasure of the Central Government.

(7) The Chairperson shall be the Chief Executive of the Authority.

(8) The head quarters of the Authority shall be Delhi.

(9) The Authority shall meet at the head office or any other place at such time as the Chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as it may specify.

(10) The Chairperson, or if he is unable to attend a meeting of the Authority, any other Member nominated by the Chairperson in this behalf and, in the absence of such nomination or where there is no Chairperson, any Member chosen by the Members present from among themselves, shall preside at the meeting.

(11) All questions which come up before any meeting of the Authority shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson or the person presiding shall have the right to exercise a second or casting vote.

(12) All orders and decisions of the Authority shall be authenticated by the Secretary or any other officer of the Authority duly authorised by the Chairperson in this behalf.

(13) No act or proceedings of the Authority shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in, the constitution of, the Authority.

(14) The Chairperson of the Authority and other full time Members shall receive such salary and allowances as may be determined by the Central Government and other Members shall receive such allowances and fees for attending the meetings of the Authority, as the Central Government may prescribe.

(15) The other terms and conditions of service of the Chairperson and Members of the Authority including, subject to the provisions of sub-section (13), their terms of office shall be such as the Central Government may prescribe."

12.2 According to the Ministry of Power, similar provisions have been provided under Section 3 of Electricity (Supply) Act, 1948 which is reproduced below:-

> **"Section 3** Constitution of the Central Electricity Authority – (1) the Central Government shall constitute a body called the Central Electricity Authority generally to exercise such functions and perform such duties under the Act and in such manner as the Central Government may prescribe or direct, and in particular to -
>
> (i) developed a sound, adequate and uniform national power policy, formulate short-term and perspective plans for power development and co-ordinate the activities of the planning agencies in relation to the control and utilisation of national power resources;
>
> (ii) act as arbitrators in matters arising between the State Government or the Board and a licensee or other person as provided in this Act;
>
> (iii) collect and record the data concerning the generation, distribution and utilisation of power and carry out studies relating to cost, efficiency, losses, benefits and such like matters;]
>
> (iv) make public from time to information secured under this Act and to provide for the publication of reports and investigations;

(v) advise any State Governments, Board, Generating Company or other agency engaged in the generation or supply of electricity on such matters as will enable such Government, Board, Generating Company or agency to operate and maintain the power system under its ownership or control in an improved manner and, where necessary in co-ordination with any other Government, Board, Generating, Company or other agency owning or having the control of another power system;

(vi) promote and assist in the timely completion of schemes sanctioned under Chapter V;

(vii) make arrangements for advancing the skill of persons in the generation and supply of electricity;

(viii) carry out, or make arrangements for, any investigation for the purpose of generating or transmitting electricity;

(ix) promote research in matters affecting the generation, transmission and supply of electricity;

(x) advise the Central Government on any matter on which its advice is sought or make recommendation to the Government on any matter if, in the opinion of the Authority, the recommendation would help in improving the generation, distribution and utilisation of electricity; and

(xi) discharge such other functions as may be entrusted to it by or under any other law.

2. The Authority shall consist of not more than fourteen members of whom not more then eight shall be full-time members appointed by the Central Government.

2A. A full-time member shall be a person who has experience of, and has shown capacity in,-

(a) design, construction, operation and maintenance of generating stations;

(b) transmission and supply of electricity;

(c) applied research in the field of electricity;

(d) applied economics; or

(e) industrial, commercial or financial matters.

3. The Central Government shall appoint one of the full-time members to be the Chairman of the Authority.

4. All the members of the Authority shall hold office during the pleasure of the Central Government.

(4.A). The Chairman of the Authority and the other full-time members shall receive such salaries and allowances as may be determined by the Central Government and the other members shall receive such allowances and fees for attending the meetings of the Authority, as the Central Government may prescribe.

(4.B). The other terms and conditions of service of the members of the Authority including, subject to the provisions of sub-section (4), their terms of office shall be such as the Central Government may prescribe.

5. No full-time member of the Authority shall have any share or interest for his own benefit, whether in his own name or others in any company or other corporate or an association of persons (whether incorporated or not), or a firm engaged in the business of supplying electrical energy or fuel, in whatever form, for the generation of electricity or in the manufacture of electrical equipment.

6. The Authority may appoint a Secretary and such other officers and employees it considers necessary for the performance of its functions under this Act on such terms as to salary, remuneration, fee, allowance, pension, leave and gratuity, as the authority may, in consultation with the Central Government, fix.

Provided that the appointment of the Secretary shall be subject to the approval of the Central Government.

7. The Chairman of the Authority may, by order, appoint any two or more members of the Authority to act on behalf of the Authority in relation to any matter referred to in clause (ii) of sub-section (1).

8. No act or proceeding of the Authority shall be invalid merely on the ground, the existence of any vacancy in, or any defect in the constitution of the Authority."

12.3 Clause 70 (3), which envisages eight full time members of Authority, Central Electricity Authority (CEA) have opined that the authority being an apex technical body in the power sector, most of the members need engineering background relating to power development. In order to ensure that technical scrutiny does not get diluted., it has been suggested to the Committee that the designations of 7 full time members in addition to Chairman may be specified as members (planning), member (hydro), member (thermal), member (power system), member (grid & operation), member (R&D) and member (E&C).

12.4 Regarding appointment of Chairman under Clause 70(4), the corresponding provision of the Electricity (Supply) Act, 1948 at Section 3 (3) states that the Central Government shall appoint one of the full time members to be the Chairman of the Authority. In a note furnished to the Committee, several Chambers like Rajasthan Chambers of Commerce and Industry and Central Electricity Authority have desired that the Chairperson of the CEA should be appointed separately rather than designating one of the members as Chairperson.

12. 5 Utkal Chamber of Commerce & Industry and Federation of Indian Chambers of Commerce & Industry (FICCI) have opined that in para 70 (5), provision shall be made to have separate numbers, one each for transmission and distribution which are two different entities.

12.6 The following observation / suggestions have been submitted to the Committee in a memorandum by Power Engineer Association:-

> "(i) Clause 70(14) and (15), which propose that the other Terms & Condition of Service of Chairperson and Members of the Authority including their terms of office shall be such as the Central Government may prescribe, it has been argued that these aspects need clear stipulation as has been provided in case of CERC / SERCs to avoid undue pressure tactics by bureaucrats of the Ministry of Power.
>
> (ii) The Authority should be provided with requisite flexibility to have its own fund and powers to create required infrastructures in performance of its duties (as being considered for other statutory bodies like CERC / SERCs)".

12.7 According the Central Electricity Authority (CEA), Clauses 70—73 detailed about the constitution and functions of the authority, which is an apex technical body manned by the officers drawn from central power engineering services. The engineers to this service are selected through competitive combined engineering services examination conducted by UPSC every year. The authority has been entrusted with the responsibility for ensuring optimum utilisation of national resources for coordinated development of power sector in the country to provide electricity to consumers at affordable rates. In order to enable this authority to perform the functions assigned to it in an effective manner, the authority needs to be given more autonomy at least as provided for in the regulatory commission and Clause 70(15) need to be suitably amended.

12.8 The Committee observe that Clause 70(3) and 70(5) of the Electricity Bill, 2001 provide for 8 full time members of Central Electricity Authority. The Committee are fully convinced with the argument that was put before it that in addition to appointing each members from each of the 4 categories mentioned in Clause 70(5), they should also be designated as members (planning), member (hydro), member (thermal), member (power system), member (grid & operation), member (R&D) and member (E&C). The Committee feel that to specify the function of a member, such classification is necessary and desire that this may be done. The Committee also desire that transmission and distribution being two distinct activities, separate members for each be appointed or else 2 members be appointed under Clause 70(5) - each with specialisation in transmission and distribution. The Committee further recommend that earlier provision for appointment of one full time member as Chairman of the Authority should be retained.

12.9 Under Clause 70(3), the Central Government is empowered to appoint 14 members to the Central Electricity Authority (CEA). The Committee feel that Sub-Clause 3 of 70 should be amended by incorporating the expression "including the Chairperson" after the word "full time member" to ensure the exact composition of the authority and consequently Sub-Clause 4 of the Clause 70 may be deleted. The Committee also desire that the Chairperson and members of the authority be appointed from amongst persons of ability, integrity and standing who have the knowledge and adequate experience and capacity in, dealing with problems relating to power sector, whether in private or public sector, in accordance with the rules prescribed by the Central Government.

12.10 In terms of Clause 70(6) of the Bill members of the Authority shall hold office during the pleasure of the Central Government. The Committee are of the view that in order to maintain integrity and independence of the CEA which is charged with many important responsibilities, it is necessary that some freedom should be given to the Authority. The Committee, therefore, recommend that Clause 70(6) of the Bill may be suitably amended to reduce the control of Government over members of the Authority and their terms and conditions of service be clearly defined.

B. Functions and Duties of Authority

12.11 The functions and duties of Central Electricity Authority (CEA) as entrusted under Clause 73 of the Electricity Bill, 2001 are as under: -

"73**.** The Authority shall perform such functions and duties as the Central Government may prescribe or direct, and in particular to -

(a) advise the Central Government on the matters relating to the national electricity policy, formulate short-term and perspective plans for development of the electricity system and co- ordinate the activities of the planning agencies for the optimal utilisation of resources to subserve the interests of the national economy and to provide reliable and affordable electricity for all consumers;

(b) specify the technical standards, for construction of electrical plants and electric lines and connectivity to the grid;

(c) specify the safety requirements for construction, operation and maintenance of electrical plants and electric lines;

(d) specify the Grid Standards for operation and maintenance of transmission l lines;

(e) specify the conditions for installation of meters for transmission and supply of electricity;

(f) promote and assist in the timely completion of schemes and projects for improving and augmenting the electricity system;

(g) promote measures for advancing the skill of persons engaged in the electricity industry;

(h) advise the Central Government on any matter on which its advice is sought or make recommendation to that Government on any matter if, in the opinion of the Authority, the recommendation would help in improving the generation, transmission, trading, distribution and utilisation of electricity;

(i) collect and record the data concerning the generation, transmission, trading, distribution and utilisation of electricity and carry out studies relating to cost, efficiency, competitiveness and such like matters;

(j) make public from time to time information secured under this Act, and provide for the publication of reports and investigations;

(k) promote research in matters affecting the generation, transmission, distribution and trading of electricity;

(l) carry out, or cause to be carried out , any investigation for the purposes of generating or transmitting or distributing electricity;

(m) advise any State Government, licensees or the generating companies on such matters which shall enable them to operate and maintain the electricity system under their ownership or control in an improved manner and where necessary, in co-ordination with any other Government, licensee or the generating company owning or having the control of another electricity system;

(n) advise the Appropriate Government and the Appropriate Commission on all technical matters relating to generation, transmission and distribution of electricity; and

(o) discharge such other functions as may be provided under this Act."

12.12 The Committee have been apprised that the functions of CEA as provided under Clause 73 of the Electricity Bill, 2001 exclude the power CEA enjoyed under Section 29, 30 & 31 of the Electricity (Supply) Act, 1948 which are reproduced below:-

> "Section 29. Submission of schemes for concurrence of Authority, etc. (1) every scheme estimated to involve a capital expenditure exceeding such sum, as may be fixed by the Central Government, from time to time, by notification in the official gazette, shall, as soon as may be after it is prepared, be submitted to the Authority for its concurrence".

(2). Before finalisation of any scheme of the nature referred to in sub-section (1) and the submission thereof to the Authority for concurrence, the Board, or, as the case may be, the Generating Company shall cause such scheme, which among other things shall contain the estimates of the capital expenditure involved, salient features thereof and the benefits that may accrue therefrom, to be published in the Official Gazette of the State concerned and in such local newspapers as the Board or the Generating Company may consider necessary along with a notice of the date, not being less than two months after the date of such publication, before which licensees and other persons interested may make representations on such scheme.

(3). The Board or, as the case may be, the Generating Company may, after considering the representation, if any, that may have been received by it and after making such inquiries as it things fit, modify the scheme and the scheme so finally prepared (with or without modifications) shall be submitted by it to the Authority along with the representations.

(4). A copy of the scheme finally prepared by the Board or, as the case may be, the Generating Company under sub-section (3) shall be forwarded to the State Government or State Governments concerned.

Provided that where the scheme has been prepared by a Generating Company in relation to which the Central Government is the competent government or one of the competent governments, a copy of the scheme finally prepared shall be forwarded also to the Central Government.

(5). The Authority may give such directions as to the form and contents of a scheme and the procedure to be followed in, and any other matter relating to, the preparation, submission and approval of such scheme, as it may think fit.

(6). In respect of any scheme submitted to the Authority for its concurrence under sub-section (1), the Board or, as the case may be, the Generating Company shall, if required by the Authority so to do, supply any information incidental or supplementary to the scheme within such period, being not less than one month, as may be specified by the Authority.

Section30. Matters to be considered by the Authority – The Authority shall, before concurring in any scheme submitted to it under sub-section (1) of section 29, have particular regard to, whether or not in its opinion:-

(a) Any river-works proposed will prejudice the prospects for the best ultimate development of the river or its tributaries for power-generation, consistent with the requirements of irrigation, navigation and flood-control, and for this purpose the Authority shall satisfy itself, after consultation with the State Government, the Central Government, or such other agencies as it may deem appropriate that an adequate study has been made of the optimum location of dams and other river-works,

(b) the proposed scheme will prejudice the proper combination of hydro-electric and thermo-electric power necessary to secure the greatest possible economic output of electric power.

(c) the proposed main transmission lines will be reasonably suitable for regional requirements;

(d) the scheme provides reasonable allowances for expenditure on capital and revenue account;

(e) the estimates of prospective supplies of electricity and revenue therefrom contained in the scheme are reasonable;

(f) in the case of a scheme in respect of thermal power generation, the location of the generating station is best suited to the region, taking into account the optimum utilisation of fuel resources, the distance of load centre, transportation facilities, water availability and environmental consideration;

(g) the scheme conforms to any other technical, economic or other criteria laid down by the Authority in accordance with the national power policy evolved by it in pursuance of the provisions contained in Clause (i) of sub-

section (1) of section 3 [and such other directions as may be given by the Central Government].

Section 31. Concurrence of Authority to scheme submitted to it by Board or Generating Company – (1) where a scheme is submitted to the Authority under sub-section (1) of section 29, the Authority may, having regard to the matters referred to in section 30, either concur in the scheme without modification or require the Board or, as the case may be, the Generating Company to modify the scheme in such manner as the Authority specifies in the requisition so as to ensure that the scheme conforms to the national power policy evolved by the Authority in pursuance of the provisions contained in Clause (i) of sub-section (1) of section 3 and in either case the Authority shall also communicate its decision to the State Government or State Governments concerned.

Provided that where the scheme was submitted for concurrence by a Generating Company in relation to which the Central Government is the competent government or one of the competent governments, the decision shall be communicated also to that Government.

(2). Where under sub-section (1), the Authority requires that a scheme may be modified, the Board or, as the case may be, the Generating Company may prepare a revised scheme in accordance with such requisition and submit it to the Authority for concurrence and thereupon the Authority shall, if satisfied that the revised scheme complies with requisition, concur in the same."

12.13 Regarding function and duties of Central Electricity Authority (CEA), the Committee have been informed by the Ministry of Power in a written note that CEA has been entrusted with some additional powers in the new Bill, namely of specifying technical standards, safety requirements, Grid Standards, conditions for installation of meters, etc. Power of arbitration by CEA is however dropped. The new Bill provides for arbitration by a person nominated by the Appropriate Commission and subject to the provisions of the Arbitration and Conciliation Act, 1996. The role of CEA has been re-oriented in view of incorporation of provisions constituting Regulatory Commission and doing away with the requirement of Techno-Economic Clearance for thermal projects.

12.14 The Power Grid Corporation of India Limited has desired that Section 73 (a) should be amended and provision to act as arbitrator in matter arising between the licensees, CTU/RLDC/STU/SLDC generating companies, etc. be vested in CEA.

12.15 Further National Thermal Power Corporation has suggested an amendment to Clause 73(b) and desired that it should read as under:-

"specify the technical standards for construction of electrical plants, electric lines and connectivity of the Grid for all the utilities, and approve the capital cost in case of thermal generating stations whose tariff are regulated."

12.16 On Clause 73 (d), the Committee observe that the authority will specify the Grid Standards for operation and maintenance of transmission lines whereas similar provisions for specifying the Grid code has been entrusted to the Central Commission under. clause 79(h) whereby the Central Commission shall discharge the function to specify grid code.

12.17 Regarding other powers entrusted to Central Electricity Authority, the Committee observe that Clause 74 empowers CEA to have statistical records and returns. Clause 74 of the Electricity Bill, 2001 states that it shall be the duty of every licensee, generating company or person generating electricity for its or his own use or consuming electricity to furnish to the Authority such accounts, statistics, returns or other information relating to generation, transmission, trading, and use of electricity as it may require and at such times and in such form and manner as may be specified by the Authority.

12.18 Further, under Clause 75 (1), in the discharge of its functions, the Authority shall be guided by such directions in matters of policy involving public interest as the Central Government may give in writing. And Clause 75(2) states that if any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final.

12.19 In regard to Clause 74 and 75, the Committee have been informed that similar provision existed in section 4 and 4A of Electricity (Supply) Act, 1948 and have been retained in the new Bill.

12.20 The Committee find that Central Electricity Authority has been reportedly entrusted with some additional powers / functions in the new Bill, namely of specifying technical standards, safety requirements, grid standards, conditions for installation of meters, etc., However, the power to give its opinion to set up hydro electric power generation plants in the country has not been clearly stated in Chapter / Part relating to Central Electricity Authority. The Committee therefore, recommend the Government to suitably incorporate the main functions and duties of the Authority under Clause 73, which are otherwise, referred to in other Clauses of the Bill. In view of the fact that Techno-Economic Clearance by CEA has been done away in setting-up thermal power generation projects, the Committee feel that CEA should be entrusted to examine / investigate the ongoing projects and be vested with power to impose penalty under Clause 73(L), if it finds faults with the licensee for not adhering to technical standards, safety requirements, etc. The Committee also desire that CEA should give its concurrence to power projects, within a fixed time schedule, failing which, the project would be deemed to be cleared. The Committee also desire that all the objections, clarification etc. sought by CEA while appraising any project should be in one go only and not in piecemeal manner. In the event of any project proposal deficient in some data / studies / information, concerning domain other than Central Electricity Authority, it should be accorded conditional approval / concurrence by the Authority, subject to the condition that it satisfies the terms and conditions of the relevant authorities.

12.21 Clause 74 of the Bill prescribes power to ask for statistics and returns. As per this Clause, it shall be the duty of every licensee, generating company or person generating electricity or person generating electricity for its or his own use or consuming electricity to furnish to the Authority such accounts, statistics, returns or other information relating to generation, transmission, distribution, trading and use of electricity as it may require and at such times and in such form and manner as may be specified by the Authority. In the opinion of the Committee, unrestricted power has been given to CEA in the matter. The Committee desire that information sought should be reasonable and restricted to that required for safety, standard of

performance, overall planning, etc. Any commercial information/data kept confidential by a licensee should not be insisted upon. The Committee further note that even a consumer of electricity is required to furnish to the Authority, such accounts, statistics, etc. in terms of this Clause. The Committee are at a loss to understand as to why the user/consumer (millions of people) using electricity will be required to furnish information under this Clause. In view of the penal provision for not-complying with the requirement of Authority, it is desirable to limit the scope of this power to only large consumers of specified categories. The Committee desire that the Government should reconsider and recast this Clause in the light of these comments.

12.22 The Committee note that CEA has been charged with the responsibilities to specify regulations with regard to technical standards for construction of electrical plants and electricity supply lines and safety requirements etc.(Section 53 and 73(b), (C), (d) and 87). In the opinion of the Committee, there is no justification, whatsoever, in excluding the States from formulation of regulations connected with Electrical Safety and Standards for construction of electrical plant, whom they themselves have to implement. The Committee desire that CEA can also consult State Governments while formulating safety standards/requirements.

CHAPTER XIII

Electricity Regulatory Commissions

A. Qualifications for Members – Functioning of Commission

Constitution of Central and State Commission

13.1 Clauses 76 and 82, 83, 77 and 84 of the Electricity Bill, 2001 regarding constitution of Central Commission, Joint Commission State Commission and qualifications for Members are reproduced below:-

"Constitution of Central Commission

76.(1) There shall be a Commission to be known as the Central Electricity Regulatory Commission to exercise the powers conferred on, and discharge the functions assigned to, it under this Act:

(2) The Central Electricity Regulatory Commission, established under section 3 of the Electricity Regulatory Commissions Act, 1998 and functioning as such immediately before the appointed date shall be deemed to be the Central Commission for the purposes of this Act and the Chairperson and Members, Secretary, and other officers and employees thereof shall deemed to have been appointed under this Act and they shall continue to hold office on the same terms and conditions on which they were appointed under the Electricity Regulatory Act, 1998.

(3) The Central Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(4) The head office of the Central Commission shall be at such place as the Central Government may, by notification, specify.

(5) The Central Commission shall consist of the following Members namely:-

(a) a Chairperson and three other Members;

(b) the Chairperson of the Authority who shall be the Member, ex officio.

(6) The Chairperson and Members of the Central Commission shall be appointed by the Central Government on the recommendation of the Selection Committee referred to in section 78.

<u>Qualification for appointment of Members of Central Commission</u>

77. (1) The Chairperson and the Members of the Central Commission shall be persons having adequate knowledge of, or experience or shown capacity in, dealing with problems relating to engineering, law, economics, commerce, finance or, management and shall be appointed in the following manner namely:-

(a) one person having qualification and experience in the field of engineering with specialisation in generation, transmission or distribution of electricity;

(b) one person having qualifications and experience in the field of finance;

c) two persons having qualifications and experience in the field of economics, commerce, law or management:

Provided that not more than one Member shall be appointed under the same category under clause (c).

(2) Notwithstanding anything contained in sub-section (1), the Central Government may appoint any person as the Chairperson from amongst persons who is or has been, a Judge of the Supreme Court or the Chief Justice of a High Court:

Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of India.

(3) The Chairperson or any other Member of the Central Commission shall not hold any other office.

(4) The Chairperson shall be the Chief Executive of the Central Commission.

Constitution of State Commission

82. (1) Every State Government shall within six months from the appointed date, by notification, constitute for the purposes of this Act, a Commission for the State to be known as the (name of the State) Electricity Regulatory Commission:

Provided that the State Electricity Regulatory Commission established by a State Government under section 17 of the Electricity Regulatory Commissions Act, 1998 the enactments specified in the Schedule, and functioning as such immediately before the appointed date shall be the State Commission for the purposes of this Act and the Chairperson, Members Secretary and other officers thereof shall continue to hold office, on the same terms and conditions on which they were appointed under those Acts.

(2) The State Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The head office of the State Commission shall be at such place as the State Government may, by notification, specify.

(4) The State Commission shall consist of three Members including the Chairperson.

(5) The Chairperson and Members of the State Commission shall be appointed by the State Government on the recommendation of a Selection Committee referred to in section 85.

Joint Commission

83. (1) Notwithstanding anything to the contrary contained in section 82, a Joint Commission may be established by an agreement to be entered into -

(a) by two or more Governments of States; or

(b) by the Central Government, in respect of one or more Union territories, and one or more Governments of States,

(c) and shall be force for such period and shall be subject to renewal for each further period, if any, as may be stipulated in the agreement.

Provided that the Joint Commission, constituted under section 21 A of Electricity Regulatory Commission Act, 1998 and functioning as such immediately before the appointed date shall be the Joint Commission for the purposes of this Act and the Chairperson, members, Secretary and other officers thereof shall be deemed to have been appointed as such under this Act and they shall continue to hold office, on the same terms and conditions on which they were appointed under the Electricity Regulatory Commissions Act, 1998.

Qualification for appointment of Members of State Commission

84**.** (1) The Chairperson and the Members of the State Commission shall be persons of ability, integrity and standing who have adequate knowledge of, and have shown capacity in dealing with problems relating to engineering, finance, commerce, economics, law or management.

(2) Notwithstanding anything contained in sub-section (1), the State Government may appoint any person as the Chairperson from amongst persons who is or has been a Judge of a High Court:

Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of that High Court.

(3) The Chairperson or any other Member of the State Commission shall not hold any other office.

(4) The Chairperson shall be the Chief Executive of the State Commission."

13.2 According to Ministry of Power, existing provision at Section 3 & 4 of Electricity Regulatory Commission Act, 1998 relating to constitution of Central Commission and qualification for appointment of members have been retained in the new Bill. Similar provisions for State Electricity Regulatory Commission made under section 17 and 18 of the Electricity Regulatory Commission Act, 1998 have been retained. Regarding constitution of selection Committee to recommend under Clause 78, provisions are similar to the existing one as under section 5 of Electricity Regulatory Commission, Act 1998. However, scope of selection Committee have been reported to be broadened under Clause 78 of the Electricity Bill, 2001. Clause 78 empowers Selection Committee to recommend members of the Appellate Tribunal also.

Functions of Central and State Commissions

13.3 Clauses 79, 80 & 81 are related to functions of Central Regulatory Commission and the Central advisory Committee constituted by it whereas Clauses 86, 87 and 88 of the Bill are related to function of State Regulatory Commission and State Advisory Committee. The Clause 79 of the Electricity Bill, 2001 is reproduced below:-

"79. (1) The Central Commission shall discharge the following functions, namely:-

(a) to regulate the tariff of generating companies owned or controlled by the Central Government;

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;

(c) to regulate the inter-State transmission of electricity ;

(d) to determine tariff for inter-State transmission of electricity;

(e) to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations.

(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;

(g) to levy fees for the purposes of this Act;

(h) to specify Grid Code;

(i) to specify or enforce the standards with respect to quality, continuity and reliability of service by licensees.

(j) to discharge such other functions as may be assigned under this Act.

2. Without prejudice to the provisions of sub-section (1), the Central Commission may:-

(a). Advise the Central Government on all or any of the following matters, namely:-

(i) formulation of National Policy and tariff policy:

(ii) promotion of competition, efficiency and economy in activities of the electricity industry;

(iii) promotion of investment in electricity industry;

(iv) any other matter referred to the Central Commission by that Government;

(b) Fix the trading margin in inter-State trading of electricity, if considered necessary.

(3) The Central Commission shall ensure transparency while exercising its powers and discharging its functions.

(4) In discharge of its functions the Central Commission shall be guided by the National Electricity Policy published under sub-section (2) of section 3.

The functions of Central Commission as enumerated under section 13 of Indian Regulatory Commission Act, 1998 are as under:-

"13. The Central Commission shall discharge all or any of the following functions, namely:-

(a) to regulate the tariff of generating companies owned or controlled by the Central Government,

(b) to regulate the tariff of generating companies, other than those owned or controlled by the Central Government specified in Clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State.

(c) to regulate:-

(i) the inter-state transmission of energy including tariff of the transmission utilities;
(ii) conveyance of energy by means of a main transmission line from the territory of one State to the territory of another State;
(iii) conveyance of energy across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-state transmission of energy;
(iv) the transmission of energy within the territory on a system built, owned , operated, maintained or controlled by a central transmission utility or by any person under the supervision and control of a central transmission utility.

(d) to promote competition, efficiency and economy in the activities of the electricity industry,

(e) to aid and advise the Central Government in the formulation of tariff policy which shall be:-

(i) fair to the consumers;

(ii) facilitate mobilisation of adequate resources for the power sector;

(f) to associate with the environmental regulatory agencies to develop appropriate policies and procedures for environmental regulation of the power sector,

(g) to frame guidelines in matters relating to electricity tariff,

(h) to arbitrate or adjudicate upon disputes involving generating companies or transmission utilities in regard to matters connected with Clause (a) to (c) above,

(i) to aid and advise the Central Government on any other matter referred to the Central Commission by that Government."

Central Advisory Committee

80 (1) The Central Commission may, by notification, establish with effect from such date as it may specify any such notification, a Committee to be known as the Central Advisory Committee.

