

38

STANDING COMMITTEE ON ENERGY

(2012-13)
FIFTEENTH LOK SABHA

MINISTRY OF POWER

[Action Taken by the Government on the recommendations
contained in the Thirtieth Report (15th Lok Sabha) on Functioning
of Central Electricity Regulatory Commission (CERC)]

THIRTY EIGHTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

August, 2013/ Bhadrapada, 1935 (Saka)



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Presented to Lok Sabha on 27.08.2013

Laid in Rajya Sabha on 27.08.2013



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August, 2013/Bhadrapada, 1935 (Saka)

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COMPOSITION OF THE STANDING COMMITTEE ON ENERGY (2012-13)

LOK SABHA

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* Passed away on 1st March, 2013
@ Ceased to be Member of the Committee w.e.f. 01.05.2013
Nominated as Member of the Committee w.e.f. 28.03.2013
\$ Nominated as Member of the Committee w.e.f. 13.08.2013

INTRODUCTION

I, the Chairman, Standing Committee on Energy having been authorized by the Committee to present the Report on their behalf, present this 38nd Report on the action taken by the Government on the recommendations contained in 30th Report of the Standing Committee on Energy (15th Lok Sabha) on 'Functioning of Central Electricity Regulatory Commission (CERC)' pertaining to the Ministry of Power.

2. The 30th Report was presented to Lok Sabha/ laid in Rajya Sabha on 24th August, 2012. Replies of the Government to all the recommendations contained in the Report were received on 18th March, 2013.

3. The Report was considered and adopted by the Committee at their sitting held on 22nd August, 2013.

4. The Committee place on record their appreciation for the valuable assistance rendered to them by the officials of the Lok Sabha Secretariat attached to the Committee.

5. An analysis on the Action Taken by the Government on the recommendations contained in the 30th Report of the Committee is given at Appendix-II.

6. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

NEW DELHI
26th August, 2013
Bhadrapada 4,1935 (Saka)

MULAYAM SINGH YADAV,
Chairman,
Standing Committee on Energy

CHAPTER - I

REPORT

This Report of the Standing Committee on Energy deals with the action taken by the Government on the Observations/Recommendations contained in the Thirtieth Report (Fifteenth Lok Sabha) on Functioning of Central Electricity Regulatory Commission (CERC) pertaining to the Ministry of Power.

2. The Thirtieth Report was presented to Lok Sabha on 24th August, 2012 and was laid on the Table of Rajya Sabha on the same day. The Report contained 16 Observations/Recommendations.

3. Action Taken Notes in respect of all the Observations/Recommendations contained in the Report have been received from the Government. These have been categorized as follows:

- (i) Observations/Recommendations which have been accepted by the Government:

Serial Nos. 1, 4, 6, 9, 10, 11, 12, 13, 14 and 15

Total - 10

Chapter-II

- (ii) Observations/Recommendations which the Committee do not desire to pursue in view of the Government's replies:

Serial Nos. 7 and 8

Total - 02

Chapter-III

- (iii) Observations/Recommendations in respect of which the replies of the Government have not been accepted by the Committee and which require reiteration:

Serial Nos. 2, 3 and 5

Total-03

Chapter-IV

- (iv) Observations/Recommendations in respect of which the final reply of the Government is still awaited:

Serial No. 16

Total - 01

Chapter-V

4. The Committee desire that Action Taken Notes on the Observations/Recommendations contained in Chapter-I of the Report may be furnished to the Committee within three months of the presentation of this Report.

5. The Committee will now deal with action taken by the Government on some of their Recommendations that require reiteration or merit comments.

A. Performance of CERC

Recommendation (SI No. 2, Para No. 2.2)

6. The Committee had noted that regulatory provisions under the Electricity Act 2003 are being implemented through of the CERC. Functions of CERC relate to important areas of power sector, viz. regulating tariff of generating companies owned and controlled by the Central Government, of such companies having composite scheme for generation and sale of the electricity in more than one States, regulating inter-state transmission of the electricity, determining tariff for inter-state transmission of the electricity, issuing licenses to transmission licensees and the electricity traders with respect to their inter-state operations, specifying grid code, levying fee, specifying and enforcing quality, continuity and reliability of services by the licensee, fixing inter-state trading margin etc. The Commission is also responsible for balancing consumer interest and promoting investments besides being responsible for oversight of the market. In pursuance of these CERC has undertaken various steps, however, in view of the Committee had these activities been taken to their logical conclusion and been implemented in letter and spirit, the consumers/citizens of the country would have been in a better position than the prevailing situation in terms of cost and availability of the electricity. The Committee, therefore, had recommended that the Commission should introspect and identify as