(2) The Central Advisory Committee shall consist of not more than thirty-one members to represent the interests of commerce, industry, transport, agriculture, labour, consumers, non-governmental organisations and academic and research bodies in the electricity sector.

(3) The Chairperson of the Central Commission shall be the ex-officio Chairperson of the Central Advisory Committee and the Members of that Commission and Secretary to the Government of India in charge of the Ministry or Department of the Central Government dealing with Consumer Affairs and Public Distribution System shall be the ex-officio Members of the Committee.

81. The objects of the Central Advisory Committee shall be to advise the Central Commission on:-

(i) major questions of policy;

(ii) matters relating to quality, continuity and extent of service provided by the licensees;

(iii) compliance by the licensees with the conditions and requirements of their licence;

(iv) protection of consumer interest;

(v) electricity supply and overall standards of performance by utilities.

Constitution of Selection Committee to select Members of State Commission

85. (1) The State Government shall, for the purposes of selecting the Members of the State Commission, constitute a Selection Committee consisting of:–

(a) a person who has been a Judge of the High Court…. Chairperson;
(b) the Chief Secretary of the concerned State…………. ….Member;
(c) the Chairperson or a Member of the Central Electricity Authority……. Member;

Provided that nothing contained in this clause shall apply to the appointment of a person as the Chairperson who is or has been a Judge of the High Court.

(2) The State Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson or a Member and six months before the superannuation or end of tenure of the Chairperson or Member, make a reference to the Selection Committee for filling up of the vacancy.

(3) The Selection Committee shall finalise the selection of the Chairperson and Members within three month from the date on which the reference is made to it.

(4) The Selection Committee shall recommend a panel of two names for every vacancy referred to it.

(5) Before recommending any person for appointment as Chairperson or other Member of the State Commission, the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as Chairperson or Member, as the case may be.

(6) No appointment of Chairperson or other Member shall be invalid merely by reason of any vacancy in the Selection Committee.

Functions of State Commission

86. (1) The State Commission shall discharge the following functions, namely: -

(a) determine the tariff for generation, supply transmission and wheeling of electricity, wholesale, bulk or retail as the case may be, within the State:

Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

(c) facilitate intra-state transmission and wheeling of electricity;

(d) issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;

(e) promote cogeneration and generation of electricity from renewal sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person and also specify, if it considers appropriate, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licence;

(f) adjudicate upon the disputes and differences between its licensees, and generating companies and to refer any dispute for arbitration;

(g) levy fee for the purposes of this Act;

(h) specify State Grid code consistent with the Grid Code specified by the Central Commission under clause (h) of sub-section (1) of section 79;

(i) specify or enforce standards with request to quality, continuity and reliability of service by licensees; and

(j) discharge such other functions as may be assigned to it under this Act.

(2) Without prejudice to the provisions of sub-section (1), that State Commission may:-

(a) advise the State Government on all or any of the following matter's namely:-

(i) promotion of competition, efficiency and economy in activities of the electricity industry;

(ii) promotion of investment in electricity industry;

(iii) reorganization and restructuring of electricity industry in the State;

(iv) matters concerning generation, transmission , distribution and trading of electricity or any other matter referred to the State Commission by that Government.

(b) fix the trading margin in inter State trading of electricity, if considered necessary;

(3) The State Commission shall ensure transparency while exercising its powers and discharging its functions.

(4) In discharge of its functions, the State Commission shall be guided by the National Electricity Policy published under sub-section(2), section 3._

State Advisory Committee and its Functions

87**.** (1) The State Commission may, by notification, establish with effect from such date as it may specify in such notification, a Committee to be known as the State Advisory Committee.

(2) The State Advisory Committee shall consist of not more than twenty-one members to represent the interests of commerce, industry, transport, agriculture, labour, consumers, non-governmental organisations and academic and research bodies in the electricity sector.

(3) The Chairperson of the State Commission shall be the ex-officio Chairperson of the State Advisory Committee and the Members of the State Commission and the

Secretary to State Government in charge of the Ministry or Department dealing with Consumer Affairs and Public Distribution System shall be ex-officio Members of the Committee.

88. The objects of the State Advisory Committee shall be to advise the Commission on:-

(i) major questions of policy;

(ii) matters relating to quality, continuity and extent of service provided by the licensees;

(iii) compliance by licensees with the conditions and requirements of their licence:

(iv) protection of consumer interest; and

(v) electricity supply and overall standards of performance by utilities.

13.4 According to Secretary Finance, Govt. of Uttar Pradesh. under Clause 79, it is a bad idea to have the fixation of trading margins as one of the possible functions of the Central Commission. It should be enough to say "the regulation of inter-state trading" and similarly for the State Commission under Clause 86.

13.5 In a note furnished to the Committee, Chairman, UPERC has opined that Clause 79(1)(b) & (c) give power to the Central Commission to regulate tariff. However, the anomaly would be partially corrected if the generation tariffs were to be determined competitively, as suggested earlier under Clause 62 and 63. In case generation tariffs are to be determined by regulator, this responsibility should be given to the Central Commission. Chairman, UPERC has also submitted that Clause 86(1)(f) should be redrafted to include adjudication of disputes between two licensees.

13.6 An individual expert has opined that the Clause 79(1)(f) empower Regulatory Commission to adjudicate disputes not only between licensees and generating companies but also among licensees themselves and between utilities and generating companies / licensees. Clause 79(1)(f) of CERC order shall prevail over clause 86(1)(f) relating to State Electricity Regulatory Commission in case of a conflict between the two.

13.7 It is further suggested that in Clause 86(2), SERC may advise or suggest Central Government in preparation of a complete and perfect national electricity plan to meet the needs of the specific local situations.

13.8 It has also been suggested to the Committee that Clause 79(1) be modified as under:-
"The Central Commission discharge the following functions, namely :- (a) to regulate the tariff of generating companies owned or controlled by the central
government; (b) to regulate the tariff of generating companies other than those owned or controlled by the central government specified in clause (a), if such generating companies enter into or otherwise have a composite schemes for generation and sale of electricity in more than one state; (c) to regulate the inter-state transmission of electricity ; (d) to determine tariff for inter-state state transmission of electricity.

13.9 From Clause 79(1)(a), the Committee also observe that the Central Commission shall regulate the tariff of generating companies owned or controlled by the Central Government, the state commission is empowered to specify the terms and conditions for the determination of tariff and also to determine the tariff. The regulation of tariff alone is indicated in respect of the Central Commission. According to Neyveli Lignite Corporation Limited it is to be clarified whether the Central Commission will have powers for specifying the terms and conditions for the determination of tariff and also to determine the tariff or has to follow the tariff policy of the Central Government, which may include the terms and conditions and also the operational and financial parameters needed for the determination of tariff.

13.10 In a Memorandum submitted to the Committee, Karnataka Power Corporation Limited, Banagalore has stated that in Clause 79(g), the earlier drafts of the Bill included CERC's main functions amongst others such as 'promotion, competition, efficiency and economy. However, The purpose of deletion or non-inclusion of this main functions in the proposed Bill have not been understood. It is noted that these functions are shifted to the Central Government under Section 79(j) and 79 (2)(a)(ii) and ERCs role is reduced to a mere adviser to government. It is not clear why this function is shifted to central government and how it can perform this function

13.11 Clause 79(1)(m) – indicate that the Central Commission shall specify the grid code. Whereas the Clause 34 of the Bill read as under:-

> "34**.** Every transmission licensee shall comply with such technical standards, of operation and maintenance of transmission lines, in accordance with the Grid Standards, as may be specified by the Authority."

13.12 Neyveli Ligniate Corporation Limited (NLC), Chennai has suggested that the contents of this grid code under Clause 79(1)(m) may please be elaborated since Clause 34 requires specification of grid standards by the CEA. The powers appear to be overlapping.

13.13 The Federation of Andhra Pradesh Chambers of Commerce and Industry (FAPCCI) has opined that Section 79 seeks to enumerate the functions of the Central Commission. The word "regulate" is used freely in several items. The mere use of the word "regulate" may be seen as conferring on them a power which is plenary in nature and extends to all matters concerning the transmission or distribution or consumption of electricity so as to exclude any other authority or institution. In order that the regulatory commissions do not take wide unfettered powers by the use of the word "regulate", it has been submitted by FAPCCI that the provisions of this Clause require reconsideration.

13.14 Clause 79 (3), requires the Central Commission to ensure transparency while exercising its powers and discharging its functions. One individual expert has observed that the word "transparency", while clear in conversation, is of inadequate precision when referred to legal proceedings. It was therefore suggested that there is necessity to specify in the act itself the minimum nature of proceedings and rights of parties in proceedings by which the transparency will be evident and established.

13.15 On being asked the difference in functions of ERC in the Act of 1998 and the proposed Bill, Ministry of Power informed the Committee that a distinction between mandatory function of the Commission under Clause 79 of the present Bill vis-à-vis

Section 13 of Electricity Regulatory Act, 1998 has been made. The mandatory functions are to issue licenses for inter-state transmission and trading; to levy fees; to specify grid code etc. Further, recommendatory functions, are generally advisory in nature.

13.16 The Committee observe that Clauses 76, 77 and 82, 84 of the Electricity Bill, 2001 regarding Constitution of Central and State Commissions and qualification for appointment of members, are similar to the existing provisions (Section 3 and 4 of Electricity Regulatory Commission Act, 1998). However, the Committee are not convinced with the essential qualification for Chairman and Members wherein he shall have adequate knowledge of or experience in or proven capacity in dealing with problems relating to engineering, law, economics, commerce, finance or, management. The Committee are of the opinion that all the qualifications viz., adequate knowledge, experience and capacity in dealing with problems relating to engineering, law, economics, commerce, finance or, management shall be considered together while selecting / appointing Chairperson / Members of the Commissions. Experience in or capacity in dealing with problems relating to engineering, law or economics cannot be a substitute for the requirement or adequate knowledge of these fields of activities. Hence, Clause 77(1) should be suitably amended.

13.17 The Committee find that by virtue of Clause 76(5)(b), the Chairman, Central Electricity Authority(CEA), shall be Member, Ex-officio of Central Electricity Regulatory Commission(CERC). The Committee desire that since CEA has been charged with the responsibilities of planning, it is not desirable to associate, Chairman, CEA, as permanent Member. The Committee, however, feel that CERC should seek the assistance of Chairman, CEA in all technical matters.

13.18 The Committee find that the Central Government under Clause 78(5) is required to make a reference to Selection Committee for filling-up of a vacancy within one month of occurrence of any vacancy by reason of death, resignation or removal or within six months before super-annuation or end of the tenure of the member. The Committee find that there is no stipulation, howsoever, as how soon the Government should fill up the vacancy. The Committee desire that it is necessary to stipulate such a period. The Committee also feel that Selection Committee being of ad-hoc nature may need to be reconstituted whenever a vacancy is to be filled up. This is further likely to delay the filling up of the vacancy in the Commission. Considering the fact that provision has already been given to fill up the vacancies under Clause 77, the Committee feel that the Selection Committee under Clauses 78 and 85 have no useful role to play and can often delay the matter. The Committee, therefore, feel that the selection of the members can be done through the Public Service Commissions. The Committee, therefore, recommend that these Clauses be amended accordingly.

13.19 In Clause 82(4), it has been provided that not more than three members including Chairperson would form a State Commission. In the opinion of the Committee since a very heavy responsibilities have been cast upon the Commissions, it would be desirable to have at least three members and not less. By interpretation it seems that the State Commission may consist of three members or less than that. In order to rectify the situation, it is suggested that words 'not more than' should be deleted.

13.20 The Committee observe that besides discharging the functions such as regulating tariff of generating companies, regulating the inter-State transmission of electricity, determination of tariff for inter-State transmission of electricity, etc., the Electricity Bill, 2001 also gives power to the Central Electricity Regulatory Commission to issue licences to persons functioning as transmission licensee, to adjudicate upon disputes involving generating companies or distribution licensees, levy fees for the purposes of this Act, to specify grid code and to specify or enforce the standard with respect to quality, continuity and reliability of services by licensee. The Committee feel that functions of the Regulatory Commission should not include executive functions such as issue of licence and desire that such functions should remain with the Government authorities and Regulatory Commission should only be assigned the functions such as (a) to regulate the tariff of generating companies owned or controlled by the Central Government; (b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified above at (a), if such generating companies enter into or otherwise have a composite schemes for generation and sale of electricity in more than one State; (c) to regulate the inter-state transmission of electricity and (d) to determine tariff for inter-State transmission of electricity.

13.21 Regarding functions such as to specify grid code and to specify or enforce the standards with respect to quality, continuity and reliability by licensee, the Committee feel that such functions may be assigned to technical bodies like the Central Electricity Authority and there should be no overlapping between the functions of CEA and Regulatory Commission. The Committee also desire that the Government should clarify the position regarding powers of the Central Electricity Regulatory Commission vis-a-vis. State Electricity Regulatory Commission regarding specifying the terms and conditions for determination of tariff as well as follow-up of the tariff policy of the Central Government which may include the terms and conditions and also the operational and financial parameters needed for determination of tariff. The Committee also desire that tariff fixed / proposed by the Electricity Regulatory Commissions be respected by the Government and accepted as far as possible.

13.22 The Committee note that a large number of functions are proposed to be assigned to the Regulatory Commissions under Clauses 79 and 86 of the Bill. These are both mandatory and recommendatory in nature. The Bill thus, heavily leans towards giving more powers to the Commissions. In fact, this is more than the powers envisaged in the Electricity Regulatory Commission Act, 1998. For example, technical dispute resolution in respect of Load Despatch functions is assigned to Central Electricity Regulatory Commission (CERC) instead of Central Electricity Authority (CEA) and similarly issuance of Grid Code has been assigned to CERC. In fact, CERC is being projected as the planner, executor, operator, administrator, regulator and adjudicator. The Committee feel that all these tasks cannot be assigned to any single body. CERC was created basically to regulate and rationalize the tariff. CERC being a quasi-judicial body should not be assigned the above tasks. But, when a host of other functions have also been suggested for the Commission, it would be difficult for a Parliamentary Committee not to question the Commissions and place them under Parliamentary scrutiny in spite of their quasi-judicial status. Now they would also be open to Parliamentary scrutiny as any other Governmental Organisation. The Committee also feel that by assigning so many functions to the Regulatory Commissions, the delays which were occurring at

the level of Central Electricity Authority would now shift to the Commissions. In arriving decisions on technical matters, the Commission has to seek advise from bodies like CEA and CTU, etc. which is likely to delay the matters. The Committee, therefore, feel that functions assigned to the Regulatory Commissions need thorough reconsideration and amendment of the relevant Clauses. However, pending this re-appraisal, the Committee feel that Government must consult the Central Commission while framing National Electricity and Tariff Policies.

13.23 The Committee find that the Central Electricity Regulatory Commission (CERC) has been charged with the responsibility of regulating tariff or generating companies owned or controlled by Union government. The Committee also find that the present legislation is not applicable to the Department of Atomic Energy. The Committee further note that nuclear power is generated by the Nuclear Power Corporation of India Limited (NPCIL), a Public Sector undertaking of the Department of Atomic Energy. The tariff for nuclear power is fixed as per the provision in the Atomic Energy Act, 1962 which stipulates fixation of rates for and regulation of supply of electricity from the Atomic Power Station in consultation with the Central Electricity Authority (CEA). The Committee are of the view that when the Union Government intend to amend the Atomic Energy Act, 1962 for private sector participation in non-strategic area, there is hardly and justification for not regulating the tariff of nuclear power through the CERC. The Committee, therefore, desire that the Government should consider the applicability of CERC over tariff for nuclear power. The Committee also recommend that in determining tariff, the Department of Atomic Energy should not part with any strategic information, data, etc. which the regulator may desire for determining the tariff. The Committee are of the view that with such an amendment, there will be a level playing field for the power sector. The Committee, therefore, desire that necessary amendments may be made in the Bill for this purpose.

13.24 The Committee observe that the existing provisions have not been implemented due to failure of States to agree on the modalities of appointment, etc. of Joint Commission. The Committee, therefore, recommend that suitable amendments may be carried out in the Bill and the Central Government be empowered to appoint Chairperson and members of the Joint Commission on being authorised by the participating State Governments.

B. Appropriate Commission – Term of Office and Condition of Services

13.25 The Clause 89 of the Electricity Bill, 2001 spell out the terms of office and condition of service of members of the appropriate commission whereas Clause 90 of the Bill is about removal of members. Both the Clauses are reproduced below:-

"89**.** (1) The Chairperson or other Member shall hold office for a term of three years from the date he enters office;

Provided that such Chairperson or other Member shall be eligible for re-appointment for a second term of three years;

Provided further that no Member shall hold office as such after he has attained the age of sixty-five years.

The salary, allowances and other conditions of service of a Chairperson and Members shall be such as may be prescribed by the Appropriate Government.

Provided that the salary, allowances and other conditions of service of the Members, shall not be varied to their disadvantage after appointment.

(3) Every Member shall, before entering upon his office, make and subscribe to an oath of office and secrecy in such form and in such manner and before such authority as may be prescribed.

(4) Notwithstanding anything contained in sub-section (1), a Member may-

relinquish his office by giving in writing to the Appropriate Government a notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 90.

(5) Any member ceasing to hold office as such shall –

(a) be ineligible for further employment under the Central Government or any State Government for a period of two years from the date he ceases to hold such office ;

(b) not accept any commercial employment for a period of two years from the date he ceases to hold such office; and

(c) not represent any person before the Central Commission or any State Commission in any manner.

Explanation. - For the purposes of this sub-section -

(i) "employment" under the Central Government or under any State Government" includes employment under any local or other authority within the territory of India under the control of the Central Government or a State Government, or under any corporation or society owned or controlled by the Government.

(ii) "commercial employment" means employment in any capacity under, or agency of, a person engaged in trading, commercial, industrial or financial business in the electricity industry and includes a director of a company or partner of a firm or setting up practice either independently or as partner of a firm or as an adviser or a consultant.

Removable of Members

90**.** (1) No Member shall be removed from office except in accordance with the provisions of this section.

(2) The President, in the case of a Member of the Central Commission, and the Governor of the State, in the case of a Member of the State Commission, may by order remove from office any member, if he-

(a) has been adjudged an insolvent;

b) has been convicted of an offence which, in the opinion of the Appropriate Government, involves moral turpitude;

(c) has become physically or mentally incapable of acting as a Member;

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member;

(e) has so abused his position as to render his continuance in office prejudicial to the public interest; or

(f) has been guilty of proved misbehaviour:

Provided that no Member shall be removed from his office on any ground specified in clauses (d), (e) and (f) unless the Chairperson of the Appellate Tribunal on a reference being made to him in this behalf by the Central Commission, or the State Government, as the case may be, has, on an inquiry, held by it in accordance with such procedure as prescribed by the Central Government, reported that the Member ought on such ground or grounds to be removed.

(3) The Central Government or the State Government, as the case may be, may, in consultation with the Chairperson of the Appellate Tribunal suspend any Member of the Appropriate Commission in respect of whom a reference has been made to the Chairperson of the Appellate Tribunal, under suvb-section (2) until the Central Government or the State Government, as the case may be, has passed orders on receipt of the report Chairperson of the Appellate Tribunal, on such reference."

13.26 Similar provisions for term of office and conditions of service as regard to Appropriate Commission contained in the Section 6, 19, 7 and 20 of the Electricity Regulatory Commission Act, 1998 are reproduced below:-

6.(1) The Chairperson or other Member shall hold office as such for a term of five years from the date on which he enters upon his office, but shall not be eligible for reappointment:

Provided that no Chairperson or other Member shall hold office as such after he has attained;

(a) in the case of the Chairperson, the age of sixty-five years, and
(b) in the case of any other Members, the age of sixty-two years.

(2) The salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members shall be such as may be prescribed.

(3) The salary, allowances and other conditions of service of the Chairperson and the Members shall not be varied to their disadvantage after appointment.

(4) The Chairperson and every Member shall before entering upon his office, make and subscribe to, an oath of office and of secrecy in such form and in such manner and before such authority as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1), Chairperson or any Member any-

(a) relinquish his office by giving in writing to the President notice of not less than three months; or

(b) be removed his office in accordance with the provisions of section 7.

(6) The Chairperson or any Member ceasing to hold office as such shall-

(a) be ineligible for further employment under the Central Government or any State Government for a period of two years from the date he ceased to hold such office;

(b) not accept any commercial employment for a period of two years from the date he ceased to hold such office;

(c) not represent any person before the Central Commission or a State Commission in any manner.

Explanation- for the purposes of this sub-section,

(i) employment under the Central Government or under the State Government includes employment under any local or other authority within the territory of India or under the control of the Central Government or State Government or under any corporation or society owned or controlled by the Government.

(ii) "commercial employment" means employment in any capacity under, or agency of, a person engaged in trading, commercial, industrial or financial business in the electricity industry and includes also a director of a company or partner of a firm and it also includes setting up practice either independently or as partner of a firm or as an adviser or a consultant.

19.(1) The Chairperson or other member shall hold office as such for a term of five years from the date on which he enters upon his office, but shall not be eligible for reappointment.

Provided that no Chairperson or other Member shall hold office as such after he has attained-

(a) in the case of the Chairperson, the age of sixty-five years, and
(b) in the case of any other Members, the age of sixty-two years.

(2) The salary and allowances payable to and the other terms and conditions of service of the Members of the State Commission shall be such as may be prescribed by the State Government.

(3) The salary, allowances and other conditions of service of the Members shall not be varied to their disadvantage after appointment.

(4) Every Member of the State Commission shall, before entering upon his office, make and subscribe to, an oath of office and of secrecy in such form and in such manner and before such authority as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (2), a Member may-

(a) relinquish his office by giving in writing to the Governor notice of not less than three months; or
(b) be removed from his office in accordance with the provisions of section 19.

(6) Any Member ceasing to hold office as such shall-

(a) be ineligible for further employment under the Central Government or any State Government for a period of two years from the date he ceased to hold such office;
(b) not accept any commercial employment for a period of two years from the date he ceased to hold such office;
(c) not represent any person before the Central Commission or State Commission in any manner.

Explanation- for the purpose of this sub-section:

(i) employment under the Central Government or under the State Government includes employment under any local or other authority within the territory of India or under the control of the Central Government or a State Government or under any corporation or society owned or control by the Government.

(ii) "commercial employment" means employment in any capacity under, or agency of, a person engaged in trading, commercial, industrial or financial business in the electricity and includes also a director of a company or partner of a firm and it also includes setting up practice either independently or as partner of a firm or as an adviser or a consultant.

Removable of Members under the Electricity Regulatory Commission Act, 1998

7.(1) Subject to the provisions of sub-section (3), any Member of the Central Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry, held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Member, ought on any such ground to be removed.

(2) The President may suspend any Member of the Central Commission in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court.

(3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be,C

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as a Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(4) Notwithstanding anything contained in sub-section (3), no Member shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court, on a reference being made to it in this behalf by the President, has, on an enquiry, held by it in accordance with such procedure as prescribed in this behalf by the Supreme Court, reported that the member ought on such ground or grounds to be removed.

20.(1) Subject to the provisions of sub-section (3), any Member of the State Commission shall only be removed from his office by order of the Governor on the ground of proved misbehaviour after the High Court, on reference being made to it by the Governor, has, on inquiry, held in accordance with the procedure prescribed in that behalf by the High Court, reported that the Member, ought on any such ground to be removed.

(2) The Governor may suspend any Member of the State Commission in respect of whom a reference has been made to the High Court under sub-section (1) until the Governor has passed orders on the receipt of the report of the High Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the Governor may by order remove from office the Member if he-

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the State Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as a Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(4) Notwithstanding anything contained in sub-section (3), no Member shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the High Court on a reference being made to it in this behalf by the

Governor, has, on an enquiry, held by it in accordance with such procedure as prescribed in this behalf by the High Court, reported that the Member ought on such ground or grounds to be removed."

13.27 The Ministry of Power have informed the Committee that the term of members as contained in Section 6 & 19 of Electricity Regulatory Commission Act, 1998 have been changed to the extent that term of three years for Chairperson / Members and the provision for reappointment for a second term of three years.

13.28 As regard to Clause 90 of the Electricity Bill, the existing provision of Section 7 & 20 of ERC Act, 1998 have been retained except with the difference that members can be removed on the recommendation of the Chairperson of Appellate Tribunal on a reference being made by the Central Government.

13.29 The State Government of Andhra Pradesh has strongly felt that there should not be provisions for re-appointments for the Commission Members.

13.30 The Indian Forum of Regulators has also desired that chairperson or other members shall hold office for a term of 5 years instead of the 3 years as proposed in Clause 89(1) of Electricity Bill, 2001 and there should be no 2nd term for the members.

13.31 On clause 89(5), the Indian Forum of Regulators has suggested that the following should be added at the end of the Clause. "except appointment as member of chairperson of any Regulatory Commission or Appellate tribunal"

13.32 In a note furnished by Secretary Finance, Government of Uttar Pradesh it has been commented that it is a bad idea to shorten the term from five to three years of commission members and to make re-appointment possible for a second term. This will compromise the independence of Commission on removal of a member.

13.33 Southern India Chambers of Commerce and Industry (SICCI) felt that it is desirable to have one term of office for a member or a chairperson. The term of office may be 5 years as already provided in the earlier Central Electricity Regulatory Commissions Act, 1998.

13.34 The Committee find that Clause 90 deals with removal of members and chairperson of both State and Central commissions. Two different procedures have been stipulated for removal of members and chairperson of the Commissions, one for person drawn from areas other than judiciary and another for person drawn from judiciary. In this regard Southern India Chambers of Commerce and Industry (SICCI) as opined that once the members and chairpersons are selected, they are of equal cadre in all aspects irrespective of the fact that they are either from judiciary or from a field other than judiciary. Such different treatments for judiciary and non-judiciary members are discriminatory. SICCI has suggested that the procedure stated in Section 7 (for members and chairperson of Central Electricity Regulatory Commission) and in Section 20 (for members and chairperson of State Electricity Commissions) of the Electricity Regulatory Commissions Act 1998 may be incorporated in lieu of the procedures stated in Clause 90 of the Electricity Bill, 2001.

13.35 The Committee have been informed by the various bodies that the term of office of the Chairman and members of the Appropriate Commissions should be fixed and they

should not be eligible for re-appointment for a second term. In this connection, it has been strongly urged before the Committee that to avoid favouritism, the terms of the members should be fixed for 5 years as in the existing Electricity Regulatory Commissions Act, 1998 instead of 3 years proposed in the Electricity Bill, 2001. The Committee are of the view that the tenure of 3 years is too short a period for any office and especially of a regulator. Secondly, the hope of reappointment may lead to voluntary surrender of the independence of the regulator. The Committee, therefore, recommend that in order to ensure independence of Commissions, the Chairperson and members of the Commission should be appointed for a fixed term i.e. for a period of 5 years as is the provisions under ERC Act, 1998.

13.36 The Committee are of the view that it is desirable to have different age ceiling for the Members of the State and Central Commissions. This will ensure that the experience of a person who has served in a State Commission can be gainfully utilised in the Central Commission. The Committee also recommend that Chairperson/Member of Commission should not be barred to take employment at the Centre or any State other than one where he/she served in the State Commission. The Committee view that stringent post retirement restriction on members would discourage eminent professionals joining such Commissions. The Committee, therefore, recommend that the Government should take proactive action to attract best talent from commerce, engineering and industry for the purpose and the Committee feel that the members and other staff should be paid at par with best PSUs in the country and the pay scales, etc., should not be a limiting factor. A separate cadre for such posts may also be thought of. At the same time, the age limit for non-judicial members of the Commission be brought down to 60 year. In order to impart professionalism in the Commission they may be permitted to decide and recruit the employees required by them to carry out efficiently their assigned work.

13.37 The Committee find that Clause 90 which deals with removal of members and chairperson of both State and Central Commissions, two different procedures have been stipulated for removal of members and chairperson of the Commissions. For persons drawn from areas other than the Judiciary, the procedure for removal is different than for persons drawn from judiciary. In this regard Southern India Chambers of Commerce and Industry (SICCI) has opined that once the members and chairpersons are selected, they are of equal cadre in all aspects irrespective of the fact that they are either from Judiciary or from a field other than Judiciary. Such different treatments for Judicial and non-Judicial members are discriminatory. In view of this, the Committee urge the Government to reconsider the provision of Clause 90 of the proposed Bill and the procedure stated in Section 7 (for members and chairperson of Central Electricity Regulatory Commission) and Section 20 (for members and chairperson of State Electricity Commissions) of the Electricity Regulatory Commissions Act 1998 may be incorporated in lieu of the procedures stated in Clause 90 of the Electricity Bill, 2001.

13.38 The Committee observe that Clause 90 of the Electricity Bill, 2001 provides for the manner of removal of a member of Appropriate Commission. The Committee find that under the Bill a judge of the Supreme Court or a Chief Justice of High Court can be appointed as the Chairperson of the Central Commission. Chairperson of the Appellate Tribunal will also be the judge of the Supreme Court or Chief Justice of a High Court. Therefore, the powers under Section 90 of the Bill should be exercisable by the Supreme Court when both the persons are having equal rank. It is inappropriate that the person of the same status should have the authority to hold the enquiry against the Chairperson of the Central Commission. This will also make Central/State Commission fully sub-serveint to the Appellate Tribunal which was not the intention of Clause 90 of the Bill. The Committee, therefore, desire that the power of removal, etc. should be vested with the President or the Governor as the case may be. The Committee also recommend that the

existing provision as contained in Section 7 of ERC, 1998 may continue and the proposed Section 90 of the proposed Bill may be deleted.

C. Accountability of Commission to Legislatures

13.39 Provision for Grants, Funds Accounts, Audit and Report of Appropriate Commission have been made under Clauses 98 to 102. Clauses 98 and 102 of the Electricity Bill, 2001 are reproduced below:-

Clause 98: the Central Government may, after due appropriation made by Parliament in this behalf, make to the Central Commission s grants and loans of such sums of money as that Government may consider necessary.

Clause 102: the State Government may, after due appropriation made by Legislature of State in this behalf, make to the State Commission grants and loans of such sums of money as that Government may consider necessary.

13.40 Regarding Clause 98, the Committee have been informed by the Government that this is a new provision for Grants and Loans in line with the TRAI, Act. Similar provision for Grants and Loans by State Government have been included in Clause 102 of the Bill.

13.41 **Establishment of Funds by Central / State Government – Clause 99 and 103**

99. (1) There shall be constituted a Fund to be called as the Central Electricity Regulatory Commission Fund and there shall be credited thereto-

a) any grants and loans made to the Central Commission by the Central Government under this Section 98;

b) all fees received by the Central Commission under this Act;

c) all sums received by the Central Commission from such other sources as may be decided upon by the Central Government.

(2). The Fund shall be applied for meeting –

a) the salary, allowances and other remuneration of Chairperson, Members, Secretary, officers and other employees of the Central Commission ;

b) the expenses of the Central Commission in discharge of its function under Section 79;

c) expenses on objects and for purposes authorised by this Act.

(3) The Central Government may, in consultation with the Comptroller and Auditor General of India, prescribe the manner of applying the fund for meeting the expenses specified in Clause (b) or Clause (c) of sub-Section (2).

Constitution of Funds

103. (1) There shall be constituted a Fund to be called the State Electricity Regulatory Commission fund and there shall be credited thereto-

a) any grants and loans made to the State Commission by the State Government under Section 102;

b) all fees received by the State Commission under this Act;

c) all sums received by the State Commission from such other sources as may be decided upon by the State Government.

(2) The Fund shall be applied for meeting –

a) the salary, allowances and other remuneration of Chairperson, Members, Secretary, officers and other employees of the State Commission ;

b) the expenses of the State Commission in discharge of its function under Section 86;

(c) expenses on objects and for purposes authorised by this Act.

13.42 To this new provisions of Clause 99 and Clause 103 relating to establishment of fund by the Government, the Ministry of Power have informed the Committee in a note as under:-

> " i) As against the provision for charged expenditure as in the existing Act, he proposed Bill provides for establishment of the Central Electricity Regulatory Commission Fund.
>
> ii) Central Government to make grants and loans after due appropriation by Parliament.
>
> iii) Rules for operation of the fund to be framed by the Government."

Accounts and Audit of Commissions

13.43 About the Accounts and Audit of Commissions, the Committee note the following Clauses in the Bill:-

"100. (1) The Central Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Central Commission shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Central Commission to the Comptroller and Auditor General of India.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the auditing of the accounts of the Central Commission under this Act shall have the same rights and privileges and authority in connection with such

audit as the Comptroller and Auditor General of India has in connection with the auditing of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Central Commission .

(4) The accounts of the Central Commission , as certified by the Comptroller and Auditor General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government and that Government shall cause the same to be laid, as soon as may be after it is received, before each House of Parliament."

13.44 **Regarding Annual Reports, the Electricity Bill, 2001 envisages as under:-**

"101. (1) The Central Commission shall prepare once every year, in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the Central Government.

(2) A copy of the report received under sub-Section (1) shall be laid, as soon as may be after it is received, before each House of Parliament."

Clause 105(1), the State Commission shall prepare once every year in such form and at such time as may be prescribed, annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the State Government.

13.45 Provisions regarding accounts and audit and reports of Regulatory Commission as enumerated in the Electricity Consumers Act, 1998 are as under:-

"31. The Central Commission shall prepare, in such form and at such time in each financial year as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Central Commission and forward the same to the Central Government.

32 (1) The Central Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Central Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Central Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Central Commission under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Central Commission .

(4) The accounts of the Central Commission , as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Central Government by the Central Commission and the Central Government shall cause the audit report to be laid, as soon as may be after it is received, before each House of Parliament.

33. The State Commission s shall prepare, in such form and at such time in each financial year as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the State Commission and forward the same to the State Government.

34. (1) The State Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the State Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the State Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the State Commission under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the State Commission .

(4) The accounts of the State Commission , as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the State Government by the State Commission and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature.

35. (1) The Central Commission shall prepare once every year, in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the Central Government.

(2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before each House of Parliament.

36. (1) The State Commission shall prepare once every year in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the State Government.

(2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before the State Legislature."

13.47 In terms of Clause 98, the Central Government may after due appropriation made by Parliament make to the Central Commission grants and loans of such sums of money as that Government may consider necessary. Clause 99 provides for establishment of a fund by the Central Commission. Clause 100 provides for the manner in which accounts and audit of Central Commission are to be maintained and conducted. The Committee find that in the existing Act of ERC, 1998 the expenses of Central Commission including

salaries and allowances payable to or in respect of the Chairperson and the members of the Central Commission shall be charged from the Consolidated Fund of India. However, in the proposed Bill financial autonomy has been given to the Appropriate Commission and special fund has been created for meeting the salaries and other expenses of the Commission . Some of the State Governments have brought to the notice of the Committee that creation of separate funds will result in lack of transparency in the operations, doubts of financial probity or conduct of the Commission . This may result in lack of confidence and may invite public criticism. The Committee would like to stress that there is no need of provision for separate funds for Central or State Commission meeting the expenditure for salary and other expenses. The Committee, therefore, recommend that the Appropriate Commission should prepare budget for themselves and submit the same to the Appropriate Government. The Committee are of the view that since the primary functions like regulation of tariffs, arbitrations, execution of disputes assigned to Central Commission s are essentially Government functions, the expenditure should be meted out of the Consolidated Fund of India. The Committee are of the view that the existing provisions of ERC Act, 1998 are adequate. The Committee, therefore, desire that suitable amendments may be made in the Bill in this regard.

13.47 **The Committee observe that the provisions in Bill regarding Reports of the Central / State Commission are silent on the following matter and may also include:-**

a) a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Commission 's functions;

b) any final or provisional order by the Commissions during that year;

c) any general directions given to the Commission during that year by the competent government;

d) a general survey of the activities during the year of the National Advisory Committee or the State Advisory Committee, as the case may be; and

e) a report on such other matters as the competent Government may, in consultation with the Commission , from time to time require.

The Committee feel that the above provisions should be suitably incorporated in the Bill. The Committee also desire that the Commission shall, before the commencement of each year, make to the competent Government a report on the Annual Programme for the year containing a general description of work, other than that comprising routine activities in the exercise of its functions, which it plans to undertake during the year in furtherance of the objectives of this Act. The Commission, before finalising the Annual Programme referred to above should also publish a draft thereof and provide 60 days' notice for inviting representations and objections from the competent Government, licensees and the public, and upon receipt of such representations and objections, it shall consider the same.

13.48 In order to ensure the accountability of the Commissions towards the Legislatures, the Committee recommend that upon presentation of the Annual Report in the Parliament or the State Legislature, as the case may be, or at any other time, the Parliament or the State Legislature, as the case may be, may require the presence of the Chairperson and the Members of the Competent Commission in connection with any investigation, debate or discussion with respect to the powers exercised or the functions performed by the Commission under the provisions of this Act and the Commission shall provide such information and render such assistance to the Parliament, or the State Legislature, as the case may be, as may be necessary. However, the legislatures should not take up any individual cases on which the Appropriate Commission has passed any order and restrict their examinations to matters of principles only.

13.49 Under Section 104 (2), the accounts of the Central Commission is to be audited by the Comptroller and Auditor General. Similar position exists for the State Commission whose accounts are also to be audited by CAG under Section 104(2). The Committee desire that while undertaking audit it should ensure that the audit does not cover orders passed by the Commission in various proceedings.

D. <u>Directions by the Central/State Government</u>

13.50 The Committee find that Clause 107 and 108 of the Bill provide for Directions by the Central / State Government as under:-

"107. (1) In the discharge of its functions the Central Commission shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it in writing.

(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final.

108. (1) In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the State Government may give to it in writing.

(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final."

13.51 The Southern India Chambers of Commerce and Industry has commented on Clause 108 as under:-

> "This undermines the independence of the Commission . The Government would be better placed if the matters of policy involving public interest were discussed with the Commission giving directions. Again the Commission must be empowered to issue orders to the State Government to make good any injury or loss to the utility on this score, to ensure that the financial well being of the utility is always preserved. Policy involving public interest is a very wide term and the same has not yet been properly defined. It may include those policies, which go to benefit only a few, leaving the vast majority or otherwise also. As such the sub

Clause 108 (2) may be deleted, leaving it open for the Commission to accept and act on it appropriately".

13.52 The Committee have been informed that Andhra Pradesh Electricity Reforms Act lays down the system of checks and balance for exercising the power by the State Government. Under this Act, the power to issue direction can be exercised if it meet the following criteria:-

i) it is not inconsistent with the objective sought to be achieved by the Act;
ii) it does not adversely effect or interfere with the functions and powers of the ERC;
iii) ERC is consulted in relation to a proposed legislation or rule concerning policy direction and its views are duly taken into account;
iv) In the event of a difference whether a direction amounts to policy or not and referred to independent authority i.e. retired judge of Supreme Court appointed in the consultation with Chief Justice of India.

13.53 Under Clauses 107 and 108, the Central and the State Governments have been empowered to issue policy directives to the Central and State Commissions respectively. Such policy directions are to be issued only in public interest. It has been left to the wisdom of the Central/State Governments to decide whether any direction issued by them relates to the matter of policy involving public interest or not. The Committee are not in agreement with the opinion expressed by some of the Chambers of Commerce and Industry that such policy direction amounts to unbridled and unfettered powers in the instrumentality of the State. The Committee are of the view that such directions need to be issued by the Central and State Governments to the Appropriate Commission as they may deem fit. The Committee find that Andhra Pradesh Electricity Reforms Act lays down the system of checks and balances for exercising the power by the State Government. Under this Act, the power to issue direction can be exercised if it meet the following criteria:-

i) it is not inconsistent with the objective sought to be achieved by the Act;
ii) it does not adversely affect or interfere with the functions and powers of the ERC;
iii) ERC is consulted in relation to a proposed legislation or rule concerning policy direction and its views are duly taken into account;
iv) In the event of a difference whether a direction amounts to policy or not and referred to independent authority i.e. retired judge of Supreme Court appointed in the consultation with Chief Justice of India.

The Committee desire that such amendments may be considered by the Government in the Clauses referred to above.

13.54 The Committee of the view that powers granted to Union and State Governments to issue policy directives under Clauses 107 and 108 are sacro-sanct and should be sparingly used. The Committee desire that such policy directions should be laid on the Table of Parliament or State Legislative Assemblies, as the case may be, for such action deemed fit by the Legislatures.

CHAPTER XIV

A. Appellate Tribunal for Electricity

14.1 Part XI (Clause 110-125) of the Electricity Bill, 2001 deals with the establishment of Appellate Tribunal for Electricity. Clause 110 – 115 of the Bill are reproduced as under:-

"**Establishment of Appellate Tribunal**

110. The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Appellate Tribunal for Electricity to hear appeals against the orders of the adjudicating officer or the Appropriate Commission under this Act.

Appeal to Appellate Tribunal

111. (1) Any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity:

Provided that any person appealing against the order or the adjudicating officer levying and penalty shall, while filling the appeal , deposit the amount of such penalty:

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the adjudicating officer or the Appropriate Commission is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3). On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer or the Appropriate Commission, as the case may be.

(5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal:

Provided that where any appeal could not disposed off within the said period of one hundred and eighty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within the said period.

(6) The Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the adjudicating officer or the Appropriate Commission under this Act, as the case may be, in relation to any proceeding, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit.

Composition of Appellate Tribunal

112. (1) The Appellate Tribunal shall consist of a Chairperson and such number of Members not exceeding three, as the Central Government may deem fit.

(2) Subject to the provisions of this Act,-

(a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson of the Appellate Tribunal with two or more Members of the Appellate Tribunal as the Chairperson of the Appellate Tribunal may deem fit:

Provided that every Bench constituted under this clause shall include at least one Judicial Member and one Technical Member;

(c) the Benches of the Appellate Tribunal shall ordinarily sit at Delhi and such other places as the Central Government may, in consultation with the Chairperson of the Appellate Tribunal, notify;

(d) the Central Government shall notify the areas in relation to which each Bench of the Appellate Tribunal may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson of the Appellate Tribunal may transfer a Member of the Appellate Tribunal from one Bench to another Bench.

(i) "Judicial Member" means a Member of the Appellate Tribunal appointed as such under sub-clause (i) of clause (b) of sub-section (1) of section 113, and includes the Chairperson of the Appellate Tribunal;

(ii) "Technical Member" means a Member of the Appellate Tribunal appointed as such under sub-clause (ii) of sub-clause (iii) of clause (b) of section (1) of section 113.

Qualifications for appointment

113. (1) A person shall not be qualified for appointment as the Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal unless he-

(a) in the case of Chairperson of the Appellate Tribunal, is or has been, a judge of the Supreme Court or the Chief Justice of a High Court; and

(b) in the case of a Member of the Appellate Tribunal,-

(i) is or has been, or is qualified to be, a Judge of a High Court; or

(ii) is or has been, a Secretary for at least one year in the Ministry of Department of the Central Government dealing with economic affairs or matters or infrastructure; or

(iii) is or has been a person of ability and standing, having adequate knowledge and experience in dealing with the matters relating to energy production, supply and energy management, standardisation and efficient use of energy and its conservation or in the field of economics, commerce, law or management:

Provided that no appointment under Clause (a) of this section shall be made except after consultation with the Chief Justice of India.

(2) The Chairperson of the Appellate Tribunal shall be appointed by the Central Government after consultation with the Chief Justice of India.

(3) The Members of the Appellate Tribunal shall be appointed by the Central Government on the recommendation of the Selection Committee referred to in section 78.

(4) Before appointing any person for appointment as Chairperson or other Member of the Appellate Tribunal, the Central Government shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as such Chairperson or Member.

Term of Office

114. The Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall hold office as such for a term of three years from the date on which he enters upon his office:

Provided that such Chairperson or other Member shall be eligible for reappointment for a second term of three years:

Provided further that no Chairperson of the Appellate Tribunal or Member of the Appellate Tribunal shall hold office as such after he has attained,-

(a) in the case of the Chairperson of the Appellate Tribunal, the age of seventy years;

(b) in the case of any Member of the Appellate Tribunal, the age of sixty-five years.

Terms and Conditions of Service

115. The salary and allowances payable to, and the other terms and conditions of service of, the Chairperson of the Appellate Tribunal, Members of the Appellate Tribunal shall be such as may be prescribed by the Central Government :

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall be varied to his disadvantage after appointment."

14.2 The Committee have been informed by the Government that Part XI include all new provisions for establishment of Appellate Tribunal to reduce litigation in High Courts and consequent delay in decision making with adverse consequences for the development of the sector. This will also provide technical input in the decision making. Appeal against the order of the Adjudicating Officer and the Appropriate Commission lie before the Appellate Tribunal.

14.3 The Kerala State Electricity Board (KSEB) has commented on the above Clauses (110 to 115) as under:-

(a) **111(6)** only appeals should be provided against the orders of the Commission. Such wide powers of revision may impede the functioning of the Commissions.

(b) **Add 113(1)(b)(ii)** "has been a chairperson or member of the Central or State Commission" this is to make such persons eligible.

(c) **114**, the term should be five years and there should be no provision for reappointment.

14.4 Clause 112(1) of the Bill provides that the Appellate Tribunal shall consist of a Chairperson and such number of members, not exceeding three, as the Central Government may deem fit. On being asked, whether the restriction of members to a maximum of three is justified in the light of the fact that the Tribunal is to hear appeal from the entire country, Federation of Andhra Pradesh Chambers of Commerce and Industry (FAPCCI) responded in a note as under:-

"We feel that the restriction of members to a maximum of three is justified. Considering that before a matter needs to come before Appellate Tribunal there are State and Central Regulatory Commissions to adjudicate".

14.5 It has been submitted to the Committee that it may be necessary to withdraw a considerable part of the rule and regulation making power to some Central Authorities to ensure some modicum of uniformity. Even these centrally made basic rules and regulations must be in accordance with clear guidelines and boundaries specified in the enactment itself, either in the main provisions or in the schedules. If this enabled transparency is ensured, the Appellate Tribunal will not be faced with too many litigations.

14.6 According to Confederation of Indian Industry (CII), the words "Interim Orders' should be added in Clause 111(3) and 111(4) after the words 'order', & 'every order'.

14.7 It has been opined by an expert that the entire provision of separate Appellate Tribunal is not necessary and is quitefluous. The appeals against SERCs orders should lie with CERC, and against CERCs orders to Supreme Court. There should be no provision

for a second appeal, in view of the fact that the writ jurisdiction of the courts still subsists.

14.8 On Clause 111(6) – Rajasthan Electricity Regulatory Commission have suggested that the Appellate Tribunal should have the power of revision only on the final orders passed by the State Commissions.

14.9 On Clauses 110 to 125 regarding Appellate Tribunal for electricity, the Committee have been apprised that these Clauses have substituted jurisdiction of High Court u/s 27 of the Electricity Regulatory Commission Act, 1998 by providing Appellate Tribunal at New Delhi. This provision will be most inconvenient to a large number of small litigants spread all over India. It was therefore, suggested that jurisdiction of High Court should be restored.

14.10 The Utkal Chambers of Commerce and Industry (UCCI) and Federation of Indian Chambers of Commerce and Industry (FICCI) have made following suggestion on Appellate Tribunal:-

> "(i) in para 112(i) insert "the Appellate Tribunal shall consist of members not exceeding 5 instead of 3 so that two benches can be created with 3 members in each bench.
>
> (ii) in para 112(2)(c) insert "the benches of Appellate Tribunal shall sit in the region to which the dispute refers" in place of para 112(2)(c).
>
> (iii) Delete "matters or infrastructure" in para 113(1)(b)(ii). Delete "or in the field of economics commerce law or management" in para 113(1)(b)(iii)".

14.11 An expert has opined that under Clause 112(1) of the Bill, the number of members of the appellate tribunal is restricted to a maximum of 3 in addition to the chairperson. The tribunal is to hear appeals from the whole of India. Provision is also made for setting up the benches. Experience also shows that at any point of time there are definitely some vacancies due to various causes. Hence, it was suggested to the Committee that for the words 'not exceeding three' the words 'not less than three' be substituted.

14.12 According to an expert, Section 113 provides for the qualification for appointment of the chairpersons and members of the appellate tribunal. The qualifications of being a secretary for a mere period of one year in the central government or dealing with economic affairs and infrastructure matters is not sufficient or appropriate qualifications for an appellate tribunal of this nature. It has, therefore, been suggested that the section 113(1)(b)(ii) be deleted. If at all such a secretary is qualified and of such merit, he may be considered under section 113(1)(b)(iii).

14.13 In this regard, the Federation of Andhra Pradesh Chamber of Commerce & Industry(FAPCCI) has also suggested the following:

> "Section 114 – enables the reappointment of the Chairperson or member of an Appellate Tribunal for a second term of three years. It would be more appropriate for not permitting reappointment of members for a second term so that any selection committee will not have occasion to appraise the performance of a

member of the Tribunal or Commission. It would also lead to a unhealthy practice by convention that every member will automatically get reappointment. It may be better to increase the term of the original appointment itself rather than provide for any reappointment."

14.14 The Committee have also been suggested that Clause 113(3) states that the members of the Appellate Tribunal shall be appointed by the Central Government on the recommendation of the selection committee referred to in Clause 78. presumably, this will not hold good in respect of a person who is or has been a judge of the high court as selection of such a person will be made on the recommendation of the chief justice of India.

14.15 In this regard an individual expert has opined as under:-

"Clause 114 – enables the reappointment of the chairperson or member of an appellate tribunal for a second term of three years. Similarly, Clause 89 provides for reappointment or members of a commission. It is submitted that it would be more appropriate for not permitting reappointment of members for a second term. It may be seen that the appointment is made after selection by a selection committee and if a reappointment is to be considered, the performance of a member would come before the selection committee who may have to appraise the performance of a member of the tribunal or commission. This is not desirable. It would also lead to unhealthy practice by convention that every member will automatically get reappointment unless he is too old for the post. It may be better to increase the term of the original appointment itself rather than provide for any reappointment".

14.16 Regarding composition of the Appellate Tribunal, the Committee note that Clause 112(1) provides that the Tribunal shall consist of a Chairperson and such number of members, not exceeding three, as the Central Government may deem fit. Although different organisations/Government bodies have responded that the restriction of member to the maximum of three is justified as there are State and Central Regulatory Commissions to adjudicate before a matter needs to come before Appellate Tribunal, others like Federation of Indian Chambers of Commerce and Industry and Utkal Chambers of Commerce and Industry have opined that the Appellate Tribunal shall consist of members not exceeding 5 instead of 3 so that two benches can be created with 3 members in each bench. In view of the divergent views received regarding composition of the Tribunal, the Committee desire that Clause 112 (1) be suitably amended by having at least 3 members in addition to the Chairperson so as to enable it to hear appeals from whole of the country and setting up of benches.

B. <u>Procedure and Powers of Appellate Tribunal</u>

14.17 Clauses 120–122 of the Electricity Bill, 2001 deals with the procedure and powers of the Appellate Tribunal, Chairperson and distribution of business. These new provisions in the Bill are enumerated as below:-

"120. (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice

and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.

(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matter, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;
(b) requiring the discovery and production of documents;
(c) receiving evidence on affidavits;
(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;
(e) issuing commissions for the examination of witnesses or documents;
(f) reviewing its decisions;
(g) dismissing a representation of default or deciding it *ex parte*;
(h) setting aside any order of dismissal or any representation for default or any order passed by it *ex parte*;
(i) any other matter which may be prescribed by the Central Government.

(3) An order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(4) Notwithstanding anything contained in sub-section (3), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 345 and 346 of the Code of Criminal Procedure, 1973 .

Power of Chairperson of Appellate Tribunal

121. The Chairperson of the Appellate Tribunal shall exercise general power of super-intendance and control over the Appropriate Commission.

Distribution of business amongst Benches and transfer of cases from one Bench to another Bench.

122.(1) Where Benches are constituted, the Chairperson of the Appellate Tribunal may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench."

(2) On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson of the Appellate Tribunal may transfer any case pending before one Bench, for disposal, to any other Bench.

14.18 On Clause 121, Rajasthan Electricity Regulatory Commission has suggested that appellate tribunal should not have general powers of super-intendance and control over the appropriate commission as in judicial matters such subordination is directly there. Giving general powers of superintendence will undermine the authority and independence of appropriate commissions.

14.19 In this regard, Utkal Chambers of Commerce and Industry (UCCI) & Federation of Indian Chambers of Commerce and Industry (FICCI) have suggested the following:-

> "Clause 121 to be deleted as no bench can be constituted with only 2 members as per para 112(2)(b)".

14.20 The State Government of Kerala have commented on Clause 121 as under:-

> "Clause 121 should be deleted. Such wide powers of superintendence and control may not extend to non-judicial functions of the Commission. The Commissions are not subordinate bodies. Subordination is limited to Commission's judicial functioning for which appeals of the orders of the Commission have been provided'

14.21 According to one view, Clause 121 of the Bill which provides that the chairman of the tribunal would exercise general superintendence and control over the commission, clearly brings the 'independent regulator' into a subordinate position. The provision is retrograde and undermines the position of the commission and should be deleted.

14.22 **The Committee observe that under Clause 121, the Chairperson of the Appellate Tribunal has been given general power of superintendence and control over the Appropriate Commission and may from time to time constitute benches by notification and distribute business amongst the benches. Suggestions have been made to the Committee by the Rajasthan Electricity Commission and the State Government of Kerala that Clause 121 should be deleted as it empowers superintendence not only over judicial functions of the Commission but also the non-judicial functions of the Commissions. The Committee also feel that the provision infringes the independence of the Regulatory Commissions and bring them to a subordinate position. The Committee, therefore, urge the Government that Clause 121 of the Electricity Bill, 2001 may be deleted so far as it extends to superintendence over non-judicial functions of the Commissions.**

CHAPTER-XV

Assessment and appeal to Adjudicating Officer

Clauses 126 and 127 contain provisions relating to assessment and appeal to Adjudicating Officer. These are new Clauses without any corresponding provisions in the previous Acts of 1910, 1948 and 1998. Clause 126 provides for on the spot assessment of electricity charges for unauthorised use of electricity. The objective is to provide for quick disposal of such cases of theft and focus on revenue recovery from cases involving unauthorised use of power.

15.2 Clause 126 of the Bill is reproduced below: -

(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom a notice has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who may, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

Provided that in case the person deposits the assessed amount, he shall not be subjected to any further liability or any action by any authority whatsoever.

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, it shall be presumed that such unauthorised use of electricity was continuing for a period of three months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services, unless the onus is rebutted by the person, occupier or possessor of such premises or place.

(6) The assessment under this section shall be made at a rate equal to one-and-half times the tariff applicable for the relevant category of services specified in sub-section (5).

Explanation: - For the purposes of this section "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated by the State Government.

15.3 According to the Surya Foundation, the M.P. Electricity Consumer's Society, Rajasthan Chamber of Commerce & Industry, Indian Chamber of Commerce, Culcutta and the Federation of Indian Chamber of Commerce and Industry (FICCI), Clause 126(1) is a totally avoidable provision, if two part tariffs as mentioned in section 45(3) are introduced and if maximum demand meter is installed. The need for inspection of premises will thus not be necessary. It is necessary that cases of misuse of energy mentioned in the Clause are well defined. In the present context, metering for every type of assessment is available and therefore, the inspection of premises is uncalled for. The only entry to the licensee shall be available to meter rooms, metering equipments and the production records. In respect of Clause 126 and Clause 127, besides the officers of licensees, there should be independent members of the public who should carry out assessment. Similarly, appeal Committee shall also include members of public.

15.4 The Kalinga Power Corporation has viewed that Clause 126 should be made more stringent. The Assessing Officer should have powers to reopen the case from the beginning by comparing the real consumption after the unauthorised use was detected with those of past three years.

15.5 On the other hand, the Haryana Chambers of Commerce & Industry has stated that there is no logic in assuming that unauthorised use of electricity had been going on for the last 3/6 months prior to being detected. The reading is taken every month and in cases of HT connection (above 70 KW), the S.D.O. takes monthly reading. So, instead of 3/6 months, it should be for that month only when it was detected.