to why the optimal results are not coming forth. Such a detailed analysis should identify whether there are legislative limitations, functional constraints, absence of entrepreneurship, lack of resources, dearth of qualified manpower or un-enabling environment, which jointly or severally, are hampering the growth of the Sector. The Committee had also strongly recommended that reasons so identified be followed up with remedial measures with utmost promptitude. The Government should not shy away from bringing amendment to the Electricity Act, 2003 if such measures are required to improve the efficacy of CERC. The Committee had also recommended that the Government should take necessary steps to appoint an independent Committee of experts to review the functioning of CERC and identify the areas which require improvements in the working of the organization and limitations of the autonomy and legislation. They had also desired that such an exercise should be conducted in a time-bound manner and followed up with necessary action wherever required.

7. The Ministry of Power in their Action Taken Reply have stated as under:

“The Central Electricity Regulatory Commission (CERC) engages in continual review of its regulations and makes amendments based on the demands of time and need for facilitation of reforms in the sector. For instance, the Commission issued first Multi Year Tariff regulations for the control period 2001-04 and subsequently made changes in the regulations for the next two control periods of 2004-09 and 2009-14 based on the prevailing market conditions. The parameters of tariff were finalized after detailed analysis and wide stakeholder consultations during each of the control period.

The Commission has been discharging its mandated functions in accordance with the provisions of the Act, Government Policies and the resources available. Section 66 of the Electricity Act, 2003 mandates the Appropriate Commission to promote development of market in power. The Tariff Policy also emphasized on development of market and regulations on power exchanges. Accordingly, the Central Commission facilitated establishment of two power exchanges and made power market regulations.

CERC has mentioned constraints affecting the Commission in bringing optimal results which have been brought out as follows alongwith the response of the Government :-

A. Legislative limitations:

- (i) Any regulatory policy adopted by the Commission can translate into benefits to the end consumers only if such policy is followed uniformly. In a federal structure, the State Commissions are independent and the regulatory policy initiatives taken by the Central Commission are not binding on the State Commissions.
- (ii) In the matter of grid discipline and UI payments, there is a need for ensuring full and quick compliance of the directions of the Commission by the erring entities. To ensure this, the Commission not only needs to have power to take actions against the erring entities and the officers in charge of such entities but should have the power to impose penalty commensurate with the nature and gravity of the offense. At present, the Commission has the power to impose penalties upto an amount of Rs. 1 Lakh for non compliance of the orders and directions of the Commission and upto Rs. 15 lakh for non-compliance of the orders of the Regional Load Despatch Centre. These powers need to be increased commensurate with the nature and gravity of offense so that it acts as an effective deterrent for future violations.
- (iii) The Commission should be vested with powers to penalize officers in charge of the erring entities by way of vicarious liability. The Commission does not have power to execute its own decisions except to initiate action under Section 142 of the Act for non-compliance of its earlier order imposing the penalty. The Commission needs to be armed with powers of execution of a Civil Court so that its orders can be executed through due process of law.
- (iv) Recently open access has been thwarted in many cases on account of two reasons. First, State Commissions have issued notifications under Section 11 of the Act to prohibit generators from selling electricity outside the State citing the ground of scarcity of power. Secondly, the SLDCs are not operating independently and are denying open access on some pretext or the other. There is a need to make the SLDCs independent so that they can discharge their functions impartially and in accordance with the Act and regulations. Section 11 needs to be suitably amended to specifically exclude shortage of electricity as the ground for invocation of the power of the State Government under the said provision.

With regards to the legislative limitations affecting the Commission in bringing optimal results, it is stated that amendment in Section 11 & 142 are under consideration of the Committee under that Chairmanship of

Chairperson, Central Electricity Authority, constituted for examination for proposed amendments in the Electricity Act, 2003.

B. Autonomy of Regulator:

It has been stated by CERC that there are constraints arising out of lack of autonomy on the following issues relating to:

- Staffing,
- operationalisation of separate fund,
- flexibility in addressing needs for skill building involving foreign visit

Staffing: It may be stated the sufficient staff strength and compensation package etc. have been finalized as per the functional requirement and on the lines of other regulatory bodies. The Government has been responsive to the difficulties faced by CERC due to inadequate staff-strength. In October 2005, 20 additional posts under various categories were created for the Commission. The present sanctioned staff strength of CERC is 80. Further, certain restrictions imposed while creating the additional posts that some of the posts should be filled up from CEA only on deputation, have been removed by the Government in October 2012 for the smooth functioning of the Commission. In addition as per 91(4) of the Electricity Act, CERC has powers to appoint Consultants required to assist the Commission in discharge of its functions. Accordingly, CERC has been appointing a number of consultants under the provisions of CERC (Appointment of Consultants) Regulations 2008 from time to time.