15.6 The Haryana Power Utilities have stated that Clause 126 (6) provides for assessment of unauthorised use of electricity and makes the recovery of penalty quite cumbersome. It also limits the penalty charges at 150% of the normal tariff. In fact, there should not be any such restriction under the Act and it should be left to the State Commission to allow the licensee for charging penal rates.

15.7 The Kerala State Electricity Board has stated that for unauthorised use of electricity, higher rate of assessment conditions are necessary. It has suggested that the assessment under this section shall be made at a rate equal to three times the tariff rates applicable for the relevant category of services specified in Sub Section (5)

15.8 The Federation of Andhra Pradesh Chamber of Commerce and Industry has viewed that the penal rate of one and half times for assessment will result in unjust enrichment of the licensee. The licensee can foist any number of cases because it is profitable for him to do so. The licensee must be allowed to recover for his own use only such amount as would represent the loss to him. The amount of penalty, if any, must go to the State.

15.9 Commenting on the above suggestions of FAPCCI, the Ministry of Power, in a post-evidence reply, stated that the penal provision has been made stringent so that penalty acts as deterrent. The theft of power is a serious menace and needs to be curbed, if the power sector has to regain commercial viability.

15.10 CESC Limited has stated that under Clause 126 authority for immediate disconnection should be conferred on the Assessing Officer.

15.11 Similarly, the Confederation of Indian Industry (CII) has also advocated for authority for immediate disconnection of electricity by the Assessing Officer under Clause 126.

15.12 Amplifying further, a representative of the CII during oral evidence before the Committee stated as under:-

> "We have District Magistrates to deal with law and order problems. If there is any law and order problem, it is the District Magistrate who has the power to call the Army or the Police. In the same way, in the handling of the power situation where we have talked about the Assessing Officer, we have to give him authority; we have to back him up with authority. Otherwise, we will not be able to solve the problems with which we are living."

15.13 The India Energy Forum has proposed that the supply of a consumer who has been found to interfere with meters/dishonestly abstracts electricity **vide** Clauses 138 and 135 by the Assessing Officer, should be disconnected without notice. Reconnection is to be effected only after payment of the assessed amount.

15.14 When asked as to whether the Assessing Officer should have the power to disconnect the supply of electricity in case he comes to the conclusion that a person has indulged in unauthorised use of electricity, the Government of Gujarat replied that the present Clause was in order.

15.15 To the same query, the Indian Merchants' Chamber and Maharashtra Economic Development Council replied that there should be a procedure laid down for the assessing authority to act before taking the steps like disconnection; otherwise, officers would tend to be coercive and exploit the consumer.

15.16 In this connection, the Government of Himachal Pradesh has stated that the Assessing Officer should have the power to disconnect the supply of electricity if he comes to the conclusion that a person was indulging in unauthorised use of power.

15.17 The Government of Goa has also stated that the Assessing Officer should have the power to disconnect the supply of electricity if he comes to the conclusion that a person was indulging in unauthorised use of power.

15.18 The Central Electricity Authority (CEA) has stated that proper procedure must be laid down by regulator/CEA for installation, testing, commissioning of meter and dealing with the unauthorised use of power and the Bill need not cover such stipulation of disconnection. The Assessing Officer need not be given power to disconnect the supply of power.

15.19 The Federation of Indian Chambers of Commerce and Industry (FICCI) has suggested that the assessing officer should have the authority to order immediate disconnection of supply of electricity if he comes to the conclusion that unauthorised use of electricity has taken place.

15.20 When asked as to whether the provision of Assessing Officer would lead to Inspector Raj, CII, in a written reply, stated that the provision of Assessing Officer will lead to greater discipline amongst the consumers. Today, the electricity sector across the

country is losing Rs. 30,000 crore annual revenue due to theft and pilferage of electricity. If this theft is plugged, the revenue generated can be utilised to create a better electrical infrastructure. Consumer knows that he can steal electricity and still get away with the offence due to loopholes in the present legislative framework. CII has suggested that the Assessing Officer should be given powers equivalent to district magistrate.

15.21 The All Bengal Electricity Consumers' Association, Kolkata has suggested to add 'appointed by Commission or Chief Electrical Inspector' after 'If the assessing officer' in line 1 of Clause 126 (5).

15.22 When asked as to whether the Government should have an option to appoint any officer of the Government as Assessing Officer, the Indian Merchants' Chamber and Maharashtra Economic Development Council replied that as far as possible the appointment of officers by the Government for this post should be avoided.

15.23 The Rajasthan Chambers of Commerce and Industry has suggested that only officers of the Board or licensee should be designated as assessing officer. The similar view has also been expressed by the Federation of Indian Chamber of Commerce and Industry ((FICCI) and the Indian Chamber of Commerce, Culcutta.

15.24 Clause 127 provides for appeal against of the order of the assessing officer. Clause 127 is reproduced below: -

(1) Any person aggrieved by a final order made under section 126 may, within thirty days of the said order, prefer an appeal, in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission to an adjudicating officer appointed under sub-section (1) of section 143.

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to one-third of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The adjudicating officer shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the adjudicating officer passed under sub-section (3) shall be final.

(5) No appeal shall lie to the adjudicating officer against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment an amount of interest at the rate of sixteen per cent per annum compounded every six months.

15.25 The Electrical Inspectorate Engineers' Association, Thiruvananthapuram has stated that the adjudicating officer (Clause 143) is a member of the Regulatory

Commission who has to carry out many other functions under the Bill. It is not practically feasible for a poor consumer in remote places of a State to come to the State capital to get his grievances redressed. The appeals against decisions of the adjudicating officer lie with the Appellate Tribunal situated at New Delhi, or some other far away place (a Bench of the Tribunal). Appeal against decision of Appellate Tribunal lies only with the Supreme Court.

15.26 The Forum of Indian Regulators has suggested that under Clause 127 (1), a person aggrieved by the final orders of the Assessing Officer should prefer an appeal to an Appellate Officer instead of the Adjudicating Officer. It has also stated that the volume of work of Assessing Officers would be large and appeal from their order cannot be handled by a member of the Commission. First appeal should lie to an appellate authority to be created separately and second appeal may come to the Commission.

15.27 The CESC Limited has also suggested that instead of the Adjudicating Officer, the Appellate Authority should be the 1st tier Reviewing Officer and the Adjudicating Officer should be the 2nd tier Reviewing Officer. Thus, the views expressed by CESC Limited are similar to those of the Forum of Indian Regulators.

15.28 Similar view has also been expressed by the Rajasthan Electricity Regulatory Commission which has stated that the volume of work of Assessing Officers would be large and appeal from their order cannot be handled by a member of the Commission. First appeal should lie to an Appellate Authority to be created separately and second appeal may come to the Commission.

15.29 The CESC Limited has also stated that the deposit for appeal should be enhanced from one-third to 50 per cent of assessed amount.

15.30 The Confederation of Indian Industry (CII) has also viewed similarly, advocating for enhancement of the deposit amount to 50 per cent of the assessed amount.

15.31 The All Bengal Electricity Consumers' Association, Kolkata has suggested for deletion of 'such fees as may be specified by the State Commission' in line 3 of Clause 127 (1). It has also suggested that instead of one-third, one-fourth of the assessed amount should be deposited under Clause 127 (2). It has further suggested that this amount should be deposited with the Commission rather than the licensee. As regards Clause 127 (5), this Association has suggested that Appeal should lie with the District Judges Court or High Court. It has also suggested that instead of 16 per cent, interest at the bank rate should be charged under Clause 127 (6).

15.32 The CESC Limited has stated that the penal interest rate under Clause 127 (6) should be increased from 16 per cent to 24 per cent per annum.

15.33 The Federation of Andhra Pradesh Chamber of Commerce and Industry has stated that the Clause 127(1) and (2) – requires a pre-deposit as a condition precedent to entertaining an appeal. In the interest of expeditious disposal of appeals, and as the procedure is an in-house one, the collection of the assessed amounts should ordinarily be deferred till the disposal of the appeal, subject only to consideration of security where found necessary.

15.34 As regards the pre-deposit stipulated under Clause 127 (2), the Haryana Chamber of Commerce & Industry has suggested that instead of one-third amount should not be more than 10%.

15.35 BSES has suggested that instead of one-third, 50 per cent of the assessed amount should be deposited with the licensee.

15.36 According to the Arimpur Power Services, the words ‘in 60 days’ shall be added after the word ‘appellant’ in Clause 127 (3).

15.37 The Committee have examined the provisions of Clauses 126 and 127 of the Bill and the views expressed thereon by various organisations. Clause 126 deals with the powers of the Assessing Officer to inspect any place / premises or equipments / gadgets and inspection of production records to find out unauthorised use of electricity. The Committee feel that there is a need to provide safeguards to check the misuse of these powers by unscrupulous elements. It should be provided in this Clause that the assessment order made by the Assessing Officer should clearly specify the reasons on which he has based his conclusion. Secondly, the Assessing Officer should be authorised to carry out the inspection only during routine office / working hours. The term ‘unauthorised use’ needs to be clarified in the Bill itself. The Committee feel that there may be cases where domestic consumers may be using more than the sanctioned load by way of use of additional home appliances, etc. over a period of time. But nevertheless, the electricity consumed is duly metered and paid for. In such cases, it should not be taken as an unauthorised use. The licensee can replace the meter with the higher load factor for which the consumer should pay. Clause 127 provides for appeal against the order of Assessing Officer to an Adjudicating Officer appointed under Clause 143 who is a member of the Regulatory Commission. It has been pointed out by the Electrical Inspectorate Engineers’ Association that it is not practically feasible for a poor consumer in remote places of a State to come to the State Capital to get his grievances redressed. The Committee, therefore, recommend that provisions should be made in the Bill that the Adjudicating Officer for the purpose of this Clause should be some Tehsil / District level officer who can be easily approached by the consumers. The Committee further desire that a fixed time frame may be drawn for the disposal of cases at the level of Adjudicating Officer and that the appropriate Government/Commission be empowered to appoint special and additional Adjudicating Officers for adjudicating the various cases. The Committee, therefore, desire that the provisions of Clauses 126, 127 and 143 be amended suitably.

CHAPTER-XVI

Reorganisation of SEBs

Clauses 131 to 134 of the Bill relate to reorganisation of the State Electricity Boards. These are new provisions incorporated in the Bill which do not have any corresponding provisions in the Acts of 1910, 1948 and 1998. Clause 167 of the Bill relates to transitional provisions in the wake of unbundling of Boards. This is also a new provision without any corresponding provision in the Acts of 1910, 1948 and 1999.

16.2 Clause 131 of the Electricity Bill, 2001 is an enabling provision for reorganisation of the State Electricity Boards and matters connected therewith. This Clause provides, *inter-alia,* for a transfer scheme to give effect to the Board. Clause 131 is reproduced below: -

131. (1) With effect from the date on which a transfer scheme, prepared by the State Government to give effect to the objects and purposes of this Act, is published or such further date as may be stipulated by the State Government (hereafter in this Part referred to as the effective date), any property, interest in property, rights and liabilities which immediately before the effective date belonged to the State Electricity Board (hereinafter referred to as the Board) shall vest in the State Government on such terms as may be agreed between the State Government and the Board.

(2) Any property, interest in property, rights and liabilities vested in the State Government under sub-section (1) shall be re-vested by the State Government in a Government company or in a company or companies, in accordance with the transfer scheme so published along with such other property, interest in property, rights and liabilities of the State Government as may be stipulated in such scheme, on such terms and conditions as may be agreed between the State Government and such company or companies being State Transmission Utility or generating company or transmission licensee or distribution licensee, as the case may be :

Provided that the transfer value of any assets transferred hereunder shall be determined, as far as may be, based on the revenue potential of such assets at such terms and conditions as may be agreed between the State Government and the State Transmission Utility or generating company or transmission licensee or distribution licensee, as the case may be.

(3) Notwithstanding anything contained in this section, where,-

(a) the transfer scheme involves the transfer of any property or rights to any person or undertaking not wholly owned by the State Government, the scheme shall give effect to the transfer only for fair value to be paid by the transferee to the State Government;

(b) a transaction of any description is effected in pursuance of a transfer scheme, it shall be binding on all persons including third parties and even if such persons or third parties have not consented to it.

(4) The State Government may, after consulting the Government company or company or companies being State Transmission Utility or generating company or transmission licensee or distribution licensee, referred to in sub-section (2) (hereinafter

referred to as the transferor), require such transferor to draw up a transfer scheme to vest in a transferee being any other generating company or transmission licensee or distribution licensee, the property, interest in property, rights and liabilities which have been vested in the transferor under this section, and publish such scheme as statutory transfer scheme under this Act.

(5) A transfer scheme under this section may-

(a) provide for the formation of subsidiaries, joint venture companies or other schemes of division, amalgamation, merger, reconstruction or arrangements which shall promote the profitability and viability of the resulting entity, ensure economic efficiency, encourage competition and protect consumer interests;

(b) define the property, interest in property, rights and liabilities to be allocated -

(i) by specifying or describing the property, rights and liabilities in question; or

(ii) by referring to all the property, interest in property, rights and liabilities comprised in a described part of the transferor's undertaking; or

(iii) partly in one way and partly in the other;

(c) provide that any rights or liabilities stipulated or described in the scheme shall be enforceable by or against the transferor or the transferee;

(d) impose on the transferor an obligation to enter into such written agreements with or execute such other instruments in favour of any other subsequent transferee as may be stipulated in the scheme;

(e) mention the functions and duties of the transferee

(f) make such supplemental, incidental and consequential provisions as the transferor considers appropriate including provision stipulating the order as taking effect; and

(g) provide that the transfer shall be provisional for a stipulated period.

(6) All debts and obligations incurred, all contracts entered into and all matters and things engaged to be done by the Board, with the Board or for the Board, or the State Transmission Utility or generating company or transmission licensee or distribution licensee, before a transfer scheme becomes effective shall, to the extent specified in the relevant transfer scheme, be deemed to have been incurred, entered into or done by the Board, with the Board or for the State Government or the transferee and all suits or other legal proceedings instituted by or against the Board or transferor, as the case may be, may be continued or instituted by or against the State Government or concerned transferee, as the case may be.

(7) The Board shall cease to be charged with and shall not perform the functions and duties with regard to transfers made on and after the effective date.

Explanation.- For the purpose of this Part, -

(a) "Government company" means a Government Company formed and registered under the Companies Act, 1956;

(b) "company" means a company to be formed and registered under the Companies Act, 1956 to undertake generation or transmission or distribution in accordance with the scheme under this Part.

16.3 The National Working Group on Power Sector has stated that for almost a decade now all the SEBs have been making losses. The all India average Rate of Return (RoR) on Capital in 2000-01 was (-) 35.06%. In Andhra Pradesh, as a consequences of reforms, the Rate of Return on Capital has been reduced from (-) 58.16% in 1998-99 to (-) 167.04% in 2000-01. It is worthwhile to note that prior to 1992 the APSEB was either breaking even or having a positive return on capital. It could certainly be argued that the revenue potential of assets is negative and therefore, the assets shall be sold for a song.

16.4 The Government of Punjab has stated that electricity being a fundamental infrastructure for state economy every State should have full option (as at present) whether to retain the Board as a vertically integrated utility or to unbundle the Board into different companies.

16.5 According to the Surya Foundation, the Rajasthan Chamber of Commerce & Industry, the Confederation of Indian Industry, Jharkhand, the Confederation of Indian Industry, the Indian Chamber of Commerce and FICCI, a time frame needs to be specified for reorganisation of SEBs.

16.6 The Jagaran Manch has stated that the sale process should be transparent and subject to public scrutiny. The valuation by the Comptroller and Auditor General (CAG) should also be obtained and published.

16.7 The Indian Chamber of Commerce has suggested reorganisation of SEBs may be undertaken to address structural/administrative issues but it will not address the main problem affecting the utilities in India, that of pilferage of electricity. To induct competition, we need to remove the distortions in the market introduced by theft of electricity and then extend the process to embrace competition for the generators and in retail.

16.8 The Southern India Chamber of Commerce and Industry has stated that transfer value that yields revenue potential should be the criteria for transferring of assets of SEB to third parties.

16.9 The Thane Belapur Industries Association have stated that assets of SEB should be transferred at book value/prevailing market price.

16.10 The Rajasthan Chamber of Commerce and Industry has stated that “revenue potential” should be replaced by “book value”.

16.11 The CESC Limited has stated that transfer value of assets (from Government to licensee) based on revenue potential is subjective and adds to revenue requirements. It has suggested that the transfer value basis should be changed to “book value”.

16.12 The Reliance Power Limited has viewed that the fair value or the one based on revenue potential would definitely be more than the book value of the assets. This would lead to increased costs for the transferee, which in turn would be recovered by him through increase in retail supply tariff. This may give rise to anti-privatisation feeling in the public at large thereby jeopardising its success. To obviate this, the assets should be transferred at the depreciated book value and bidding criteria based on efficiency improvement and loss reduction.

16.13 The Tata Power Company Ltd. has suggested that "Revenue potential" needs to be replaced by "book value". There is no provision at all to improve the financial viability of the Boards. To be effective, the proposed reforms should be completed within a specified period, which should ordinarily not exceed one year.

16.14 The Trivandrum Chamber of Commerce has stated that prevailing market rate should be the criteria for transferring such assets.

16.15 The Utkal Chamber of Commerce and Industry has suggested that to determine transfer value, the depreciated book value of the original cost of assets plus capital investments made shall be taken into consideration.

16.16 The BSES Ltd. has suggested that vesting of property of SEB should be according to book value instead of revenue potential.

16.17 The Tamil Nadu Electricity Board has stated that the book value cannot be taken in respect of assets like land where the market value will be much higher when compared to the book value. Whereas, certain assets like lines, cables and networks are to be valued on some reasonable basis by registered valuers. Hence, book value/market value should also be taken into account while transferring of such assets.

16.18 The Federation of Indian Chambers of Commerce and Industry has suggested that when assets are transferred from the Board to the State, it should be done on the revenue potential of such assets. In case of transfer of assets to a company other than wholly owned government owned company, it should be at the fair value.

16.19 In this connection, the Indian Chamber of Commerce and FICCI have suggested that "revenue potential" should be replaced by "book value".

16.20 The Institution of Engineers (India), Delhi State Centre has stated that proposed transfer value of assets of SEBs based on the revenue potential of such assets can be harmful to SEBs. It can mean assets being sold/transferred at throw away prices as most of the Boards have been running in loss and do not have any revenue potential. This must be replaced by the book value of assets.

16.21 The Confederation of Indian Industry (CII) has stated that the Bill provides that the transfer of assets shall take place at a transfer value based on the revenue potential or at the fair value. The fair value or one based on revenue potential would definitely be more than the book value of the assets. This would lead to increased costs for the

transferee, which in turn would be recovered by him through the tariff. This may lead to an increase in tariffs, thereby jeopardizing the success of the privatisation process. It has suggested that asset valuation of SEB should be alone on the combined basis of depreciated value and the revenue potential. An independent evaluation should do the assessment of revenue potential.

16.22 The Government of Rajasthan has opined that re-vesting of the rights and liabilities of SEBs in company should be on terms and conditions as may be mutually agreed to.

16.23 The Government of Himachal Pradesh has stated that the revenue potential can be worked out by taking into account the possible increase in tariff and the improvements over the years and need not be based on the present scenario alone. Moreover, the transfer value should not be less than the market value for the assets to be transferred.

16.24 The Government of Gujarat has stated that in any arrangement of transfer, whether to a public or a private organisation, the principle of equitable treatment is important. In case of transfer, the fair market value should be the criterion. The tariff can be levelised to take care of any increase due to fair market value concept and in case of transfer from one Government company to another, this value can be equity of the new company to tie up with minimum financial requirement.

16.25 The Government of Madhya Pradesh has stated that there is a need to recognise that there is a transition period during which SEBs/Successor companies can turn around and get out of their present financial crisis. The power sector reforms aimed at improving efficiency, financial viability and customer service will take time. Therefore, there is a need to incorporate provisions in the proposed Bill for providing State Governments with powers and flexibility to frame rules to deal with the problems during the transition. Such rules should be binding on all including the Regulatory Commission. This provision can be for a prescribed time after which regulatory matters may be left to the Commission.

16.26 The Government of Uttar Pradesh has stated that the transfer value would need to be determined on a case to case basis taking cognizance of the factors like the revenue potential of the assets, their depreciated value, fair value, impact on tariffs, etc. As such, this should be left to the discretion of the respective State Governments.

16.27 The Government of Nagaland has stated that simply because the SEB/ED is running under loss, does not mean that there is no revenue potential. Its just that the potential is not being realised. Hence, the assets of the SEB/ED should be sold/transferred at actual value.

16.28 The Government of Chhattisgarh has suggested that valuation of assets should be done on the market value of the assets rather than depreciated book value. Also revenue potential should also make a basis. It would not be proper to consider depreciated book value for the transfer of the assets. The Government of Chhattisgarh has also stated that revenue potential may be worked out on the basis of a tariff which should not be less than the cost of supply at a particular voltage. The Government of Chhattisgarh has added that the book value cannot be considered as a transfer value of the assets. Most of the assets which SEB is operating have become 30 to 40 years old and therefore, their book value has become zero, except the irreducible minimum, whereas the fact remains that SEBs are still able to generate revenue through these assets. Further, there are many assets such

as copper conductor where the value has appreciated many times over its book value or market value. It is, therefore, suggested that revenue-earning potential together with market price of the fixed assets may form the transfer value or assets.

16.29 The Government of Madhya Pradesh has opined that the method and manner of valuation of the assets should be left to be decided by the State Government and it is not necessary to bind the State Government to adopt any particular method. It may not be appropriate even to provide that such valuation shall be decided on revenue potential assets. These are details to be worked out by the State Government and to be incorporated in the transfer scheme. The Act can provide that the State Government may value the assets in such manner as the State Government considers appropriate and incorporate the same in the transfer scheme. The Government of Madhya Pradesh has also stated that in that State, the SEB is running in cash deficit. As the MPSEB will not be able to achieve a break-even position in the next 10 years under such circumstances, transfer of assets on business value will not be a viable option for the State. Perhaps, asset transfer on depreciated market value/fair value could be thought of.

16.30 CEA has expressed the view that majority of the SEBs are operating for two decades or more and their assets have depreciated considerably. As such, if an SEB is making losses and the book value of assets is negative, it is only rational that the revenue earning potential should be the basis for valuation and transfer of assets between the State Government and the State Transmission Utility or generating company or transmission licensee or distribution licensee, as the case may be, provided in Clause 131 (2) of the Electricity Bill, 2001. As regards the transfer of assets to any other person or undertaking not wholly owned by the State Government, the Bill, under Clause 131 (3) (a), provides that such transfers will be on fair value to be paid by the transferee (to the State Government), which is quite logical.

16.31 During oral evidence a representative of the Ministry of Power deposed before the Committee as under: -

> " There are enabling provisions in the Bill for a statutory transfer scheme or schemes, through which one or more companies can be created from the State Electricity Boards. So, the Electricity Boards and the State Governments could utilise these provisions for restructuring the State Electricity Boards into one or more companies, if they wish to do so. If a State Government wishes to continue with the State Electricity Boards, it could also do so. There is flexibility, but in terms of the legal framework. The State Electricity Board would be the State Transmission Utility and the distribution licensee in the area of the State. The States have been given full flexibility in adopting reform model/path that they consider proper. Unbundling of the Electricity Boards is not mandatory. The States have a choice to do so or not to do so. These provisions have fully taken care of the concerns that have been expressed."

16.32 The National Thermal Power Corporation (NTPC) and India Energy Forum have suggested that instead of revenue earning potential, book value should be the basis of valuation. Assessment of revenue earning potential could be subjective. Book value, however, is a reliable criteria and has been historically used for such purposes. In order to avoid any possibility of the Appropriate Commission taking a different view with respect

to the value of assets to be considered for tariff fixation, NTPC has suggested that the following may also be added in the Proviso to Clause 131(2).

> "the Appropriate Commission shall be guided by the value of assets determined under Clause 131 (2) for the purpose of tariff determination"

16.33 The Kerala State Electricity Board has suggested that revesting of the State Electricity Board rights and liabilities under Clause 131 (2) should be done on "lease hold' basis. It has also suggested that if transfer scheme under Clause 131 (2) is approved, determination of assets value should be based on investment cost and revenue potential.

16.34 When asked as to whether the re-vesting of the assets and liabilities of SEBs in companies should be on 'lease hold' basis, CEA, in a written reply, have stated that since this Clause provides for a transfer scheme on such terms and conditions as may be agreed between the State Government and the Company, there is flexibility in the matter.

16.35 In this connection, the Indian Merchants' Chamber and Maharashtra Economic Development Council have suggested that the Central Electricity Regulatory Commission (CERC) should provide some guidelines for uniformity.

16.36 To a similar query, the Government of Chhattisgarh has replied that transfer of assets and liabilities of SEBs to the companies on 'lease hold' basis may not prove adaptive enough to invite the investors in competitive spirit. Similarly, they may not provide good services to the consumers. At the same time, they may like to earn the maximum profit on a short term basis. Moreover, they may not take the liability of the retiring employees. Therefore, transfer of assets and liabilities should be on permanent basis.

16.37 The Government of Uttar Pradesh has viewed that limiting the unbundling model for SEBs to that on "leasehold basis' only would limit the restructuring options. Such options should be considered on a case-to-case basis and as such should be left to the discretion of the respective State Governments.

16.38 In this connection, the Government of Madhya Pradesh has stated that the State Government should be permitted to determine the terms and conditions of the re-vesting. It is not correct to provide things such as leasehold basis only. There should be sufficient flexibility to the State Government in the re-organisation of the Electricity Board.

16.39 The Ministry of Power, in a post-evidence reply, stated that as far as the suggestion that the transfer of the company should be only on leasehold basis is concerned, it is pointed out that the manner/value of transfer will be dependent on the assessment of the investor. Given the present condition of the network, it can be safely concluded that in most cases there will be no taker if the companies are transferred on leasehold basis.

16.40 Clause 132 of the Bill is a new provision introduced in this Bill. This Clause provides for the manner of utilization of proceeds of sale, in the event of the Board or any utility owned or controlled by the Appropriate Government is sold or transferred to a person who is not owned or controlled by the Appropriate Government. It also provides that proceeds will be utilised in payment of dues to employees and payment of loans of existing utility.

16.41 Clause 132 of the Bill is as under: -

132. In the event that a Board or any utility owned or controlled by the Appropriate Government is sold or transferred in any manner to a person who is not owned or controlled by the Appropriate Government, the proceeds from such sale or transfer shall be utilised in priority to all other dues in the following order, namely :-

(a) dues (including retirement benefits due) to the officers and employees of such Board or utility, who have been affected by the aforesaid sale or transfer;

(b) payment of debt or other liabilities of the transferor as may be required by the existing loan covenants.

16.42 The UCCI and FICCI have suggested another sub-clause to Clause 132 as under:-

"(c) in case the proceeds of sale or transfer are inadequate to meet the liabilities mentioned in Clause 132 (a) & (b), the same shall be recovered from the original licensee by legal means.

16.43 The Southern India Chamber of Commerce and Industry has suggested that a sub-Clause (c) may be added to Clause 132 as under:-

> "In the event to transfer of Board's assets to a person, who is not owned or controlled by the Appropriate Government, such person shall show only the book value of assets in his books of accounts, which shall form the basis of determination of tariff, in case he continues the license of transmission, distribution or supply and trading of electricity."

16.44 Reliance Power Ltd. has stated that Clause 132 does not envisage the shortfall in meeting liabilities, if any.

16.45 The Indian Chamber of Commerce, Calcutta and FICCI have also stated that provision should be made in meeting any shortfall after the sale to settle the dues to employees or for servicing of debt.

16.46 The Rajasthan Chamber of Commerce and Industry has suggested that provisions should be made to meet any shortfall after the sale to settle the dues of employees or for liquidating the debt.

16.47 Similarly, the Confederation of Indian Industry (CII) has also stated that the Clause does not envisaged the shortfall in meeting the liabilities, if any.