CERC Fund: As per the relevant provisions of the Electricity Act, Rules regarding constitution of the CERC Fund have been issued by the Government vide Notification dated 22.10.2007. The Fund is operational as per the provisions of the said Rules. CERC had recently made a representation that releases from CERC Fund should not be treated as grant-in-aid (General). This was examined in consultation with Department of Economic Affairs and Controller General of Accounts who did not agree to the views of CERC in the light of the provisions of the Act and Rules made thereunder. Views of Department of Economic Affairs and Controller General of Accounts have since been communicated to CERC.

Skill building needs for staff: It has been stated by CERC that they should also be delegated the powers of deciding and approving the needs for skill enhancement of officers/staff including those involving foreign visits. In this regard, it may be mentioned here that earlier proposals of Chairperson and Members of CERC for undertaking foreign visits used to go to the Screening Committee of Secretaries for approval. This has been done away with vide amendment made in the service Rules. At present, Chairperson, CERC powers for approving training programmes for skill enhancement of the officers/staff of the Commission except their foreign deputation for which approval are accorded by the Government in line with austerity measures of the Government (Ministry of Finance/ Department of Expenditure) from time to time.

The Commission has initiated to undertake impact assessment of regulations framed by it. However, to start with, Regulatory Impact Assessment (RIA) inter alia, of only CERC tariff regulations for all the three control periods shall be carried out. The following activities shall be carried out under the assignment:

- (a) Study of methodologies adopted for regulatory impact assessment by other Indian and Foreign regulators.
- (b) Development of RIA tools for impact assessment.
- (c) Comparative analysis of 2009 regulations vis-à-vis previous regulations.
- (d) Impact analysis of tariff norms, financial as well as technical, on generating companies, transmission companies and beneficiaries.
- (e) Impact analysis of external factors like Government policies and taxes, duties, funding etc.
- (f) Comparison of Tariff norms vs Actual Economic/Financial Conditions and operation efficiency.
- (g) Impact on investment promotion and environment
- (h) Way forward to tariff regulations.

Further, the Working Group on Power for 12th Plan has recommended that through suitable legislative changes, a Multi-disciplinary body shall be constituted comprising of representatives from Centre and States to review the performance of the Regulatory Commission periodically on the basis of a performance evaluation matrix and report to the appropriate Government for necessary corrective action. The same is being examined by a Committee under the Chairmanship of Chairperson CEA constituted for examination of various proposals for amendment in Electricity Act, 2003. Therefore, there appears to be no need for appointment of an independent Committee of experts to review the functioning of CERC and identify the areas which require improvements in the working of the organization and limitations of the autonomy and legislation as recommended by the Standing Committee.”

8. The Committee, considering the importance of the work which has been assigned to CERC and the ineffectiveness of the institution, for whatsoever reasons, to carry out the assigned task, had recommended the Government to appoint an independent Committee of expert to review the functioning of CERC with a view to make it more efficacious. Should it be necessary, the Committee had also recommended to bring amendment in the Electricity Act, 2003. However, in the action taken reply, they have only enumerated and

described the constraints of CERC which the Committee are already aware of and which was the basis of the very recommendation of the Committee. The Committee expected the Government to come up with the solution to the problems being faced by the CERC and apprise the Committee about the same in the action taken note. In regard to recommendation of the Committee, in their action taken reply they have stated that there appears to be no need to set up an independent Committee of expert to review the functioning of the CERC as a proposal for constitution of Multi-disciplinary body comprising of representatives from Centre and States to review the performance of the Regulatory Commissions periodically and to report to the appropriate Government for necessary corrective action is under examination of a Committee under the Chairmanship of Chairperson CEA. Simultaneously, it has also been stated that any regulatory policy adopted by the Commission can translate into benefits to the end consumers only if such policy is followed uniformly. In a federal structure, the State Commissions are independent and the regulatory policy initiatives taken by the Central Commission are not binding on the State Commissions. The Committee infer that issues like regulating inter-States transmission of electricity, determination of tariff for such transmission, issuing licences to transmission licensees and electricity traders for inter-States operations, specifying Grid Code, levying fee, ensuring quality services by licensees, fixing inter-State trading margins etc. are the core issues within the domain of CERC. The character and quality of electricity scenario in the Country will be revolving around such issues and CERC has have to play a lead role despite the existence of multi-lateral bodies like FOR and the proposed multi-disciplinary entity. Independence of State Regulatory