16.48 Clause 133 of the Bill is a new provision introduced in this Bill. This Clause seeks to guarantee protection of service conditions of officers and employees of the SEB consequent upon its reorganisation.

16.49 Clause 133 of the Bill is reproduced below: -

133. (1) The State Government may, by a transfer scheme, provide for the transfer of the officers and employees to the transferee on the vesting of properties, rights and liabilities in such transferee as provided under section 131.

(2) Upon such transfer under the transfer scheme, the personnel shall hold office or service under the transferee on such terms and conditions as may be determined in accordance with the transfer scheme:

Provided that such terms and conditions on the transfer shall not in any way be less favourable than those which would have been applicable to them if there had been no such transfer under the transfer scheme:

Provided further that the transfer can be provisional for a stipulated period. *Explanation:* - For the purposes of this section and the transfer scheme, the expression "officers and employees" shall mean all officers and employees who on the date specified in the scheme are the officers and employees of the Board or transferor, as the case may be.

16.50 The Haryana Power Utilities have viewed that provisional transfer stipulated under Clause 133 (2) can create complications and preferably it should be left to the individual State Government/Transfer Scheme.

16.51 The Kerala State Electricity Board has suggested that under Clause 133, the transfer protective conditions should be made applicable to all the retired officers and employees as on the date of transfer, not just the serving officers and employees.

16.52 When asked as to whether the retired officers and employees as on the date of transfer should be included in the expression "officers and employees", the Government of Gujarat stated that the present Clause is in order.

16.53 The Government of Goa has stated that the retired officers and ex-employees should not be included in the expression "officers and employees".

16.54 In this connection, the Indian Merchants' Chamber and Maharashtra Economic Development Council have stated that there is no need to include retired and to be retired employees in the expression "officers and employees" as the same would crowd the transfer list.

16.55 When asked as to whether retired officers and employees as on the date of transfer should be included in the expression 'officers and employees', the Ministry of Power, in a post-evidence reply, stated that this is implicit.

16.56 The Government of Manipur has stated that the officers and employees of the Electricity Departments enjoy attractive service conditions as Government employees. When the State Government prepares a transfer scheme for the reorganisation of the Department in a Corporate form, all the service conditions provided to a Government Department are to be provided by the Government company. A suitable Section in this regard is required to be inserted.

16.57 Clause 134 of the Bill is a new provision introduced in this Bill. This Clause provides that the officers and employees of the Board consequent on its re-organisation, shall not be entitled to compensation or damages under this Act or any other Central or State law save as provided under Transfer Scheme.

16.58 Clause 134 of the Bill is reproduced below:-

134. Notwithstanding anything contained in the Industrial Disputes Act, 1947 or any other law for the time being in force and except for the provisions made in this Act, the transfer of the employment of the officers and employees referred to in sub-section (1) of section 133 shall not entitle such officers and employees to any compensation or damages under this Act, or any other Central or State law, save as provided in the transfer scheme.

16.59 According to Assistant Engineers' Association, Hyderabad the Statement of Objects and Reasons under Clause 4 (xi) states that the service conditions of the employees would as a result of restructuring not be inferior. But restructuring in states like A.P., Orissa, U.P., etc. have resulted in inferior service conditions i.e., non-settlement of terminal benefits, no promotion or delay in promotions, no compassionate appointments, no recruitment, etc. Clause 134 states in unambiguous terms that employees are not entitled to any compensation or damages. This takes away the rights of the employees under the Industrial Disputes Act, 1947.

16.60 The Tamil Nadu State Electricity Board has stated that the Industrial Disputes Act applies to any organisation to which the employees are transferred. The Industrial Disputes Act, 1947 still exists. Hence, the apprehension referred to is not correct.

16.61 The BSES Limited has viewed that transfer of employees should have protection under the Industrial Disputes Act, 1947. It is, however, suggested that the buyer should have the option after a year or so to down-size his undertaking as otherwise the operations cannot be commercially viable.

16.62 When asked as to whether the transfer of employees under the transfer scheme would deprive them of the recourse to the Industrial Dispute Act, 1947 and amount to violation of their Fundamental Rights, the Tata Power Company Limited replied that this apprehension of the employees seemed to be unfounded. Under Clause 133 (2) it is clearly stated that the terms and conditions on the transfer shall not in any way be less favourable … than before transfer.

16.63 The Government of Gujarat has viewed that the rights of the employees of the Electricity Boards should be protected. In the State Act, a provision has been made to get the people repatriated to the Gujarat Electricity Board in case they are not required by the transferee company. The Board and Government will think of ways and means to keep them productively occupied till they retire in case of their non-absorption in new companies. Alternatively, Voluntary Retirement Scheme can be thought of.

16.64 When asked to comment on the apprehension of some employees of Electricity Boards that they would be deemed to have been transferred to the new entity without any recourse to the Industrial Disputes Act, 1947 on the reogranisation of the Boards, the

Ministry of Power, in a post-evidence reply, stated that adequate safeguards have been provided in the Bill itself for the employees on reorganisation of SEBs. Unless such a provision exists, all the reform action will be subjected to a plethora of employees-related litigations which will significantly increase the investor risks.

16.65 Clause 167 of the Bill relates to transitional provisions in the wake of unbundling of Boards. This is a new provision without any corresponding provision in the Acts of 1910, 1948 and 1998.

16.66 Clause 167 of the Bill is as under:

167. Notwithstanding anything to the contrary contained in this Act,-

(a) a State Electricity Board constituted under the repealed laws shall be deemed to be the State Transmission Utility and a licensee under the provisions of this Act for a period of one year from the appointed date or such earlier date as the State Government may notify, and shall perform the duties and functions of the State Transmission Utility and a licensee in accordance with the provisions of this Act and rules and regulations made thereunder:

Provided that the State Government may, by notification, authorise the State Electricity Board to continue to function as the State Transmission Utility or a licensee for such further period beyond the said period of one year as may be stipulated in the notification;

(b) all licences, authorisations, approvals, clearances and permissions granted under the provisions of the repealed laws may, for a period not exceeding one year from the appointed date or such earlier period, as may be notified by the Appropriate Government, continue to operate as if the repealed laws were in force with respect to such licences, authorisations, approvals, clearances and permissions as the case may be, and thereafter such licences, authorisations, approvals, clearances and permissions shall be deemed to be licences, authorisations, approvals, clearances and permissions under this Act and all provisions of this Act shall apply accordingly to such licences, authorisations, approvals, clearances and permissions.

(c) the undertaking of the State Electricity Boards established under section 5 of the Electricity (Supply) Act, 1948 may after the expiry of the period specified in clause (a) be transferred in accordance with the provisions of Part XIII of this Act;

(d) the State Government may, by notification, declare that any or all the provisions contained in this Act, shall not apply in that State for such period, not exceeding six months from the appointed date, as may be stipulated in the notification.

16.67 The Southern India Chamber of Commerce and Industry has stated that the effective date stipulated for reorganization of the Board is flexible at the option of the State Government. Already more than ten years have gone by and many State Governments have not resorted to reforms and restructuring. Still giving a long rope is not going to help. The urgency for revamping the utility cannot wait any longer. Therefore, a time frame to initiate reforms may have to be prescribed for the purpose, which should not exceed say one or two years after the Bill is passed. The manner of reorganisation may be left to the concerned States, but all the process of reforms and

reorganisation must be completed in a period of say seven years by which the utility must become financially healthy and does not depend on the support of the Governments. The Regulatory Commissions should facilitate this revamping process.

16.68 The GVK Industries Limited has suggested that the proviso to Clause 167 should be deleted as the provision would defeat the purpose of this Act, if the periods are extended continuously beyond the relaxation period of one year. It has further suggested that Clause 167 (d) should also be deleted as the provision defeats the purpose of this Act.

16.69 As regards transition provisions in the Bill, the Government of Assam has stated that Assam, like many other States, has recently embarked on a programme of reform of the power sector. The State would require considerable financial support and capacity building before the institutions of the re-structured sector can actually start functioning properly. There should be a time frame for the transition to be completed. What sort of transition is required by the States to be able to eventually operate in the framework prescribed by the Bill, should also be specified in the form of a phased roadmap so that the direction to be taken by the sector across the country by all the States can be clear. The Government of Assam have also viewed that during the transition, separate accounting for generation, transmission and distribution should be provided for along with adoption of profit-centred approach for entities engaged in such activities. This is essential also to enable proper ascribing of costs where they are incurred to allow for cost control and cost effectiveness.

16.70 When asked as to whether there should be a provision for review of continuation of SEB by the State Legislative Assembly every year, CII, in a written reply, stated that the first few drafts of the Electricity Bill, 2001 had defined time frame for unbundling and corporatisation, which has been dropped in the present draft. CII is of the opinion that review should be left at the discretion of the State Governments; however, it would be desirable if State Governments can chalk out medium and long term targets and implementation strategies.

16.71 The Government of Delhi have viewed that open-ended provision for continuation of SEBs as a licensee will seriously affect the reform in the power sector. This will indirectly also facilitate those unions who are not forward-looking to thwart attempts by the State Governments for restructuring of the Boards. Therefore, it is suggested that there should be a provision for review for continuation of SEB by the State Legislature every year.

16.72 The Government of Madhya Pradesh have viewed that there should be a provision for review for continuation of utility of a SEB by State Legislature every year and it is proposed that the State Government will continuously monitor the performance of SEB which should in any case bring improvements within a period of 3 years and the utility make a turnaround within 5 years.

16.73 The Government of UP has suggested that the yearly performance review of the utility of a SEB should be undertaken by the State Regulatory Commission and the same should be placed along with its comments and recommendations before the State Legislature which may take the final decision about the continuation of SEB and/or its

utility in the present form. Yearly review of the reform process by the legislature in order to roll it back will create uncertainty. The legislature, however, should be empowered to review the performance.

16.74 The Government of Gujarat has stated that the open-ended provision for continuation of SEB is a more pragmatic approach, particularly because, in different States, the circumstances and the socio-economic considerations will be different. The present provision is in order.

16.75 In this connection, the Indian Merchants' Chamber and Maharashtra Economic Development Council have suggested that a time bound programme for unbundling should be made in the State's integrated energy plan.

16.76 The BSES Rajdhani Power Limited has stated that the reorganisation and unbundling of the State Electricity Boards is an important objective of the Electricity Bill, 2001. However, the Bill does not make the reorganization of the State Electricity Boards as mandatory and has empowered the State Governments to decide on the time frame for reorganisation. This freedom to the State Governments may result in delay in reorganisation of the SEBs. A clear time frame should, therefore, be stipulated in the Bill for carrying out the reorganisation of the SEBs.

16.77 The Government of Nagaland has stated that the provisions for review for continuation of utility of a SEB/ED by the State Legislature every year (with its commitment to bear the cost of its continuation) may also be incorporated in the Bill, to avoid the reform process corporatisation from suffering the fate of something like the Directive Principles of the Constitution, which have remained "Principles".

16.78 The Government of Chhattisgarh have stated that there should be an open-ended provision for continuation of SEBs as licensee, till such time the complete take over has taken place smoothly. This will also send a message to transferee for not acting in a monopolistic manner.

16.79 According to the Government of Rajasthan, it should be left to the States to decide about re-structuring of SEBs.

16.80 The State Government of Rajasthan have also stated that Sub-Clause (a) of Clause 167 of the Bill permits Electricity Boards to perform the duties and functions of STU and a licensee for a period of one year. This would mean that generation, transmission and distribution functions could be performed by SEBs for a period of one year. However, the proviso to this Clause may create some confusion as to whether the said arrangement could be continued further or whether SEBs can function either as STU or as a licensee. It may be noted that while the main Clause 167(a) defines the functions as "…shall perform the duties and functions of the State Transmission Utility and a licensee in accordance with the provisions of this Act and rules and regulations made thereunder", the proviso to the above Clause states "….State Electricity Board to continue to function as the State Transmission Utility or a licensee for such further period beyond the said period of one year as may be stipulated in the notification". So while the word "and" has been used in the main Clause, it has been replaced by "or" in the proviso. In case the intent is that SEBs should not handle the functions of generation, transmission and

distribution after a period of one year, this would then be contrary to what has been stated in sub-para 4 of 'Statement of Objects and Reasons' which reads as under:

> "…..The State Governments have the option of continuing with the State Electricity Boards which under new scheme of things would be a distribution licensee and the State Transmission Utility which would also be owning generation assets…."

16.81 The Arimpur Power Services has suggested that the extension period under proviso to Clause 167(a) should not exceed a period of one year under any circumstances.

16.82 The BSES Limited and the India Energy Forum have stated that there should be a time limit fixed in Clause 167 by which time the State must notify the Act, otherwise the purpose of the new Act would not be met.

16.83 The BSES and India Energy Forum has stated that since reform and restructuring of SEBs is a primary goal of the Act, the absence of a time frame for effecting this reform would defeat the main purpose of the Act. Hence, it is proposed that an outer limit of 18 months be allowed for the remaining State Governments to implement a transfer scheme for reform and restructuring of the State Electricity Boards.

16.84 As regards Clause 167 (b), the BSES and India Energy Forum has stated that some licensees have entered into long term financing agreements with institutions like the World Bank and the loans from such institutions, etc. have been secured or agreed to be secured by mortgages/charges on the assets and licenses held by the company. The value of such mortgaged licenses are dependent on the contents and duration of the licenses. Both these are liable to be abridged by Clause 167 b by limiting the validity of existing licenses and approvals to one year only. Hence, it is imperative that the existing validity period and license conditions remain unchanged even after the new act comes into force.

16.85 The Kerala State Electricity Board has expressed the view that the State Government's authority to declare non-application of the new Act should not be limited to six months. It has suggested the following modification in Clause 167(d): -

> "The State Government may by notification, declare that any or all the provisions contained in this Act, shall not apply in that State for such period, as determined by the State Government from the appointed date as may be stipulated in the notification."

16.86 As would be seen from the details in the foregoing paras, a number of suggestions have been received on the method of valuation of assets of SEBs to give effect to the transfer scheme of the Boards. The Committee have considered all these views and agree with the views of the Government of Madhya Pradesh that the method of valuation of the assets of SEBs should be left to the respective State Governments as basically these are State Governments' assets. The Act can provide that the State Government may value the assets in such manner as it considers appropriate and incorporate the same in the transfer scheme. However, the State Governments while determining the valuation of assets may keep in mind the effect of such valuation on future tariff which the transferee is likely to recover from the consumers. An appropriate provision may also be made stating that the appropriate

Commission shall be guided by the value of assets determined under this Clause for the purpose of tariff determination. Provisions of other Clauses may be suitably modified. The Committee also feel that the State Governments should be given sufficient liberty to reorganise their Boards. The relevant Clauses may be amended accordingly.

16.87 The Committee have considered the various views received regarding the time frame during which the restructuring of SEBs should be done by various State Governments. It has been stated in the Statement of Objects and Reasons (Clause xi of Para 4) that the State Governments have the option of continuing with the State Electricity Boards which under the new scheme of things would be a distribution licensee and the State Transmission Utility which would also be owning generation assets. In proviso to sub-Clause (a) of Clause 167, it has been stated that 'the State Government may, by notification, authorise the State Electricity Board to continue to function as the State Transmission Utility or a licensee for such further period beyond the said period of one year as may be stipulated in the notification'. Similarly, sub-Clause (d) of Clause 167 stipulates that 'the State Government may, by notification, declare that any or all the provisions contained in this Act, shall not apply in that State for such period, not exceeding six months from the appointed date, as may be stipulated in the notification'. It has been suggested by various State Governments and CII that it should be left to the State Governments to review the position regarding continuation of SEBs to watch their performance and decide future course of action regarding restructuring of SEBs. The Committee while agreeing with the views of various State Governments recommend that Clause 167 should be suitably modified to clearly provide that the State Governments should decide restructuring of SEBs taking into account the ground realities within a period of one year.

16.88 The Committee find that as vertically integrated utilities, the State Electricity Boards (SEBs) are able to co-ordinate between generation, transmission and distribution. They also undertake scheduling of the State generation so as to achieve the energy output at least cost, schedule Central sector drawals keeping in view their own generation and State load requirement and also schedule load so as to meet the requirement of grid discipline. The Committee find that in case the generation, transmission and distribution activities become separate entities as envisaged in the Bill, the problem of integrated/co-ordinated grid operations would become unmanageable. The Committee, therefore, desire that this aspect should also be taken into account and a suitable mechanism put in place before the entities are unbundled.

16.89 The Committee have noted that the Bill gives flexibility to States in the continuance of the Electricity Boards or otherwise. However, no provision exists for any Electricity Department system to disintegrate into generation, transmission and distribution entities. The Committee desire that on the lines of the power granted to State Governments, the Electricity Department of a State should also be given adequate time for shifting from Electricity Department system to separate corporations. Similarly, there is also a need to have a provision for continuance of electricity supply by the Electricity Department on the lines of powers conferred on the State Government in this regard. The Committee desire that the Bill should have a provision enabling the Government Departments to undertake generation, supply, etc. of electricity.

CHAPTER-XVII

Theft of Electricity

Clauses 135 to 152 of the Electricity Bill, 2001 contain anti-theft provisions. Some of these important provisions are dealt with in the succeeding paragraphs.

17.2 Clause 135 of the Bill relates to theft of electricity. It is an equivalent provision of Section 39 of the Indian Electricity Act, 1910 with some expansion of scope.

17.3 Section 39 of the Indian Electricity Act, 1910 relating to theft of electricity is reproduced below:

Whoever dishonestly abstracts, consumes or uses any energy shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than one thousand rupees, or with both: and if it is proved that any artificial means or means not authorised by the licensee exist for the abstraction, consumption or use of energy by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of energy has been dishonestly caused by such consumer.

17.4 Clause 135 of the Bill is as under: -

135. (1) Whoever dishonestly, --

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, service wires, or service facilities of a licensee; or

(b) tampers a meter, installs, or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity,

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption, or attempted use -

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment

for a term not less than six months but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that if it is proved that any artificial means or means not authorized by the Board or licensee exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(2) Any officer authorized in this behalf by the State Government may --

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been, is being, or is likely to be, used unauthorisedly,

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been, is being or is likely to be used for unauthorized use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

17.5 Thus, it may be seen that the provisions made under Clause 135 of the Bill regarding theft of electricity are more comprehensive than those under Clause 39 of the Indian Electricity Act, 1910.

17.6 The Tamil Nadu State Electricity Board has stated that Clause 135 (1) (c)(i) indicates the punishment for theft of energy where the load abstracted, consumed or used does not exceed 10 KW. The punishment for cases with a connected load not exceeding 10 KW is not deterrent enough to make errant consumers refraining from indulging in offences for the second and subsequent convictions. TNEB has suggested that the sentence and fine for second and subsequent convictions for cases where load does not exceed 10 KW should be the same as the one prescribed under Clause 135 (1) (c) (ii) for cases where load exceeds 10 KW. TNEB has also stated that as per the provisions made under this Clause, for loads not exceeding 10 KW/exceeding 10 KW, the fine imposed on 1st conviction shall not be less than 3 times and in the case of 2nd or subsequent conviction it shall not be less than 6 times the financial gain respectively. As this fine amount is comparatively high, the errant consumers may opt for legal remedy instead of

remitting this amount. In order to realise the loss of revenue expeditiously. TNEB has suggested that for the 1st offence the fine amount may be modified as two times and in the event of 2nd or subsequent offence the fine imposed may be three times the appropriate tariff for both the categories.

17.7 Emphasizing strict penalties for theft of electricity involving small loads, a representative of the Government of Chhattisgarh stated during oral evidence as under:

> "Unless a differentiation is made between theft upto 10 KW load and less than that, in our view, it is not possible to prevent theft. In many cases theft takes place where theft is of less than 10 KW also. So, there should be strict penalties for fewer loads also."

17.8 The GVK Industries Limited has suggested to add the words 'Board or the Licensee' after the words 'State Government' in line 1 of Clause 135 (2). It has also suggested to add the words 'with proper certification' after the word 'authorised' in line 1 of the same Clause.

17.9 The Central Water & Power Engineering Services (Gr. A) Association has suggested that the search/raiding party should be led by a magistrate with powers to impose penalty/imprisonment on the spot and such party should comprise at least 2 officers of the Board/utility and accompanied by necessary police protection.

17.10 The Jagaran Manch has suggested that Clause 135 (1) (line 14-17) second proviso to Clause 135 (1) is too stringent and should be deleted. It has also suggested to add "with proper prior authorization from Commission or its designated officer" in Clause 135 (2) (line 19).

17.11 According to the Federation of Andhra Pradesh Chamber of Commerce and Industry (FAPCC&I), in Clause 135(1)(b) the significance of using the term "electric current" instead of "electricity" is not readily understood. The Federation has also stated that the penalty for theft is made dependent on "financial gain". It is not at all clear what amounts to "financial gain" and how the financial gain for the purpose of penalty is to be ascertained or computed. It needs to be clarified whether the relevant financial gain is to be established taking only the wrongful loss to the licensee or taking into account all the consequential trading or other benefits that may have arisen due to the use of stolen electricity.

17.12 The Federation of APCC&I has also viewed that under Clause 135 (2), it is necessary to clearly indicate as to whether such an officer is an employee of the Government or whether the officer may be an employee of the licensee.

17.13 The Utkal Chamber of Commerce and Industry (UCCI) and the Federation of Indian Chamber of Commerce and Industry (FICCI) have suggested that in Clause 135 (1) (c), the maximum imprisonment period is 3 years whereas in proviso 1 to 135, the maximum imprisonment is 5 years, which should be reconciled.

17.14 According to the Laghu Udyog Bharti, 3 times charges to be made 3/2 time i.e. instead of 300% it should be 150% for the first default and 200% (2 times) for subsequent defaults.

17.15 According to the Haryana Chambers of Commerce & Industry, inspection should be done in presence of two respectable persons to avoid any unilateral punitive action.

17.16 According to the India Energy Forum, there should be provision for list of officers authorised by the licensee and approved by the Commission to carry out functions listed under (a)(b) and (c) of Clause 135 (2). It has also suggested that suitable amendments should be incorporated to facilitate officers of the company above a specified rank to carry out the functions of entry, search and seizure and assessment.

17.17 The Tata Power Co. Ltd. has also stated that there should be a provision for Senior Officers above a certain rank authorised by the State Transmission Utility or a licensee and approved by the Appropriate Commission to carry out this function, in addition to the persons authorised by the State Government.

17.18 The BSES has also suggested that there should be provision for Officers authorised by the licensee and approved by the Commission to carry out functions listed under (a), (b) and (c).

17.19 The CESC Limited has suggested that besides the officials of the State Governments, officials of licensee/Board should also be authorised to inspect, search, seize, etc.

17.20 When asked as to whether the powers relating to search and seizure should vest with only the Government servants, the Indian Merhants' Chamber and Maharashtra Economic Development Council replied that this should not be the case. The duly authorised utility person can search and seize with a witness of a stature. Rules can be forced on this line.

17.21 The Indian Merhants' Chamber and Maharashtra Economic Development Council have also stated that Electrical Inspector should not become harassing authority. If theft is not proven, it should go against him. On the other hand he should be rewarded for catching a thief through financial incentive.

17.22 The Aditya Spinners Ltd. has stated that unauthorised use of electricity should prima facie be determined by more than one officer authorised by the Government and should include at least one officer not working for the licensee but having sufficient knowledge about electricity matters.

17.23 The Kalinga Power Corporation has stated that in Clause 135, 136, 137 and 138, the expression "which may extend to three years or with fine or with both" should be substituted with "six months to three years and with fine".

17.24 The All Bengal Electricity Consumers' Association, Kolkata has stated that the following provision should be included after sub-clause (4) of Clause 135:

"Provided at the time to search and seizure the consumer`s and witnesses' presence is a must;

Provided the accused shall have the right to move the Appropriate Court for the proper adjudication of the case."

17.25 Clause 136 of the Bill relates to theft of electric lines and materials. This is a new provision incorporated in the Bill.

17.26 The Ministry of Power have stated that theft of electric lines and materials also causes considerable damage to the electricity industry. Therefore, such theft has been recognised as an offence.

17.27 Clause 136 is reproduced below:

136. (1) Whoever, dishonestly --

(a) cuts or removes or takes way or transfers any electric line, material or meter from a tower, pole, any other installation or place of installation or any other place, or site where it may be rightfully or lawfully stored, deposited, kept, stocked, situated or located, without the consent of the owner, whether or not the act is done for profit or gain; or

(b) stores, possesses or otherwise keeps in his premises, custody or control, any electric line, material or meter without the consent of the owner, whether or not the act is committed for profit or gain; or

(c) loads, carries, or moves from one place to another any electric line, material or meter without the consent of its owner, whether or not the act is done for profit or gain,

is said to have committed an offence of theft of electric lines and materials, and shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(2) If a person, having been convicted of an offence punishable under sub-section (1) is again guilty of an offence punishable under that sub-section, he shall be punishable for the second or subsequent offence for a term of imprisonment which shall

not be less than six months but which may extend to five years and shall also be liable to fine which shall not be less than ten thousand rupees.

17.28 Clause 137 of the Bill relates to punishment for receiving stolen property. This is a new provision incorporated in the Bill.

17.29 Clause 137 is reproduced below:

137. Whoever, dishonestly receives any stolen electric line or material knowing or having reasons to believe the same to be stolen property, shall be punishable with imprisonment of either description for a term which may extend to three years or with fine or with both.

17.30 Regarding Clause 137, an individual expert (Dr. Govind M. Phadke) has suggested that for persons who receive stolen property “knowingly”, there should be a minimum fine equal to 10 times the “legitimate” and not the price of the property received. If the offence is repetitive, there should be a minimum prison term prescribed for 2nd or 3rd offence onward with progressively increasing level of prison term. This is essential, since the thefts are sustained only because of availability of trading/dealer channels.

17.31 Clause 138 of the Bill relates to interference with meters or works of licensee. This provision is based on the provision contained in Clause 44 of the Indian Electricity Act, 1910.

17.32 Clause 44 of the Indian Electricity Act, 1910 is reproduced below:

Whoever-

(a) connects any meter referred to in Section 26, sub-section (1), or any meter, indicator or apparatus referred to in Section 26, sub-section (7), with any electric supply-line through which energy is supplied by a licensee, or disconnects the same from any such electric supply-line. Or

(aa) unauthorisedly reconnects any meter referred to in sub-section(1) of Section 26, or any meter, indicator or apparatus referred to in sub-section(7) of Section 26, with any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, when the said electric supply line or other works has or have been cut or disconnected under sub-section(1) of Section 24; or

(b) lays, or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee; or

(c) maliciously injures any meter referred to in Section 26, sub-section(1), or any meter, indicator or apparatus referred to in Section 26, sub-section(7), or wilfully or fraudulently alters the index of any such meter, indicator or apparatus, or prevents any such meter, indicator or apparatus from duly registering; or

(d) improperly uses the energy of a licensee.

shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both, and, in the case of a continuing offence, with a daily fine which may extend to fifty rupees; and if it is proved that any artificial means exist for making such connection as is referred to in Clause (a) or such reconnection as is referred to in Clause(aa), or such communication as is referred to in Clause(b), or for causing such alteration or prevention as is referred to in Clause(c), or for facilitating such improper use as is referred to in Clause(d), and that the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, it shall be

presumed, until the contrary is proved that such connection, reconnection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and willfully caused by such consumer.

17.33 Clause 138 of the Electricity Bill, 2001 is as under:

138. (1) Whoever, -

(a) unauthorisedly connects any meter, indicator or apparatus with any electric line through which electricity is supplied by a licensee or disconnects the same from any such electric line; or

(b) unauthorisedly reconnects any meter, indicator or apparatus with any electric line or other works being the property of a licensee when the said electric line or other works has or have been cut or disconnected; or

(c) lays or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee; or

(d) maliciously injures any meter, indicator, or apparatus belonging to a licensee or wilfully or fraudulently alters the index of any such meter, indicator or apparatus or prevents any such meter, indicator or apparatus from duly registering; or

(e) intentionally or improperly uses the electricity of a licensee,

shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both, and , in the case of a continuing offence, with a daily fine which may extend to five hundred rupees; and if it is proved that any means exist for making such connection as is referred to in clause (a) or such re-connection as is referred to in clause (b), or such communication as is referred to in clause (c), or for causing such alteration or prevention as is referred to in clause (d), or for facilitating such improper use as is referred to in clause (e), and that the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, it shall be presumed, until the contrary is proved, that such connection, reconnection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and wilfully caused by such consumer.

17.34 Thus, it may be seen that the quantum of fine has been increased in the present Bill.

17.35 The Federation of APCC&I has submitted that every user of electricity is entitled to install any kind of check meter or other indicator and apparatus to check and verify on the quantity and quality of electricity being supplied by him. Surely, it cannot be construed that the mere installation of apparatus is an offence. The provision, therefore, needs reconsideration.

17.36 The Federation of APCC&I has further stated that Section 138(1)(e) appears confusing and cannot be readily understood.

17.37 Clause 139 of the Bill is concerned with negligently wasting electricity or injuring works. This provision is based on Clause 46 of the Indian Electricity Act, 1910.

17.38 Clause 46 of the Indian Electricity Act, 1910 is reproduced below:

Whoever negligently causes energy to be wasted or diverted, or negligently breaks, throws down or damages any electric supply-line, post, pole or lamp or other apparatus connected with the supply of energy, shall be punishable with fine which may extend to two hundred rupees.

17.39 Clause 139 of the Electricity Bill, 2001 is as under:

139. Whoever, negligently causes electricity to be wasted or diverted or negligently breaks, injures, throws down or damages any material connected with the supply of electricity, shall be punishable with fine which may extend to ten thousand rupees.

17.40 Thus, it may be seen from the above that there has been an increase in the quantum of fine in the present Bill.

17.41 Clause 140 of the Bill relates to penalty for maliciously wasting electricity or injuring works. The corresponding provision of Clause 140 has been made under Clause 40 of the Indian Electricity Act, 1910.

17.42 Clause 40 of the Indian Electricity Act, 1910 is as under:

Whoever, maliciously causes energy to be wasted or diverted, or, with intent to cut off the supply of energy, cuts or injures, or attempts to cut or injure, any electric supply-line or works, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

17.43 Clause 140 of the Electricity Bill, 2001 is reproduced below:

140. Whoever, maliciously causes electricity to be wasted or diverted, or , with intent to cut off the supply of electricity, cuts or injures, or attempts to cut or injure, any electric supply line or works, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both.

17.44 Thus, it may be seen that the quantum of fine has been increased in the present Bill.

17.45 The Clause 141 of the Bill provides for punishment for extinguishing public lamps. The corresponding provision of Clause 141 has been made under Clause 45 of the Indian Electricity Act, 1910.

17.46 Clause 45 of the Indian Electricity Act, 1910 is reproduced below:-

Whoever maliciously extinguishes any public lamp shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to three hundred rupees, or with both.

17.47 Clause 141 of the Bill is as under:-

Whoever, maliciously extinguishes any public lamp shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

17.48 Thus, it may be seen that the quantum of fine has been increased in the present Bill.

17.49 There has been some apprehension that the provisions of Clauses 139 and 140 might be misused. In this regard CEA has stated that the officer in-charge with such powers will be accountable; as such no misuse is foreseen.

17.50 In this connection, the Government of Madhya Pradesh has stated that the provision of Clause 139 appears to be controlled by the word 'negligently' and, therefore, seems to be appropriate. The issue whether a person is guilty of the offence made in Clauses 139, 140 etc., shall, however, be decided in regular proceedings before the court. The burden of proving such negligence will be on the utility. No further preventative measures need to be considered.

17.51 The Government of Chhattisgarh has stated that in the present scenario where due care is not being paid for the use of electricity, it is felt that provisions under Clause 139 and 140 of the Bill shall prove effective.

17.52 The Government of Jharkhand has stated that the words 'negligently/maliciously' would leave a lot of scope for misuse by the employees of the Board. These need to be reworded.

17.53 As regards the sweeping powers conferred on the executive under Clauses 139 and 140 of the Electricity Bill, 2001 and the possible misuse thereof, the State Government of Gujarat has opined that the power given to the executive will prevent wastage and losses.

17.54 In this connection, the Government of Goa replied that the executive should have adequate powers.

17.55 The Jagaran Manch has suggested that Clause 139 appears to be too stringent and hence, this Clause should be deleted.

17.56 The BSES Limited has stated that Clauses 139 and 140 of the Bill have corresponding provisions in the Indian Electricity Act, 1910. There is no open reports of any widespread misuse and therefore, the same need to be maintained.

17.57 As regards Clauses 139 and 140, Haryana Power Utilities have opined that it is not clear whether any ostentatious use of electricity could be called waste. This Clause should apply only to the damages/injury caused to the works.

17.58 In this connection, the Indian Merhants' Chamber and Maharashtra Economic Development Council have stated that wasting of electricity should be penalized by fine and 'injuring works' should be dealt with by both financial as well as criminal penalties.

The power should be used carefully with full opportunity to explain by the alleged offender.

17.59 An individual expert (Dr. Govind M Phadke) has viewed that for deliberate malicious acts, a minimum fine of Rs. 500/- to Rs. 1000/- should be imposed for first offence, which should be raised to double and four times for the 2nd and 3rd offences respectively. Thereafter, a minimum term of imprisonment should be prescribed.

17.60 Clause 145 of the Bill relates to lack of jurisdiction of Civil Court. This is a new provision made in the Bill which does not have any corresponding provision in the Acts of 1910, 1948 and 1998. This Clause provides that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer(Clause 126) and the adjudicating officer(Clause 143) is empowered to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by this Act.

17.61 Clause 145 of the Bill is as under:

145. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 and the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

17.62 As regards Clause 145, the FAPCCI has stated that in the context of privatisation, the assessing officer and the adjudicating officer are employees of a private corporation. Thus, it may not be proper to exclude the jurisdiction of the ordinary courts of the law.

17.63 The National Power Trading Institute has stated that Clause 145 which specifies that Civil Courts shall not to have jurisdiction, may cause hardships to honest consumers. The Clause may be modified to have jurisdiction of Lok Adalat/Special Court/State High Court for redressal.

17.64 The Confederation of Indian Industry (CII) has stated that the provision under Clause 145 needs clarity. It has suggested an amended Clause as under:-

> "No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in Section 126 and the adjudicating officer appointed under this Act is empowered by or under this Act to determine <u>all matters and disputes arising in connection with supply of electricity</u>. No injunction <u>or any other order</u> shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

17.65 Clause 150 of the Bill relates to abatement. The corresponding provision in this regard has been made in Clause 39A of the Indian Electricity Act, 1910.

17.66 Clause 39A of the Indian Electricity Act, 1910 is as under:

39A. Whoever abets an offence punishable under section 39 or section 44 shall, notwithstanding anything contained in section 116 of the Indian Panel Code (45 of 1860), be punished with punishment provided for the offence.

17.67 Clause 150 of the Bill is reproduced below:

150. (1) Whoever abets an offence punishable under this Act, shall, notwithstanding anything contained in the Indian Penal Code, be punished with the punishment provided for the offence.

(2) Without prejudice to any penalty or fine which may be imposed or prosecution proceeding which may be initiated under this Act or any other law for the time being in force, if any officer or other employee of the Board or the licensee enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals or connives at any act or thing whereby any theft of electricity is committed, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

17.68 Thus, it may be seen that a provision has been made in the Bill to provide punishment to employees of the Board or licensee for abetment of theft.

17.69 The Ministry of Power have stated that the intention is to convey in explicit terms that even the employees of the Board or the Licensee involved in abetting the offence shall be liable for punishment.

17.70 When asked as to whether specific provisions should be made in the Bill to make the employees of distribution licensees/utilities accountable in cases of theft of electricity once their connivance is established, the Government of Chhattisgarh replied that it would not be proper to make any provision in the Bill to make the employees of distribution licensees/utilities accountable in cases of theft of electricity. In case guilt is proved, the licensee/utility shall be free to take administrative action against the employee which may even cost his job.

17.71 To the same query, the Government of Madhya Pradesh has replied it is in agreement that specific provisions should be made in the Bill to make the employees of distribution licensees/utilities accountable in cases of theft of electricity once their connivance is established. In fact, Madhya Pradesh Urja Adhiniyam 2001 also provides for such a provision. This will in true sense arrest the increasing trend of incidence of theft/malpractice/misuse of electricity and send a message among the public that the utility is seriously concerned in the matter.

17.72 The Government of Gujarat has viewed that if connivance of an employee is established in theft of electricity, then he would be punished like any other person under this Act or under the Indian Penal Code. There is no need to make any specific provision for this purpose.

17.73 In this connection, the BSES Limited has stated that this issue is very contentious and the present law of the land on theft should only prevail. It would be unfair to assume

complicity of any employee. If, however, such complicity is proved beyond doubt, the present IPC has adequate provisions for taking action against employees.

17.74 The Indian Merchants' Chamber and Maharashtra Economic Development Council have suggested that stiff financial penalties should be imposed as a deterrent. The licensees should make employees accountable for such defaults.

17.75 The Southern India Chamber of Commerce and Industry has stated that the employees of distribution licensees/utilities should be accountable in cases of theft of electricity once their connivance is established.

17.76 The Trivandrum Chamber of Commerce has stated that the employees should be made accountable in case of theft of electricity if their connivance is established.

17.77 The Central Electricity Authority has stated that in order to make rules more stringent, it is felt that employees of distribution licensee/utilities need to be made accountable and it should be provided that if it is established that theft is committed in connivance with them, then they should also be penalised suitably.

17.78 Advocating for imprisonment for the guilty employees of the utilities, an individual expert (Dr. Govind M. Phadke) has stated that major thefts have been possible only because of non-metered connections and connivance of employees. Thefts and consequential revenue loss have been the main reasons for the present plight of electricity supply industry. The success of reforms will depend solely upon efficiency of revenue collection. A deterrent is necessary to dissuade normally honest people from straying into dishonesty. A mere thought of having to "sit behind" for even a month or two makes people shudder. A minimum term of imprisonment should be prescribed for the employee who has 'cheated his bread-giver'. There is no possibility of second and subsequent offences since a person guilty of such conduct is always removed from service.

17.79 The Central Water & Power Engineering Services (Gr. A) Association and the Institution of Engineers (India), Delhi State Centre have stated that in order to make rules more stringent, it is felt that employees of distribution licensees/utilities need to be made accountable and it should be provided that if it is established that theft is committed in connivance with them, then they should also be penalized suitably.

17.80 The Laghu Udyog Bharti has suggested that the representatives of suppliers i.e. SEB or other agency should also be punished severely for helping theft or neglecting their duties. Punishment of dismissal from service and attachment of property should be provided in the Bill.

17.81 The Kalinga Power Corporation has suggested that a specific provision should be made to prosecute departmental employees in connivance with offenders of such unauthorised use or theft of electricity. Since power theft and non-payment are the main cause of the malady in the electricity sector, punishment for these offences should be made as stringent as possible.

17.82 Advocating the need for strict penalty for the abettor, a representative of Assocham stated during oral evidence as under:-

"This Act gives conviction to the person who is stealing, but id does not give conviction to the person who is abetting that crime. I want that both of them – the one who is stealing and the one who is abetting – to be prosecuted and the State Commission should be given the power to define the maximum losses which can be tolerated. Today, we have 50 per cent losses. If they say that 10 per cent losses will be allowed as per technical norms, and if there are more than 10 per cent losses, then there will be investigation under Section 10. Immediately 50 per cent of the people involved in the theft will be caught."

17.83 During oral evidence a representative of the Ministry of Power deposed before the Committee as under: -

"Coming to the provisions for compounding of offences, there are provisions for on the spot assessment for unauthorised use of electricity, and there is provision for treating theft as a cognizable criminal office with imprisonment, and also punishment for abetment of theft. With these provisions, the employees of the industry who collude and who abet in the theft, and without whose collusion it may not be possible, also become criminally liable."

17.84 Clause 151 of the Bill relates to cognizance of offences. Similar provision has been made in Clause 48 of the Electricity Regulatory Commissions Act, 1998, Clause 77C of the Electricity(Supply) Act, 1948 and Clause 50 of the Indian Electricity Act, 1910.

17.85 Clause 48 of the Electricity Regulatory Commissions Act, 1998 is as under:

No court shall take cognizance of an offence punishable under this Ordinance except upon a complaint, in writing, made by the Commission or by any other officer duly authorised by the Commission for this purpose.

17.86 Clause 77C of the Electricity(Supply) Act, 1948 is as under:

No Court shall take cognizance of an offence under section 77, except on the complaint of,-

(a) in the case of an offence relating to section 4, by an officer of the Authority authorized in that behalf by the Authority;

(b) in the case of any other offence,-

  (i) where a Board is constituted, by an officer of the Board authorized by the Board in that behalf;

  (ii) where no Board is constituted, by an officer of the State Government authorised by the State Government in that behalf.

17.87 Clause 50 of the Indian Electricity Act, 1910 is as under:

No prosecution shall be instituted against any person for any offence against this Act or any rule, licence or order thereunder, except at the instance of the Government [for a State Electricity Board] or of an [Electrical Inspector] or of a person aggrieved by the same.

17.88 Clause 151 of the Bill is reproduced below:

151. No court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose.

17.89 Thus, it may be seen that under Clause 50 of the Indian Electricity Act, 1910, a prosecution can be initiated by an aggrieved person also. However, this provision has been done away with in the present Bill.

17.90 When asked as to whether a provision should be made in the Electricity Bill, 2001 to enable an aggrieved person to institute a prosecution, the Indian Merhants' Chamber and Maharashtra Economic Development Council replied that this provision has been used by SEBs more than the consumer. With the existence of CERC/SERC, consumer courts, etc. it may not be necessary to have this as part of the Bill.

17.91 The CESC Limited has suggested that the Board should also be empowered for referral envisaged under Clause 151.

17.92 Clause 152 of the Bill relates to compounding of offences. This is a new provision incorporated in the Bill.

17.93 The Ministry of Power have stated that it has been felt necessary to provide for opportunities for out of court settlement between the contending parties.

17.94 Clause 152 of the Bill is reproduced below:

152. Notwithstanding anything contained in the Code of Criminal Procedure 1973, the Appropriate Government or any officer authorized by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table below:

TABLE

Nature of Service	Rate at which the sum of money for Compounding to be collected per Kilowatt (KW) Horse Power(HP) or part thereof for Low Tension (LT) supply and per Kilo Volt Ampere(KVA) of contracted demand for High Tension (HT)
(1)	(2)
1. Industrial Service	twenty thousand rupees;
2. Commercial Service	ten thousand rupees;
3. Agricultural Service	two thousand rupees;
4. Other Services	four thousand rupees:

Provided that the Appropriate Government may, by notification in the Official Gazette, amend the rates specified in the Table above.

(2) On payment of the sum of money in accordance with sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal court.

(3) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer authorised in this behalf empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973.

(4) The compounding of an offence under sub-section (1) shall be allowed only once for any person or consumer.

17.95 The Tamil Nadu State Electricity Board has stated that the rates specified in the table under Clause 152 (1) are on high side and if this Clause is enforced, the consumers may contest in the court of law resulting in increase in the number of cases in court and will also cause abnormal delay in realisation of loss of revenue to the SEBs. Hence, the contents of the table under Clause 152 (1) prescribing compounding rates for the offence of theft of energy punishable under this Act may be replaced as under:-

<table>
<tr><td>1.</td><td>Industrial service</td><td rowspan="4">The fee shall be Rs. 1000/- or twice the applicable tariff whichever is higher in respect of electrical energy involved in the offence.
Or
As decided by SERC from time to time.</td></tr>
<tr><td>2.</td><td>Commercial service</td></tr>
<tr><td>3.</td><td>Agriculture service</td></tr>
<tr><td>4.</td><td>Other services</td></tr>
</table>

17.96 As regards Clause 152 (4), the Tamil Nadu Electricity Board has stated that this Clause prescribes that compounding of an offence under Sub-Section (1) shall be allowed only once for any person or consumer. If this is implemented, the offender will not come forward to make payment of compounding fees thus depriving the possibility of SEBs realising loss of revenue quickly. Hence, this Clause is suggested to be deleted.

17.97 The GVK Industries Limited has suggested to add the words 'of the Government or the licensee or the Board as the case may be authorized in the behalf by the Government' after the words 'any officer' in line 2 of Clause 152(1).

17.98 The Confederation of Indian Industry (CII) has suggested similar additions/amendments to Clause 152 (1) as suggested by the GVK Industries. The amended Clause suggested by CII is as under: -

> "Notwithstanding anything contained in the Code of Criminal Procedure 1973, the Appropriate Government or any officer of the Government or the licensee or the Board, as the case may be, authorised in this behalf by the Government may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table below:"

17.99 Similarly, the CESC Limited has suggested that officers of licensee/Board should be included along with Appropriate Government or its officials as compounding authority.

17.100 The Government of Rajasthan has viewed that prescribing similar rate for KW and HP is anomalous as 1 HP is equal to 0.746 KW only.

17.101 The Haryana Chambers of Commerce & Industry has viewed that the compounding should not exceed Rs.2000/- per KW in case of industrial consumer and lesser for other categories. The purpose of penalties should not be the revenue focus, as mentioned in the Statement of Objects & Reasons. The consumer should be motivated not to default by providing efficient, prompt and transparent services. More technology should be employed for this purpose.

Anti-theft Legislation in West Bengal

17.102 It is worthwhile to mention that the Government of West Bengal has recently enacted the Indian Electricity(West Bengal Amendment) Act, 2001 mainly to combat the menace of theft of electricity and electric lines and materials. As per the provisions of this enactment, on detection of such theft, power supply can be disconnected and on apprehension on repeat offence, such consumer shall be debarred from getting supply upto two years. The offence is cognizable and non-bailable. Trial will be held in Special Courts to be set up. There is also a provision of raising "Electric Utility Protection Force". Punishment on conviction may extend to five years of imprisonment with a fine ranging from Rs. 5,000 to Rs. 50,000/-. The Government of West Bengal has requested to incorporate the following main features of this enactment in the Electricity Bill, 2001:

(i) The definition of theft of electric line and materials in Clause 136 may be suitably modified to include theft in transportation.
(ii) In case of detection of theft of energy, electric lines and materials, electric supply of the offender may be cut off without notice.
(iii) Repeat offender should be debarred from getting power upto 2 years.
(iv) Abetment by electrical contractor, supervisor, or their worker should lead to cancellation of licence in addition to other punishments provided.
(v) The offences of theft of electricity and theft of electric lines and materials should be cognizable and non-bailable.
(vi) Trial of offences under Clauses 135 and 136 should be by Special Courts which should be set up.
(vii) Electricity Utility Protection Force should be set up.

17.103 The Government of Karnataka has stated that it has enacted anti-theft law and constituted Special Courts by making suitable amendment to the Central Act which needs to be protected.

17.104 As regards anti-theft legislations in Delhi, a representative of the Government of Delhi deposed before the Committee as under:-

> "The provisions of Delhi Electricity Act in this regard applies in Delhi. The Delhi Government, at this stage, is considering a draft legislation which may strengthen the law on the line of some other States in this regard."

General suggestions to curb theft of electricity

17.105 The Surya Foundation has suggested the following measures in order to check the theft of electricity: -

(i) Heavy penalties need to be provided where it is proved that employees of licensee had worked in league with offenders.
(ii) Public Vigilance Committees need to be provided for and their active aid needs to be sought for by licensees.
(iii) It should be obligatory on the part of the Governments to provide law and order support to the licensee in the normal discharge of their duties in meter readings and checks on power thefts. This needs to be provided in the Bill, otherwise private investments in distribution may not be forthcoming.
(iv) Since distribution activities involve thousands/lakhs of customers, consumer grievance redressal mechanism will have to be suitably mandated. Adjudication provision must exist at local points (without prejudicing rights of consumers to go to consumer courts).
(v) Complaint handling mechanisms should be instituted in the utilities and their functioning reviewed by SERCs.
(vi) There is also a need for provision of mobile courts to look into power thefts and penal provision for employee connivance in power thefts.
(vii) There should be a provision of additional T&D loss surcharge in areas prone to large scale thefts, in the form of a collective fine.

17.106 The Central Power Research Institute (CPRI) has stated that to cope up with the theft of electricity, it has developed 'Tamper-proof Single-phase Static Energy Meter'. CPRI has also developed card operated Single-phase Energy Meter which will sense both earth tampering and current reversal. By providing adequate shielding for the enclosure, the effect of external magnetic fields influencing the performance of the meter can be overcome. With the provision to sense earth tampering and current reversal, about twenty combinations of tampering as indicated in the tender document of utilities, have been covered. In addition to this CPRI already has initiated R&D activity on the development of remote metering to facilitate tamper-free metering. CPRI has suggested that the proposed Bill should provide that all future requirements of Energy Meters must possess anti-tampering devices.

17.107 When asked whether the theft of electricity should be made a cognizable offence or not, the Government of Rajasthan replied that as per Chapter XIII of Criminal Procedure Code, if offence is punishable with imprisonment of three years or more, it is cognizable and non-bailable offence. In such an offence, the police can arrest without warrant and bail is granted by competent court only. The provision of the Bill is appropriate.

17.108 When asked whether the anti-theft provisions made in the Bill are adequate, the Government of Uttar Pradesh replied that the anti theft provisions of the Act need to include specific definition of the offence as "cognizable". At present it is neither specifically "cognizable" nor "non-cognizable". Also, punishment for employees of the Utility- Generation, Transmission and Distribution - who are found to indulge in the theft

or abetment of theft of energy should be included. Similarly, employees of the Companies indulging in tampering of meters, metering equipment and related circuits resulting in over assessment and/or under assessment of energy and/or demand may also be brought under the anti-theft provisions. The Government of UP has proposed that the offences under the proposed Act may be made cognizable and non-bailable.

17.109 In this regard, the Government of Punjab has stated that Clause 135 mentioning the methods employed for theft of energy is good enough to the extent that theft of energy is defined but penalties proposed are impractical. A provision should be made in the proposed Act that the time tested procedures adopted by various SEBs in case of theft of energy may continue subject to approval as such or with modification by the Commission. The essence is that supplier is compensated for the energy stolen.

17.110 The Government of Goa has stated that the provisions contained in the Bill to curb the theft of electricity are adequate. It has also viewed that theft of energy should be made a cognizable offence.

17.111 The Government of Jharkhand has stated that the provisions stipulated under this part appear to be wholly pivoting round the consumer and the mischiefs he/she may cause. However, it is silent on giving cognizance and thereafter punishment to the officials of the supply company who may connive at and get in truck with the mischievous consumer, they rather become the protector/trainer of such consumers. Official's connivance is one of the most serious elements in electricity thefts/pilferage at present, be it through meter tampering, billing, bill adjustment or any other thing of that sort. It is high time that this aspect be explicitly dealt in the Electricity Bill, 2001. Effort should be made to fight the cause and not only the effect. The Government of Jharkhand has also stated that it is not clear whether the offences under Clause 135 are cognizable. It has suggested that such offences should be cognizable and bailable.

17.112 The Government of Gujarat has suggested that the offences under the proposed Act should be bailable. It has also stated that provisions made in the Bill relating to theft of electricity are adequate

17.113 The Government of Himachal Pradesh has suggested that the offences under the proposed Act should be cognizable and bailable.

17.114 The Government of Nagaland has stated that the anti-theft provisions in the Bill are adequate–as generally is most of the time. The difficulty is the lack of supporting structure/environment for its implementation. The issue is of ownership. There will always be theft, loss, leakage, mismanagement, etc. of a shop or business which does not have a clear line of ownership. Electricity is a business. But the Government owned entity by its very nature does not have an owner.

17.115 In this connection, the Government of Madhya Pradesh has stated that the theft of electricity can be made a cognizable offence. The licensee should have the authority to prosecute the accused. An officer of the licensee can act as the prosecutor. The licensee can be allowed to engage its own counsel. There is no need to provide that public prosecutor will deal with the theft of electricity. The licensee should also be allowed to compound offences subject to any regulations that may be framed by the Appropriate Commission.

17.116 When asked as to whether the provisions to check theft of electricity as contained in the Bill are enough, CEA mentioned that the provisions are considered adequate.

17.117 The Power Finance Corporation (PFC) has opined that the provisions contained in the Bill to curb the theft of electricity are adequate.

17.118 The Rajasthan Chamber of Commerce and Industry has also viewed that the provisions contained in the Bill to curb the theft of electricity are adequate.

17.119 The Bengal Chamber of Commerce & Industry has stated that prevention of theft of electricity is a major challenge facing the electricity industry. While the new Act has the provisions for penalties discouraging theft, implementation of measures preventing theft of electricity cannot be done by the electricity utility alone. Effective support of the administration is very important. There is a need to evolve a suitable mechanism to enhance a coordinated effort by the utilities and the administration.

17.120 The Indian Merchants' Chamber and Maharashtra Economic Development Council has stated that the provisions in the Bill to check the theft of electricity are adequate. The States should implement these provisions as has been done in AP by associating an IPS Officer with the distribution companies.

17.121 The Thane Belapur Industries Association have viewed that the anti-theft provisions made in the Bill are adequate.

17.122 The BSES Limited has stated that the provisions of the Bill to check the theft of electricity are adequate. It is, however, suggested that the power of disconnection of supply on locating theft should be vested in the licensee. Also the Act should specifically provide for recovery of the cost of the energy stolen as estimated.

17.123 CII has stated that it strongly favours the need for strict anti-theft legislation in the power sector. Out of total energy generated in our country, only 55 per cent is billed and only 41% is realised. Each State is today losing huge revenue due to theft of electricity and implementation of such legislation will help the utilities recover the cost of electricity, avoid undue tariff hikes, work on commercial principles and undertake investments to augment operational efficiency. The State of West Bengal has strongly proved the need for such legislation. Within a few days of the implementation of the legislation, the State has been able to address the weak links straining the State's power sector.

17.124 The Indian Merchants' Chamber and Maharashtra Economic Development Council have suggested that that the offences under the proposed Act should be cognizable and bailable.

17.125 Commenting on the anti-theft legislations, a representative of the CII deposed before the Committee as under: -

> "The other point is with respect to anti-theft legislation. All the States are coming out with good legislation. We should back it up. A national framework should be there. We should ensure that honest player and honest payer is not discriminated against, and they actually have tariff increases because of others not complying with it. I think if we do this, definitely we will be able to see this sector which is bankrupt to become bankable."

17.126 Commenting on the anti-theft provisions in the Bill, a representative of the Ministry of Power stated during oral evidence as under: -

> "In the provisions against theft, a new orientation has been given, apart from tightening the provisions, which is focussed on revenue realisation than criminal proceedings and convictions. So there is a provision for penalties, which should be linked to the connected load and quantum of energy and financial gain involved through theft."

17.127 The Committee note that under Clause 135(1), penalty for theft of electricity can be imposed on the basis of the financial gain accruing to the accused. The Committee feel that there is a need to clearly define this 'financial gain' so as to remove the likely confusion in the matter in future. Similarly, the provision relating to imposition of imprisonment of three years/five years under Clause 135(1) also needs to be reconsidered as this provision can be misused by unscrupulous persons. The Committee recommend that the penalty of imprisonment should be imposed only in case of theft of electricity and not in case of wastage or use of electricity more than the sanctioned load, etc. In such cases, the idea should be to recover the financial loss accruing to the licensee and levy some amount of penalty for the wrongdoing. The Committee further note that under Clause 135(2), an officer authorised by the State Government can enter, inspect, break open and search any place/premises if he has reason to believe that electricity has been, is being or is likely to be used unauthorisedly. The Committee feel that this power should not be vested in a single person. They feel that the raiding party should comprise a magistrate, a neutral observer, preferably a local person and representatives of the Board/Utillity.

17.128 The Committee are of the view that there is an urgent need for strong anti-theft provisions considering the huge revenue loss resulting from theft of electricity. The Committee agree with the suggestion of the Government of West Bengal that the definition of theft of electric line and material in Clause 136 should be suitably modified to include theft in transportation. However, the Committee are not in favour of disconnection of electricity supply of the offender on detection of theft of electricity since they feel that such a provision would be prone to misuse and lead to high-handedness on the part of the raiding party. The Committee also recommend that the offences of theft of electricity should be made bailable. The Committee further recommend that the Ministry of Power should consider the feasibility of making a provision in the Bill for setting up of Special Courts for trial of offences under Clauses 135 and 136 of the Bill.

17.129 The Committee note that Clause 138(1)(e) of the Bill provides for punishment to a person who 'intentionally or improperly uses the electricity of a licensee'. In the opinion of the Committee, such a provision is confusing and the provision has a dimension of being misused by the licensee in future. The Committee, therefore, recommend that this provision should be deleted.

17.130 The Committee find that Clauses 139, 140 and 141 are vague and confer sweeping powers on the executive for taking action against negligently wasting electricity or injuring works and penalty for maliciously wasting electricity or injuring works. The Committee are of the view that except in case of wanton injury or disruption of electricity for reasons such as strike, sabotage, etc. where deterrent action is called for, the way the Clauses are worded can lead to avoidable

harassment. The Committee, therefore, recommend that suitable amendments may be carried out to ensure that no harassment whatsoever is meted to honest consumers. The Committee view that it should be provided in the Bill that if any licensee is found misusing his powers under this Act, he would be facing the higher amount of penalties. The Committee, therefore, recommend that these Clauses may be amended suitably. The Committee also recommend that explicit provisions should be made in these Clauses to the effect that the onus of proving the negligence is on the authority/utility and that in the event of failure on the part of the authority/utility to prove the charge, suitable penal action be taken against them. The Committee feel that the punishment of imprisonment stipulated under Clause 140 is a bit too harsh. They recommend that there should not be any provision for imprisonment for the first offence under this Clause.

17.131 The Committee note that as per Clause 145 of the Bill, no civil court shall have jurisdiction to entertain any suit in respect of a matter which an assessing officer/adjudicating officer is empowered to determine. The Committee feel that such a provision may cause genuine and avoidable hardships to some honest consumers. The Committee are of the view that where the penalty of imprisonment is prescribed under different Clauses, the jurisdiction of civil courts should not be barred. The Committee, therefore, direct the Ministry of Power to examine the feasibility of modifying this provision so as to provide for jurisdiction of courts in the matter.

17.132 As per Clause 151, no court shall take cognisance of an offence punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officers authorised by them or a Chief Electrical Inspector or an Electrical Inspector or a licnesee or the generating company, as the case may be, for this purpose. The Committee find that the present Clause is similar to Clause 50 of the Indian Electricity Act, 1910 with one major difference. In the Act of 1910, there is a provision that the prosecution could be instituted at the instance of an aggrieved person. But there is no provision for institution of prosecution at the instance of an aggrieved person in the present Bill. In the opinion of the Committee, this will deprive an aggrieved person of an opportunity to approach a court under the proposed Bill which is available to him under the Indian Electricity Act, 1910. The Committee recommend that such a provision should be incorporated in the present Bill. The Committee, therefore, desire that necessary amendments may be made in the Bill for the purpose.

17.133 The Committee note that a consumer who has committed or is reasonab1y suspected of having committed an offence of theft of electricity, can pay a sum of money by way of compounding of the offence. The rates of such payment have been specified in the table incorporated in Clause 152 of the Bill. The Committee feel that such rates, instead of being prescribed in the Bill, should be fixed by the State Regulatory Commissions from time to time. The Committee also take note of the anomaly pointed out by the Government of Rajasthan relating to fixation of identical rates for KW and HP. The Ministry of Power may examine the matter and take necessary action.

CHAPTER-XVIII

Appointment of Chief Electrical Inspector and Electrical Inspectors

Clause 157 of the Bill relates to appointment of Chief Electrical Inspector and Electrical Inspector. This provision is similar to Section 36 of the Indian Electricity Act, 1910. Section 36 of the Indian Electricity Act, 1910 is reproduced below:

36(1) The appropriate Government may by notification in the Official Gazette, appoint duly qualified persons to be Electrical Inspectors and every Electrical Inspector so appointed shall exercise the power and perform the functions of an Electrical Inspector under this Act within such areas or in respect of such class of works and electric installations and subject to such restrictions as the appropriate Government may direct.

36(2) In the absence of express provision to the contrary in this Act, or any rule made thereunder, an appeal shall lie from the decision of an Electrical Inspector to the appropriate Government or if the appropriate Government, by general or special order so directs, to an Advisory Board.

18.2 Clause 157 of the Electricity Bill, 2001 reads as under:-

157. (1) The Appropriate Government may, by notification, appoint duly qualified persons to be Chief Electrical Inspector and Electrical Inspectors and every such Inspector so appointed shall exercise the powers and perform the functions of a Chief Electrical Inspector or an Electrical Inspector under this Act within such areas or in respect of such class of works and electric installations and subject to such restrictions as the Appropriate Government may direct.

(2) In the absence of express provision to the contrary in this Act, or any rule made thereunder, an appeal shall lie from the decision of a Chief Electrical Inspector or an Electrical Inspector to the Appropriate Government or if the Appropriate Government, by general or special order so directs, to an Appropriate Commission.

18.3 Thus, it may be seen from the above that existing provision of the 1910 Act has been retained in the present Bill.

18.4 The Arimpur Power Services has suggested that the words ‘from the decision of an Electrical Inspector to the Chief Electrical Inspector and’ may be added after the word ‘lie’ in Clause 157 (2). The words ‘or an Electrical Inspector’ may be deleted in the same Clause.

18.5 The Confederation of Indian Industry (CII) and the Institution of Engineers (India), Delhi State Centre have suggested that no person who has any financial interest, directly or indirectly, in any company or undertaking dealing with any of businesses related to generation, transmission, distribution or supply of electricity or manufacture, sale or supply of any fuel, machinery, plant, equipment, etc. related to these activities should be appointed as a Chief Electrical Inspector or Electrical Inspector under this section.

18.6 The CII and the Institution of Engineers have suggested that the following should be added as Sub-Clause 3 of Clause 157:-

> " Every Chief Electrical Inspector or Electrical Inspector shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code (45 of 1860), and shall be officially sub-ordinate to such authority as the Government appointing him may specify in this behalf."

18.7 The Federation of APCC&I has stated that nowhere in the Bill have any provisions been made for substantial duties and functions of Electrical Inspectors. There is no provision in the Bill which empowers the electrical inspector to oversee any safety standards or technical standards in respect of electrical plant, sub-station or generating stations or electric lines.

18.8 When asked as to whether the Electrical Inspector should have the power to decide theft cases, CII replied that the Electrical Inspector has in their view by and large been unable to perform its functions. Hence, theft cases should be kept out of their purview.

18.9 To the same query, the Government of Madhya Pradesh, in a written reply, stated that the functions of Electrical Inspector are to decide on certain issues relating to metering, etc. Theft cases should be decided by the courts.

18.10 To the same question, the Government of Chhattisgarh replied that it would not be proper to authorise Electrical Inspector to decide the theft cases, which involve criminal and economic offences.

18.11 On the other hand, the Government of Goa replied to this question that the Electrical Inspector should have the powers to decide theft cases.

18.12 The Haryana Power Utilities have stated that no provision has been made under Clause 157 (1) for fixation of charges for inspection carried out by the Electrical Inspector and the designation of authority to do so.

18.13 The Neyveli Lignite Corporation Limited has suggested that it is to be clarified whether the provisions under this Clause will apply to the Central Generating Companies since the inspections in these Central Generating Companies are presently being carried out by the Central Electricity Authority.

18.14 The Committee note that the Bill does not specify the functions and duties of Electrical Inspectors. The Committee agree with the suggestion made by the Federation of Andhra Pradesh Chamber of Commerce and Industry (FAPCCI) that these should be specified in the Bill and they should be made responsible for ensuring technical and safety standards in respect of generating stations and in various transmission and distribution works in the State. The Committee also agree with the suggestion made to them that appeals should lie to the Chief Electrical Inspector from the decisions of the Electrical Inspector. Clause 157 should be amended accordingly.

18.15 The Committee find that under Clause 157, powers have been given to the Appropriate Government to appoint Chief Electrical Inspector. The Committee also find that Section 37 of 1910 Act inter alia provides for rules making power of the Central Electricity Board in the matter to prescribe qualification for a Electrical Inspector, authorise any Electrical Inspector to examine any place, carriage or vessel in which he has reason to believe any appliance or apparatus used in the generation, transmission, supply or use of energy to be and to carry out tests therein and to prescribe the facilities to be given to such Inspector for the purpose of such examinations and authorise and regulate the levy of fees for any such testing or inspection. The Committee are of the view that in the absence of clear-cut stipulation in the present Bill, the inspection machinery may not yield any result. The Committee, therefore, desire that such provisions need to be retained in the present Bill.

Chapter –XIX

Recovery of Sums

Clause 165 of the Electricity Bill, 2001 relates to recovery of sums payable under the Act. The corresponding provision of this Clause has been provided in Clause 45 (2) of the Electricity Regulatory Commissions Act, 1998.

19.2 Clause 45 of the Electricity Regulatory Commissions Act, 1998 is as under:-

45(1) In case any complaint is filed before the Commission by any person or if the Commission is satisfied that any person has contravened any directions issued by the Commission under this Ordinance, rules or regulations made thereunder, the Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Ordinance, such person shall pay, by way of penalty, which shall not exceed rupees one lakh for each contravention and in case of a continuing failure with an additional penalty which may extend to rupees six thousand for every day during which the failure continues after contravention for the first such direction.

(2) Any amount payable under this Section, if not paid, may be recovered as if it were an arrear of land revenue.

19.3 Clause 165 of the Electricity Bill, 2001 is as under:-

Any amount payable by a person under the Act, if not paid, may be recovered as if it were an arrear of land revenue.

19.4 Thus, it may be seen that while the recoverable arrears of land revenue are restricted in the Electricity Regulatory Commissions Act, 1998 to a particular Clause viz. Clause 45 relating to payment of penalty as punishment for non-compliance of directions given by a Commission, such arrears in the Electricity Bill, 2001 encompass the entire Act.

19.5 The Committee find that under Clause 165, 'any amount payable by a person under the Act, if not paid, may be recovered as if it were an arrear of land revenue'. The Committee are of the view that this is too harsh a provision. In this connection, the Committee would like to draw the attention towards Clause 45(2) of the Electricity Regulatory Commissions Act, 1998 whereunder the recoverable arrears of land revenue were restricted to that particular Clause only i.e. punishment for non-compliance of direction given by a Commission. The Committee desire that this provision in the present Bill may also be restricted to non-compliance of direction given by a Commission only and not encompass the whole Act.

Chapter -XX

Exemption from the Act

Clauses 168 and 179 of the Electricity Bill, 2001 provide for exemption of some Acts/Ministries/Departments from the purview of the Bill. Clause 169 of the Bill gives an overriding authority to the Bill over the provisions in other Acts/Laws except those provided in Clause 168 viz. the Consumer Protection Act, 1986 and the Atomic Energy Act, 1962. Clauses 168 and 169 are based on the provisions contained in the Clauses 49 and 52 of the Electricity Regulatory Commissions Act, 1998 respectively.

20.2 Clause 49 of the Electricity Regulatory Commissions Act, 1998 is as under:-

Nothing contained in this Ordinance or any rule or regulation made thereunder or any instrument having effect by virtue of this Ordinance, rule or regulations shall have effect so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962.

20.3 Clause 168 of the Bill is as under:-

168. Nothing contained in this Act or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962.

20.4 Thus, it may be seen that Clause 49 of the Electricity Regulatory Commissions Act, 1998 and Clause 168 of the Electricity Bill, 2001 are similar.

20.5 Clause 52 of the Electricity Regulatory Commissions Act, 1998 is reproduced below:-

Save as otherwise provided in Section 49, the provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Ordinance.

20.6 Clause 169 of the Electricity Bill, 2001 is as under: -

Save as otherwise provided in Section 168, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any enactment having effect by virtue of any law other than this Act.

20.7 Thus, it may be seen that Clause 52 of the Electricity Regulatory Commissions Act, 1998 and Clause 169 of the Electricity Bill, 2001 are similar.

20.8 Clause 179 of the Electricity Bill, 2001 relates to non-application of the provisions of the Act in certain cases. Such exemption has been granted to the Ministry/Department of the Central Government dealing with Defence, Atomic Energy or

such other similar Ministries/Departments/Undertakings/Boards/Institutions as may be notified by the Central Government. This is a new provision incorporated in the Bill without any corresponding provision in the Acts of 1910, 1948 and 1998.

20.9 Clause 179 of the Bill is as under:

179. The provisions of this act shall not apply to the Ministry or Department of the Central Government dealing with Defence, Atomic Energy or such other similar Ministries or Departments or undertakings or Boards or institutions under the control of such Ministries or Departments as may be notified by the Central Government.

20.10 The Southern India Chamber of Commerce and Industry has stated that there should not be any special treatment to Public Sector Undertakings or other ministries and the Government Departments.

20.11 Some organisations/Ministries like the Ministry of Railways, the Bhakra Beas Management Board (BBMB) and the Damodar Valley Corporation (DVC) have requested for exemption from the Act citing peculiar/sensitive/specialised jobs they are carrying out as the ground.

20.12 The Ministry of Railways (Railway Board) have suggested that along with Defence and Atomic Energy, Railways should also be inserted in Clause 179. They have stated that the Railways have an important role to perform during the time of war for the security and defence of the country. As such, the provisions of this Act should not be applicable to the Ministry of Railways.

20.13 The Ministry of Railways (Railway Board) have also requested for exemption/concession under Clauses 12, 42, 47, 67, 68 and 169 of the Bill.

20.14 When asked to give their views on the request of the Ministry of Railways for exemption under Clause 179, the Ministry of Power, in a post-evidence reply, stated that the provision contained in the Clause is adequate.

20.15 The Bhakra Beas Management Board (BBMB) has stated that BBMB has been constituted under the Punjab Reorganisation Act, 1966 for administration, operation and maintenance of Bhakra Nangal and Beas Projects. It is not covered either under the definition of Board or licensee as provided in the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 and derives power for generation and transmission of power under the Punjab Reorganisation Act, 1966.

20.16 It has also stated that BBMB has been constituted under a separate Act of Parliament and is discharging its statutory functions of generating and transmitting electricity to the participating States (State Electricity Boards) and is presently operating and maintaining six power houses with an installed capacity of 2867MW, a transmission network of 400/220/132 and 66 KV lines comprising 3735 circuit KMs and 24 EHV sub-stations.

20.17 BBMB has further stated that Clause 168 of the Bill provides that no provision of the proposed legislation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962. The

constitution, functions, powers and duties of BBMB constituted by the Central Government under the provisions of the Punjab Reorganisation Act, 1966 and the rules and regulations framed thereunder have not been saved and protected specifically. BBMB has suggested that the Punjab Reorganisation Act, 1966 may also be included in the Clause 168 of the Electricity Bill, 2001.

20.18 When asked to comment on the request of the BBMB for inclusion of the Punjab Reorganisation Act, 1966 in Clause 168, the Ministry of Power, in a post-evidence reply, stated that BBMB has been constituted for administration of the Bhakra Nangal and Beas projects. BBMB does not own any assets. The participating States have shares in the projects and BBMB is like a manager entrusted with the responsibility of operation, maintenance and administration of the projects on behalf of the participating States. The O&M expenses of BBMB are also recoverable from the participating States/State Power Utilities as per the share agreements. Thus, the status of BBMB is not at par with the cooperative entity nor do its activities involve any commercial transaction as in the case of a licensee. Even in so far as transmission of electricity is concerned, BBMB's role cannot be equated to that of a transmission licensee as envisaged in the Bill. It is, therefore, not considered necessary to provide for deemed licensee status to BBMB. Provisions of the Punjab Reorganisation Act and the status of BBMB are not affected in any way because of the Bill.

20.19 The Damodar Valley Corporation (DVC) has stated that DVC was constituted under the DVC Act, 1948 for the development of Damodar Valley in the provinces of Bihar (now Jharkhand) and West Bengal. The functions of the Corporation are as under:-

(a) the promotion and operation of schemes for irrigation, water supply and drainage,
(b) the promotion and operation of schemes for the generation, transmission and distribution of electrical energy, both hydroelectrical and thermal,
(c) the promotion and operation of schemes for flood control in Damodar river and its tributaries and the channels, if any, excavated by the Corporation in connection with the scheme and for the improvement of flow conditions in the Hooghly river,
(d) the promotion and control of navigation in the Damodar river and its tributaries and channels, if any,
(e) the promotion of afforestation and control of soil erosion in the Damodar Valley, and
(f) the promotion of public health and the agricultural, industrial, economic and general well-being in the Damodar Valley and its area of operation.

20.20 The responsibility cast by the DVC Act on the Corporation is for the holistic development of the valley area and the area of operation of DVC in general which includes generation and distribution of electrical energy. Substantial investment is being made and the Corporation is incurring expenditure on the non-power activities in pursuance of the major non-power objectives of the Corporation. The activities in the non-power area are, therefore, statutorily mandated objectives of the Corporation. The activities in the non-power area have, therefore, to be cross-subsidized by the power surplus on year to year basis.

20.21 A special responsibility has also been cast on the Corporation by virtue of the provision under the Act to supply bulk power to the major core sector industries in the Damodar Valley area such as Coal, Mines & Minerals, Steel and Railways, etc. By meeting its commitment of supplying quality power to the core sector industries, DVC

has contributed substantially to industrial growth and general development of the Valley as well as of the country.

20.22 Concurrent with the special responsibility attached to the DVC with regard to the general development of the Valley, its industries and the socio-economic conditions, the DVC Act, in recognition of such onerous responsibility has assigned special statutory protection through Section 58 of the DVC Act. So far, no legislation has overlooked this special status and statutory protection. The impact of Clause 169 of the Electricity Bill, 2001 will be to do away with special status. This will go against the mandated role of the DVC. The DVC has, therefore, proposed to the Ministry of Power that the status and responsibility be protected as per the already assigned role and responsibility through inclusion of DVC in the saving provision of Section 168 of the Electricity Bill, 2001.

20.23 DVC has also stated that the Indian Electricity Acts enacted so far have not been allowed to be passed in derogation of or to override the special provisions of the DVC Act in due consideration of the special responsibilities attached to the DVC.

20.24 Section 169 provides that the provision of the Electricity Bill, 2001 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any law other than the Electricity Bill, 2001. On the other hand, Section 58 of the DVC Act, 1948 gives effect to the provisions of this Act "notwithstanding anything contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act". Thus, DVC has argued that the provision of Section 58 of the DVC Act and Section 169 of the Electricity Bill, 2001 are contradictory to each other.

20.25 DVC has also stated that the provisions of the proposed Electricity Bill, 2001 having significant impact on DVC Act, 1948, if passed in its present shape without reconciliation, will have serious repercussion on the functioning of DVC. The special status of DVC as accorded by the DVC Act, 1948 by virtue of Section 58 needs to be protected so that the Corporation can fulfil its statutory mandate in the valley area.
Alternatively, the functions of DVC will require change. Since the Act has been enacted on the recommendations of the Provincial Legislatures by the Parliament of India, any review of the provisions of the Act have to be separately conducted with the full involvement of the concerned State Governments and the Provincial Legislatures. Any changes in DVC Act, 1948 (XIV of 1948) should, therefore, follow a conscious decision taken in consultation with the States and the State Legislatures of West Bengal and Jharkhand.

20.26 DVC has suggested that the DVC Act, 1948 should be included in Clause 168 of the Electricity Bill, 2001 along with the Consumer Protection Act, 1986 and the Atomic Energy Act, 1962 in order to avoid any confusion regarding the effect of the proposed Bill on the provisions of the DVC Act, 1948.

20.27 As regards the special status of DVC, the Chhotanagpur Chamber of Commerce and Industry has stated that DVC has monopoly in its command area for generation, transmission and supply of electricity. Even NTPC cannot supply power in the command area of DVC. The Electricity Bill, 2001 should specifically provide that DVC will be treated like any other generating company and regulated as such.

20.28 The Bengal Chamber of Commerce and Industry has stated that the Eastern Region suffers from a particular situation due to the fact that DVC has not yet come under any Regulatory Body while all the other electricity organisations have to go through either the State or the Central Electricity Regulatory Commission. In view of the new Act leading to the formation of the Regulatory Commission both at the Centre and at the State, the DVC Act should be repealed. The said Chamber has also stated that various utilities in this region which are drawing power from DVC are going through considerable hardship as they are not able to increase tariff without going through the Regulatory Commission while DVC had already increased the price unilaterally. Apart from the above situation, the DVC Act needs to be repealed if the new policy of the Government is to be given effect to. The DVC Act is prohibitive of encouraging competitors.

20.29 In this connection, the Government of Jharkhand has stated that DVC is a creation of the DVC Act, 1948. It has monopoly in its command area for supply of electricity above 30,000 volt. Out of 22 districts of Jharkhand, 7 districts fall under the command area of DVC. The consumers above 30,000 volt are HT and bulk consumers. They are best pay masters in the whole country. Accordingly, the T&D loss of DVC is as low as 15 per cent. DVC wants to protect its monopoly over the elite HT consumers in the command area at all costs. DVC claims to provide the cheapest electricity in the command area. This has happened only because of its monopoly above 30,000 volts. The Jharkhand Government had requested DVC to provide electricity to LT & domestic consumers also in its command areas. The request was turned down by the DVC, claiming protection from DVC Act, 1948. The basic purpose of the Electricity Bill, 2001 is to remove all kinds of monopoly and promote free and fair competition for electricity. That is why under Clause 131 of the Bill, the State Electricity Boards are being dismantled. In this background, the restructuring of DVC should also be included under Clause 131 of the Bill. Accordingly, the DVC Act, 1948 should also be reviewed/repealed along with the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 under Clause 180 of the Electricity Bill, 2001.

20.30 The Government of Jharkhand has also stated that as per the DVC Act, 1948, the DVC is supposed to carry out six different functions viz. irrigation and flood control, soil conservation, navigation, power generation and distribution, economic upliftment of command area and afforestation. Out of these 6 activities, the power generation and distribution occupies 90 per cent of its total activities where as the rest 5 activities occupy only 10 per cent of its total activities. In view of the total change in the functions of DVC, the DVC Act itself requires compete review and overhauling.

20.31 The Government of West Bengal has stated that even though DVC is an authority under the control of the Central Government, the tariff of DVC is not determined by the Central Electricity Regulatory Commission. Section 13(a) of the Electricity Regulatory Commissions Act, 1998 and Clause 78(1)(a) of the proposed Act are similarly worded. This position cannot continue. Provisions need to be made so that tariff of DVC is also regulated.

20. 32 The Committee note that Clauses 168 and 179 of the Electricity Bill, 2001 grant exemption to certain Acts viz. the Consumer Protection Act, 1986 and the Atomic Energy Act, 1962 and the Ministry, Department, undertaking, etc. dealing with Defence and Atomic Energy. In this connection, the Committee have been requested by the Ministry of Railways, the Bhakra Beas Management Board (BBMB) and the Damodar Valley Corporation (DVC) for exemption from the scope of the Bill. The Ministry of Railways have argued that as they have an important role to perform during the time of national

emergencies, they may be exempted under Clause 179 of the Bill. Similarly, BBMB has stated that it has been constituted under the Punjab Reorganisation Act, 1966 for administration, operation and maintenance of Bhakra Nangal and Beas Projects and that it is not covered either under the definition of Board or licensee as provided in the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 and derives power for generation and transmission of power under the Punjab Reorganisation Act, 1966. BBMB has suggested for inclusion of the Punjab Reorganisation Act, 1966 in Clause 168 of the Bill. DVC has stated that it is incurring expenditure on the statutorily mandated non-power activities viz. promotion of schemes for irrigation, flood control, navigation, afforestation and public health which is cross-subsidised by the power surplus on year to year basis. It has argued that Section 58 of the DVC Act. 1948 and Clause 169 of the Electricity Bill, 2001 are contradictory to each other and that the Bill, if passed in its present shape, would have serious repercussion on the functioning of the Corporation. DVC has suggested that the DVC Act, 1948 should be included in Clause 168 of the Bill.

After considering the arguments of these organisations, the Committee feel that DVC has a strong case for exemption from the Bill. Accordingly, the Committee recommend that DVC should be exempted from the Bill under Clause 168 or any other similar Clause. The Committee have taken note of the request of the Ministry of Railways for exemption from the provisions contained in Clauses 12, 42, 47, 67, 68 and 179. The Committee desire that the Ministry of Railways be exempted from licensing for erecting, maintaining and transmission of electricity, subject to the condition that the transmission network is outside the grid and erected for their own use. The licence would be insisted upon for grid operation. As regards the request of BBMB, the Committee feel that the case of BBMB has no merit to be considered for exemption from the provisions of the Bill.

CHAPTER –XXI

Central Act vis-à-vis State Enactments

Clause 180(3) of the Electricity Bill, 2001 is a new provision without any corresponding provision in the Acts of 1910, 1948 and 1998.

21.2 Clause 180(3) provides that the provisions of the enactments specified in the Schedule, not inconsistent with the provisions of this Act, shall apply to the States in which such enactments are applicable. This means that the provisions of the State enactments which are inconsistent with those in the Central Act, would not apply. The Schedule referred to in Clause 180(3) contain the Reform Acts of Orissa, Haryana, Andhra Pradesh, Uttar Pradesh, Karnataka, Rajasthan and Delhi.

21.3 The GVK Industries Limited has suggested that Clause 180 (3) should be deleted as the provision defeats the purpose of this Act. The provision of the Act should apply to all stations.

21.4 CII has suggested some amendments to Clause 180 (3). It has suggested that the Bill should :

(i) preserve their current reform programmes based on their respective reform legislations in the short duration – say 3 to 5 years,
(ii) extend the application of other provisions in the Bill like those governing trading, market development, open access, etc., which do not have any contrary/corresponding provisions in the respective State Acts, to the reforming States; and
(iii) identity the cut off date by which the Scheduled States will come under the umbrella of the Bill, so that they can prepare and implement a smooth transition.

21.5 The Confederation of Indian Industry (Jharkhand) has suggested that in case of conflict between the individual State Act and the Electricity Bill, 2001, the spirit of the Electricity Bill, 2001 should prevail.

21.6 The BSES Limited and the India Energy Forum have suggested that for the sake of unity in legislation across the country, it is suggested that once this Bill is enacted as an Act, the States should not pass their Reform Bills. The BSES Limited has also suggested that the provisions of this Act in so far as they are related to the Act of the State legislature specified in the schedule, shall not be applied for two years. Thereafter, the provisions of this Act will apply.

21.7 In this connection, the Indian Merhants' Chamber and Maharashtra Economic Development Council have stated that this Act should be overriding; otherwise, there would be endless litigations. SERC should interpret the variation, if any, and decide on natural justice principle. During implementation, if any serious flaws are noticed, the Act can be amended.

21.8 Taking a different view, the Thane Belarpur Industries Association has stated that the provisions of State Acts should continue to operate in their entirety even after enactment of the Bill.

21.9 The Rajasthan Chamber of Commerce has viewed that no overlapping effect of the Central law should be allowed.

21.10 On the other hand, the Trivandrum Chamber of Commerce has viewed that the fears of the State Governments are unfounded.

21.11 According to CEA, the Bill in its present form will not cause any problems in the process of reform in the States. If at all any difficulty arises, this can be dealt with under Clause 178.

21.12 Clause 178 of the Bill reads as under:-

178. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

21.13 The Indian Merchants' Chamber and Maharashtra Economic Development Council have suggested that the Electricity Bill, 2001 should prevail upon all the related State Acts. During implementation, if any serious flaws are noticed, the Act can be amended.

21.14 The Forum of Indian Regulators has stated that the proposed Bill has provisions relating to virtually all matters covered by the State Act. This means that the proposed Act would practically supersede the Act. If the intention is to supersede the State Acts, it may be so provided specifically.

21.15 The Government of Himachal Pradesh has stated that as the reform process is State specific, the overriding effect of the proposed Act will affect the process of reforms undertaken in various States.

21.16 The Government of Goa has stated that the provision for reforms should not be made mandatory for the States that have already reformed/or are undergoing reform.

21.17 The Government of Uttar Pradesh has suggested that in the event of a conflict between a State law and the Electricity Bill, 2001, it is the State law which should gain pre-eminence even though the electricity is in the Concurrent List of the Constitution of India. In other words, the suggestion is that the enactment of the Electricity Bill, 2001 may kindly not be allowed to override the federal system of the Constitution of India.

21.18 During oral evidence, a representative of the Government of Uttar Pradesh deposed before the Committee as under:-

> "Different States have passed their own Bills. Many of them have done so recently. The UP Power Theft Bill has only recently received the assent of the

President of India. We have an Electricity Act. We have our own Regulatory Commissions as well. In that context, we have to phase out State Laws in favour of the Electricity Bill, 2001. When we phase out State regulations, there would certainly be transitional period, if not a permanent entity of State regulations. Now, I find that the Electricity Bill, 2001 unfortunately does not have sufficient transitional provisions. After all, today, in our State, like in may other States, we are having a system of cross-subsidy. It is not easy to finish it off overnight. It will take time. The State Government has to continue to discharge that social responsibility over a number of years till the entire privatisation and the Electricity Bill, 2001 is stablised. Therefore, what I mean to say is that the federal structure of the Constitution that gives a prerogative to the State Government to look after social and other managerial responsibilities in this particular area of activity of State legislation may be allowed to have a breathing time. Therefore, transitional provisions should be appropriately put in place and carefully integrated into the Bill so that the transition is unflinching and from a managerial point of view without any shocks."

21.19 Amplifying further, a representative of the Government of Uttar Pradesh deposed before the Committee as under:-

"…It should not disturb the federal structure of the Constitution ….in the event of a conflict between the Electricity Bill, 2001 and a State regulation, unlike the stipulations in the Concurrent List of the Constitution, the State legislation should get the overriding consideration and not the Electricity Bill, 2001."

21.20 The Government of Gujarat has viewed that it has introduced the Reforms Bill in the Assembly. In the State Reforms Bill, it has been provided that the State Government may give directions to the Commission on matters of policy including the matters relating to planning and co-ordination of the development of the electricity industry and that the Commission shall comply with such directions. In the Central Bill, such directions are restricted to policy involving public interest and there is no mention about compliance by the State Commission excepting that the decision of the State Government is final. It has opined that the provisions of the State Bill should prevail once passed and should continue to operate.

21.21 The Government of Karnataka has stated that it is extremely important to save all State Reforms Acts and Amendments to the Central Acts as they have been enacted to address State specific issues. Irrespective of inconsistencies, existing State Enactments have to be saved for the reforms to succeed.

21.22 The Government of Madhya Pradesh has stated that electricity is a Concurrent subject. This means both the Parliament and the State Legislature have powers to enact legislation. Since 1994, the Central Government has encouraged States to legislate power sector Reform Acts. Many States including Madhya Pradesh have enacted appropriate legislation. The Legislative will in these States has been reflected in the State Legislations. These State Legislations have also received the assent of the President of India under Article 254 of the Constitution of India which gives supremacy to the State Legislation over the existing Central legislation in case of inconsistency. It may not, therefore, be appropriate to override the State Legislations by the new Central Legislation. The federal structure requires that the States which have enacted their own

legislation are allowed to maintain and preserve the Act enacted by its State Legislature and in case of inconsistency between the proposed Central Act and the State Reforms Act, the latter is allowed to prevail.

21.23 During oral evidence, a representative of the Government of Madhya Pradesh deposed before the Committee as under: -

> "There is a schedule attached to the Act which lists those Acts passed by various State Governments which have been saved under Clause 180 of this Bill. Unfortunately, the State Act passed by Madhya Pradesh does not find a place in this. The State had passed a reform legislation and M.P. Reform Act has been passed and it received Presidential assent and it has been enforced in our State. The next point is relating to the applicability of the State laws in a situation where the Central Act is to come into force. We would like to humbly submit that in the Bill it is prescribed that the Central Act will prevail over the State Act where there is inconsistency between the two. There are very many provisions which have been provided for in the State Acts which are not contrary to this law. They are specifically provided for. For example, take the case of tenure of office of the Regulatory Commission which is given as five years in our case. It is put here as three years, extendable by another three years. They are not actually contradictory. But, then, if this Act becomes a law all my members of the Regulatory Commission will have to quit office. That may not be a good thing to do. There are six or seven areas of this kind of an overlapping provision in this Act and our Act."

21.24 The Government of Karnataka has stated that Clause 180 provides for State enactments to apply to the States to the extent they are consistent with the provisions of this Central Act now proposed under the Electricity Bill, 2001. This means that the provisions in the State Act on important matters relating to licensing, tariff and working of the Commission will be changed once this Law is brought into force. Further, the provisions relating to imposition of penalties and punishment for theft of electricity are different in the Central Act than what is mentioned in the State Amendment. The State Amendment to the Central Act provides for constitution of special courts for each district headed by a district and session judge whereas, the Central Act provides for discharging these functions by an Assessing Officer and the State Electricity Regulatory Commission. It may be better to leave the adjudication process to the Courts as they have been dealing with matters relating to conducting trials as per the procedures laid down in the Criminal Procedure Code, etc. Moreover, the State Commissions are already overburdened with laborious process of regulatory matters. Hence, it may be better to save all the State enactments made during reform process unconditionally so that the pace of State reform remains unaffected. Alternatively, power may be vested in such States who have already made such enactments to decide and notify as to which of the provisions of the Central Act could be applied to their States for accelerating the reform process.

21.25 According to the erstwhile Delhi Vidyut Board and the Government of Delhi, the provision of Clause 180(3) seems to be inadequate and is a cause of serious concern. In the earlier drafts, it was provided that the provisions of this Act in so far as they relate to the Acts of State Legislatures specified in the Schedule to the current Act, shall not apply. The Acts mentioned in the Schedule are the Reform Acts enacted by the States which were primarily intended to bring about reforms in their power sector. These States have already initiated the process of reforms and have gone ahead with restructuring of the

SEBs in terms of the provisions of these Reform Acts. The provision now suggested in the Act can seriously jeopardize the reform process in the States, particularly in Delhi. It means that the Delhi Electricity Reform Act shall stand repealed to the extent it may be held to be inconsistent with the Central Act. This will create a whole range of very serious problems. It will be necessary to incorporate a provision to the effect that the provisions of the State Reform Acts listed in the Schedule shall continue to be in force and shall have overriding effect to the extent of any inconsistency between those Acts and the provisions of the Central Act. The Government of Delhi has enacted the Delhi Electricity Reform Act 2000 and has since restructured the Delhi Vidyut Board and privatised the distribution business w.e.f. 1st July, 2002 by issuing certain policy directions under the Delhi Act which are binding on the State Commission and the stake holders for the transition period of 5 years. It will, therefore, be necessary to allow the Delhi Reform Act listed in the schedule to continue to be in force and allow it to have overriding effect to the extent of any inconsistency between the State Act and the provisions of the Central Act.

21.26 During oral evidence, a representative of the Government of Delhi deposed before the Committee as under:-

> "The most important thing that is worrying us – and that is why I am bringing it to your notice right at the beginning – is the fact that in Section 180 (3) – that is the repeal and saving Clause – it would appear that the Bill intends that if there is any conflict between this Bill, when it becomes an Act, and any of the provisions which are there in the existing Acts which have been promulgated by State Governments, then what is in the Central Act would prevail. In the case of Delhi, we not only have embarked on the passage of the Act in Delhi, which is the Reform Act 2000, but also have implemented the same in a very massive way. For reasons which I would also like to, if you permit, share with you, anything that we now do might be taken by our detractors – there are a number of people who have some interest one way or the other – to see that this process of reform may not go forward. If that opportunity is given through an Act which tries to say that there is an opportunity to go back on what has already been done by the Government of NCT Delhi, it could be a source of major concern and major worry in case the matter goes to the Court of Law. Therefore, as was done in the previous version, it may be specifically provided that this Act would not affect the Acts which have been introduced by the State Government. Whichever way it is possible, I would be grateful if this could be please kept in mind."

21.27 Empahsising on the impact of the Electricity Bill, 2001 on the reforms package in the State, a representative of the Government of Delhi deposed before the Committee as under:-

> "The essential feature of the reform in Delhi is that we have a five year package. For five years certain things have been established. These are primarily these. One is that transitional financing has been committed by the Government for five year period to the extent of Rs. 3450 crore. Second, which is connected with this, is the efficiency improvements targets that have been established for five years through the bidding process. Regulatory Commission has been given policy directions by the Government whereby for five years the Regulatory Commission will take all regulatory decisions in accordance with the package on which the bidding was

invited. Our serious anxiety is this. The package which has been given to the investors who have put in their money to buy their shares in a company, and also are now investing money to run the company to improve the system on the basis of this package for five years, that package should not be disturbed. It is our serious anxiety that the way in which this saving Clause in Section 180 has been drafted, it may put this package at risk."

21.28 The Government of Rajasthan has stated that after the Electricity Bill, 2001 is enacted, reforming States like Rajasthan would face immediate problem in continuing the reform programme as envisaged under Power Sector Reform Act of the State. In Rajasthan, Power Sector Reforms are at an advanced stage after unbundling of the erstwhile RSEB into five distinct entities handling generation, transmission and distribution. The World Bank loan assistance has been sanctioned. A consultant has also been appointed to advise the Government on privatisation of distribution companies.
However, organisational structure would again undergo drastic changes once the Electricity Bill, 2001 comes into force. This would lead to serious impediments in the reform process. As per scheme finalised by the State Government, under power sector reforms, the bulk supply has been assigned to the transmission utility. The three distribution companies at this stage are in no position to undertake bulk supply, as their financial position is very weak. The supply functions should be separated from the transmission company only after an alternative arrangement is in position. There seems to be no option at this juncture in Rajasthan as the erstwhile Board has been unbundled about two years ago and regrouping of the companies for the purpose of creating suitable organisation for bulk supply would seriously jeopardise the reforms programme. Whereas the Statement of Objects and Reasons assert that the States are being given enough flexibility to develop their power sector in the manner they consider appropriate, the flexibility in case of reforming States would, on the other hand, get severely restricted.

21.29 The North Delhi Power Limited (NDPL) has viewed that the provision of the Central Legislation is inadequate and a cause of serious concern, as it will have overriding powers over State Acts and thereby undo the Reforms process in some of the States which have undertaken Reforms or are in the process of unleashing the same. This will create a whole range of potentially very serious problems, which it is impossible even to fully anticipate and enumerate at present. Fundamentally, since it can affect the whole basis on which a five-year package was created to attract potential investors, it can send a very wrong signal regarding the trustworthiness of Indian Governments so far as such reform packages are concerned, as it may change the scenario under which the investors made their investment decision.

21.30 The BSES Rajdhani Power Limited has stated that the Government of National Capital Territory of Delhi (GNCTD) has undertaken various initiatives for bringing in reforms and restructuring in the State power sector. The reform measures have been driven by the enactment of the Delhi Electricity Reform Act, 2000 which received the assent of the President under Article 254 of the Constitution. As an integral part of the reforms & restructuring exercise, the GNCTD has unbundled the erstwhile Delhi Vidyut Board into functional entities viz. generation, transmission, distribution and privatized distribution business by calling in international competitive bids. BSES has been awarded two out of the three new distribution companies. With a view to providing an enabling investment climate and also an optimal risk mitigation framework, the GNCTD had prepared a five-year package which formed basis of the bid and the investment decision by the private sector. The private licensees have taken over the distribution business in

Delhi entirely on the basis of the supports and assurances granted by the GNCTD in this package. The GNCTD issued appropriate policy guidelines under Section 11 of the Delhi Electricity Reform Act to the Delhi Electricity Regulatory Commission for implementation of the package. Section 180 (3) of the Electricity Bill stipulates that the provisions of the State Reform Acts specified in the Schedule which are not inconsistent with the provisions of the Bill shall apply in the States. This implies that wherever there is an inconsistency between the reform legislation of the State and this Central legislation, the provisions of the Central Electricity Act would override the corresponding provisions in the State Reform Acts. It may be noted that some of the assurances/supports given in the package/policy guidelines by the GNCTD may be made subject of various challenges in the light of the provisions of the Electricity Bill and / or create an uncertainty with respect to the structure and operation of the industry in the State, etc. By virtue of Section 180 of the proposed Electricity Bill, if the provisions in the Delhi Reform Act are overridden, it would not only negate the entire bidding process, it would also put into jeopardy the very reform process which the Bill seeks to achieve in all parts of the country. This would also send out a very uncomfortable signal to the investing Company about the certainty of the Government policies and assurances, which would have a very debilitating effect on the entire economic reform process in the country.

21.31 As regards the powers of the State Government vis-à-vis the Union Government on matters enumerated in the Concurrent List of the Constitution of India, the Ministry of Law has made the following broad points: -

(i) The subject 'electricity' has been included as Item No. 38 in List III (Concurrent List) of the VII Schedule of the Constitution. Article 246 (1) of the Constitution provides that notwithstanding anything in Clause (2) and (3), Parliament has exclusive power to make laws with respect of any of the matters enumerated in List I in the VII Schedule. Clause (2) of the Article 246 provides that both Parliament and Legislature of any State have concurrent power with respect to the subjects enumerated in List III.

(ii) Article 254 of the Constitution provides that the provisions of the State Act should not conflict with those of the Central Act on the subject. Where the Parliament has made no law occupying the field in List III, the State Legislature is competent to legislate in the field.

(iii) Clause (1) of the Article 254 lays down the general rule that the Union law on any subject in the Concurrent List will prevail where State Law is repugnant to it irrespective of the fact whether the Union Law is prior or later in time. However, the State Law does not become void as soon as Parliament legislate with respect to the same subject. Article 254 is attracted only if the State law is repugnant to the Union Act which means that the two cannot stand together.

(iv) Article 254 (2) provides that a law enumerated in the Concurrent List, will prevail in the State notwithstanding its repugnancy to a law of the Union if the President assents to it which has been reserved for his consideration.

(v) Article 256 of the Constitution provides that the executive power of every State shall be so exercised as to ensure compliance with the laws made by the

Parliament and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government to be necessary for that purpose.

(vi) In the light of the above stated Constitution provisions, it will appear that the Parliament has full power to legislate on the subject of electricity which falls in the Concurrent List and a Union Law in respect of a subject enumerated in List III prevails over a State law to the extent of repugnancy between the two. In case of overlapping between Union and State powers, the Union power shall prevail.

21.32 The Ministry of Power, in a post-evidence reply, have stated that Clause 180 saves the State Reform Acts to the extent of their not being inconsistent with the provisions of the proposed legislation. If State enactments are given supermacy over the provisions of this Bill, many of the provisions of the Bill will be rendered ineffective throughout the country e.g. the provision relating to open access in transmission and distribution will become infructuous if 8-9 States which already have their reform Acts can block it. The Ministry of Power have further stated that the provisions of this Bill will in no way derail the reform process. Only effect of the law on the restructured companies in reforming States will be that their Transmission Companies will not be able to trade in power. This provision is necessary to maintain neutrality of the transmission companies and also giving up single buyer model.

21.33 Clause 180 (1) seeks to repeal the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998. Clause 180 (2) (c) saves the Indian Electricity Rules, 1956 made under Section 37 of the Indian Electricity Act, 1910 until regulations under Clause 53 of this Act are made.

21.34 The Kerala State Electricity Board (KSEB) has suggested that the Electricity Supply Annual Accounts Rules, 1985 made under Section 69 of the Electricity (Supply) Act, 1948 should also be saved as a transitional arrangement.

21.35 The Committee have noted the views expressed by various State Governments that electricity is a concurrent subject and that both the Parliament and State Legislatures have powers to enact legislation on the subject. As such, many States have enacted legislations as mentioned in the Schedule. The legislative will in these States has been reflected in the State legislations. These State legislations have also received the assent of the President of India under Article 254 of the Constitution. It may not, therefore, be appropriate to override the State legislations by the new Central legislation. It has, therefore, been suggested that the States which have enacted their own legislation be allowed to maintain and preserve the Act enacted by the State Legislature and in case of inconsistency between the proposed Central Act and the State Act, the latter be allowed to prevail. It has also been stated that the provisions now suggested in the present Bill can seriously jeopardise the reform process in the States. It may be pertinent to mention that the Ministry of Law have expressed their opinion that the Parliament has full powers to legislate on the subject of electricity which falls under the Concurrent List and a Union Law in respect of a subject enumerated in the Concurrent List shall prevail over a State Law to the extent of repugnancy between the two. The Committee feel that the present Bill has been brought forward to take measures conducive to development of the electricity industry. For this purpose, the active co-operation of the States is a pre-requisite and becomes absolutely necessary. Keeping in view the federal structure of our polity, it would be appropriate that States are given enough flexibility to decide for themselves in the matter of a subject which is in the Concurrent List of the Constitution of India. Taking into consideration that a number of States have already taken action/steps in pursuance of their Reform Acts, striking down any provision of State

Acts, which is inconsistent with the Central Legislation, may jeopardise and even derail the power sector reforms in the States concerned and pose serious practical problems. The Committee, therefore, desire that a harmonious balance between the Central Legislation and the State Reform Acts be struck. The Committee recommend that a suitable provision may be made in the Bill to save the action already taken under State Reform Acts. Further, those States where the process of reforms is under way, the saving Clause may be operationalised after three years of the enactment of this Bill. The Committee also recommend that the Reform Acts enacted in the States which do not find a place in the Schedule to the Bill, may also be included in the Schedule.

21.36 The Committee find that under Clause 180(2)(c), the Indian Electricity Rules, 1956 have been saved. However, the Electricity Supply Annual Accounts Rules, 1985 have not been saved. Taking into consideration that freedom has been granted to State Governments to continue with SEB or otherwise, it is desired that the Rules of 1985 should also be saved so as to ensure continuity in the system. The Committee, therefore, recommend that these rules should also be saved and amendments may be made in the Bill accordingly.

SONTOSH MOHAN DEV,
Chairman,
Standing Committee on Energy.

NEW DELHI;
December 13, 2002
Agrahayana 23, 1924(Saka)

NOTE

Every society evolves legislation through an evolutionary process accommodating new concepts and technologies in order to use of resource consistent with societal needs. Legislation is resorted to only if and when necessary. The proposed legislation is without a perspective. Several questions need to be answered:

- What would be the long-term policy with respect to privatization of the electrical power industry?

- Would profit maximization be sole objective in a country where a vast majority has little purchasing capacity?

- Since independent power producers (and traders) are allowed to sell power directly to select consumers, what would happen to the people of the state where the plant is located since no part of India is, in the near future, going to have surplus energy except may be for a few hours or days?

- Why should SEBs be liquidated and handed over to the private sector (on worst financial terms possible)? Would the SEBs not be profitable if provisions of the bill (and for that matter even under the existing legislation) in respect of revenue realization and subsidies are enforced?

- Can the removal of subsidies and profits guaranteed to the MNCs not result in the denial of power to rural areas and the urban disadvantaged? Who will take care of power and food riots that will follow?

- Would the people be given a choice between affordable power with power cuts during peak hours and high priced uninterrupted and reliable power?

- In an interconnected grid how would the administrative boundaries of rural and urban be drawn on electrical power lines and why should rural areas be served on the "do it yourself basis?

- And, finally if the state Govts. Could, with impunity, violate the existing legislation particularly Section 59 of the Indian Electricity (Supply) Act, 1948, what purpose does the new legislation serve?

It is true **that Indian Electricity Act 1910 (Supply) Act, 1948** do not fully cover the needs for accelerated developments and generation of funds, adequate for funding new projects. It was, therefore, thought the proposed bill would cover restructuring of electricity sector and streamlining procedure and enabling clauses to usher-in climate for fresh investments. Instead of addressing these problems, **GOI** insists **on IMF-WB-WTO** sponsored **Electricity bill 2001** to facilitate privatization repeating **Indian Electricity Act 1910 and Electricity (Supply) Act 1948,** thereby denying efficient service to consumers at economical just rates.

In the last decade enough attempts were made in the name of reforms to address the problems, but they are IMF-WB dictated solution, which have been proved inappropriate resulted in increased power sector crisis.

The Electricity is a subject under the concurrent list, as per the Constitution of India. Moreover State Govts. / Union Territories are answerable to the people of their States for consistent quality power supply at an affordable price. But the Electricity Bill-2001 had diluted the power of State Govt.s in all respect a depicted in the following areas:

- Planning process of State Power Sector
- Area supplier / licensing process etc.
- Regional Transmission Centre / State Transmission Centre.
- Power supply to rural areas.
- Regional Load Dispatch Centre.

* * * * **The** role of the legislature is almost eliminated; it is reduced to a listening post. The appellant commission eliminates the jurisdiction of civil courts. The **CEA** is reduced to a data collection center and for laying down standards for construction and operation. There is no holistic examination of the viability of the various generation and transmission schemes. The investors is free to decide on the future of this very vital infrastructure that is distinct from any other commodity or service in as much as that it has no finished goods inventory.

The question arises as who has felt the need? Moreover in what way have the existing legislation failed, which have added above one lakh MW since independence and provided electrification in 5 lakh villages (out of total 5.9 lakh) besides energizing b125 lakh pump sets. It is highlighted that all the existing Acts have never been implement in true spirit, what is the guarantee that the proposed bill will not be violated?

In fact the Bill is based on the California type model which has failed miserably leading to soaring prices, rolling blackouts, laying off thousands of workers. Let down with such failures, the Governor of California, Gray Davis in his Jan, 8, 2001 address said “my friends electricity is not a exotic commodities like pork bellies, to be treated in the chaotic equivalent of a future market, electricity is a

basic necessary of life. It is the very fuel that powers our high-tech economy" What lesson can we learn from California crises?

It is proposed to statutorily divide India into two parts viz. "Urban India" and Rural India for planning, Policy and execution of the electricity supply. The rural area (perhaps a loss making system) is proposed to be managed through NGOs Panchayat, Franchise etc. and urban area (a profit making) through ultra modern private agencies. As a result the supply of Rural areas would be retailed / governed by "area lords" or mafias in utter violation of laws and safety consideration. This would enforce costlier as well as unreliable power to farmers / rural agro industries endangering energy security and in turn, food security. This would virtually result into no common and poor man.

To have proper check and balance in the formulation of above policy and to avoid the arbitrary decision making on policy formulation, it is strongly felt that policy should be drafted by CEA in consultation with sates and their after be approved and notified by the central Govt.

The thermal generation has been completely freed from any permission / approval except a general coordination of general compliance relating to the grid connectivity. Even publication of notices for formation / representation of the concerned and local people has been waived off which was provided under section 29(2) and 29(3) of ES, Act, 1948. It is a serious issue and implies that an investor will enjoy complete freedom to invest in generation for any size, fuel, location type, technology, capital cost etc. and without considering the national economy, optimal use of national resources, foreign exchange implications etc.

It means the country in one stroke will give up all control in fuel energy balance, which have far reaching implications on National economy. Such statutory freedom from technical environmental and social responsibility is very dangerous for the country keeping in view the fact that the national has paid a heavy price for enron misadventure in Maharashtra for which all checks and balance including TEC by CEA were kept aside.

It is irony that one hand the govt. is reiterating its commitment to make chief, affordable and reliable power to all section of the consumer and on the other, it is doing away or diluting those checks and balances which ensure optimal utilization of natural recourses to arrive at least cost energy for the ultimate benefit of common consumers.

TEA by CEA has been wrongly compared with licensing, the tech-economic appraisal / clearance (TEA) by CEA is neither an administrative approval nor any licensing but this is a process of optimization of project parameters for maximization of overall benefits from the projects, which has direct bearing over tariff.

In case of hydro generation this is like a half free and half catch situation.

To ensure complete transparency and to allow representation, the provisions of section 29(2) and 29(3) of Electricity (Supply) Act, 1948 need to be retained.

The emphasis of the Bill is to provide electricity in urban areas and no responsibility has been cast to have an assess of electricity in rural areas especially when all the villages are top be electrified by 2007 and 80,000 villages which cannot be connected to grid are to be electrified by 2012, taking into consideration with all the state governments are reeling under financial crunch, financial resources are to be appropriated in a fixed share so that both Union Govt. AND state Govts. may make substantial investment in the electrification of rural India.

The move by the Committee to di-license the transmission and distributor of electricity will invite private sector's participation whose track record so far has been dismal. The nation has achieved tremendous programme under Govt. control and there is no reason why this sector should be handed over to MNCs. This will further add to unemployment in the country.

It has been proposed that the cross subsidization will have to be eliminated, this will have adverse impact, in a country where a thirty per cent of population is living below poverty line the cross subsidization should continue.

In the third World countries the World Bank together with the multinationals and other private interests are compelling the local Govts. to open the power sector. And in order to ensure that administrative decisions take by the Govt. of the day are not overturned by their successors (as should or could happen in a democratic framework) it is essential for the vested interest to ensure that the legislation itself is changed, thereby giving the "reforms" stability through an irreversible process. It is this and this alone that is the real motivation behind the Electricity Bill 2001. What is put out for public consumption is that the existing legislation is far too cumbersome and needs consolidation, and that efficiency can only be imparted to the industry by legislative changes.

The modal that is envisaged for India in the Electricity Bill 2001 has failed even in **California and USA.** Simply because the powers that be chosen to ignore all the evidence placed before them and plough on with a particular ideology that benefits clearly unidentifiable vested interest, the people cannot be silent spectators in an area that effects their life.

The Indian Economy, especially agriculture depends heavily on electrical power. It is indeed sad that a fundamental change not only in legislation, but in institutions supporting the same is sought to be brought about in cavellar manner without any serious cause, deliberation or discussion. It can be summed and concluded that;

- **The new** legislation is not required. The existing legislation is broad based and can accommodate any restructuring.
- **The reforms** so far taken have been failed miserably on every count.
- The Electricity Bill 2001 is diversionary and will result in confusion causing a further set back of the power programme.

- There will be enormous problems and litigation in respect of transfer of assets liabilities and accountability etc.

The Govt. intends to promote development of a power market including trading with an administered price through regulator and its consequential benefits if any would remain illusionary.

Therefore the Electricity Bill 2001 should be withdrawn instead the twin problems of financial structure of SEBs and the unbridled electricity theft mostly by organized industry be tackled with farm political will by the Central and State Governments.

Sd/-
Shri Basudeb Acharia

I am of strong opinion that this Bill if passed and the existing legislation is repealed all the institutions built over the last fifty four years in power sector will be in trouble. This will adversely affect all efforts of the State Governments to develop the electricity industry.

The Electricity Act of 1948 brought in by Dr. B.R.Ambedkar paved the way for great achievements 83% of our villages were electrified, more than one lakh M.W. added to the installed capacity by building viable mechanism for generation, transmission and distribution. Now giving the power sector a market orientation and make the consumer bear the inflated costs and profits of private power producers is a step against our national interest. Handing over the power security. Experience the world over clearly indicate that several countries who had privatised power sector reverted to Government control. This Bill if enacted will reduce the role of the legislature to that of a listening post.

Power to farmers at an affordable price is essential for the nations food security. The profit motive of private sector will not meet this most important requirement.

Technical and ministerial employees devotion and cooperation is important for the success of power industry – All the Central trade unions including the B.M.S., INTUC, AITUC, CITU, UTUC are dead against this Bill. Reason for losses are not due to failure of existing legislation. Administrative lapses could be rectified without handing over the entire sector to private hands. This Bill curtails the federal system of governess and overrides the authority of States on this vital sector of power industry. For investment, the private sector mainly utilise the public financial institution resources, which could be made available to the State sector for viable projects of development – overall planning for development is only possible by the Union and State Governments. This could not be carried on by the competing private sector.

If there is a need to strengthen the existing legislation, amendments may be made to the 1948 Act. I urge upon the Government to withdraw the Electricity Bill, 2001.

Sd/-
Shri V.V.Raghavan