Commissions and their dependence on the appropriate governance is perhaps the main factor for uncertain and un-viable electricity scenario of the Country and hence an effective CERC would lend a great helping hand in heralding a competitive and viable atmosphere for economic and reliable electricity set up in the Country. Therefore, the analysis of shortcomings of CERC by an expert body cannot be substituted by a yet to be constituted multi-disciplinary body of the Centre and States. The Committee, therefore, reiterate their recommendation with regard to making CERC making more effective and more efficacious by identifying the problems through an expert body and taking follow up remedial measures.

A. Establishment of CERC

Recommendation (SI No. 3, Para No. 2.3)

9. The Committee had noted that the Commission functions in a quasi-judicial manner and consist of a Chairperson, three full time Members and the Chairperson of Central Electricity Authority as ex-officio Member. Owing to the efficient functional requirement the Act mandates that Chairperson and the Members shall be persons having adequate knowledge and experience in Engineering, Law, Finance, Management, Commerce etc. The Chairperson and the Members are appointed by the President of India on the recommendation of a Selection Committee as prescribed under the Act. The Act also provides for the appointment of a Secretary of the Commission whose powers and duties are defined by the Commission. The Committee had found that given the functions of the Regulatory Commissions to transform the electricity sector, the constitution of a Board was enshrined in the Act itself to make these Commissions the proper bodies with adequate powers to develop and regulate the sector. However, over the years it has been found that the spirit of the Act has not been carried in the right perspective. Most of the Regulatory Commissions have become the refuge for the superannuated but influential officials. Their primary objective is to remain in employment rather than making any

meaningful contribution with regard to the activities of the Commissions in the pursuit of their objectives. Hence these bodies have lost sheen and the authority, which they were designed to represent. In the process they have also lost the autonomy, which the Act has provided them for functional purposes. Had these Commissions acted as mandated under the Act, there would have been hardly any justification for languishing electricity sector in the Country. The Committee had inclined to infer that Regulatory Commissions have squarely failed in performing their assigned duties. The Committee had recommended that with a view to revolutionize the Sector it has become imperative to recast these Commissions at Board level, therefore, these establishments should not become the sanctuaries for senior citizens to secure sinecure positions without any accountability and stakes. Hence, these positions should be manned by the senior technical brains of the respective areas who are alive in services, having sense of accountability.

10. The Ministry of Power in their Action Taken Reply have stated as under:

It is understood that by constitution of Board, constitution of Commission is implied. Section 76(5) of the Electricity Act, 2003 provides for composition of the Central Commission as under-

(a) a Chairperson and three other Members;

(b) the Chairperson of the Authority who shall be the Member, ex officio.

The Chairperson and Members of the Central Commission shall be appointed by the Central Government on the recommendation of the Selection Committee. Composition of the Selection Committee for appointment of Chairperson and Members of CERC has been provided in the Electricity Act, 2003. The qualification and experience requirements for appointment to these posts are also provided in the Act. As per the provisions of the Act, the Central Commission shall consist of a Chairperson and three other members who shall be persons having adequate knowledge of, or experience in, or shown capacity in dealing with the problems related to engineering, law, commerce, finance or management. The Chairperson and Members of the Central Commission have been appointed in pursuance of the provisions of the Act. A glance through the experience of Chairperson and members appointed by the Central Commission in the past and at present would reveal that the persons having proven track record in finance, engineering, accounts, management and law have been appointed as chairperson and members of the Commission. With their contribution, the Commission has been

able to create regulatory culture in the country and at present, the regulations and the decisions of the Central Commission are one of the guiding factors in the development of the power sector in the country. Further, the recommendations have been noted.

11. The Committee in their Report after due consideration of the provisions made in the Act in regard the appointments of the Chairman and the Members of the Regulatory Commissions had made a specific recommendation that these position should be manned by the senior technical brains of the respective areas who are still alive in their services so that their functions can be ensured in more accountable manner. However, the action taken reply of the Government has tried to justify the status quo by citing the provisions of the Act and that the incumbent to the positions have been contributing for development of power sector. The Committee after the perusal of the Act find that there is no such provision which prevent the Government to appoint such persons who are still in the service. The rationale behind such recommendation of the Committee is quite clear as implementation of this provision will surely bring sense of greater responsibility and stake resulting in improvement in performance of the Commission. They, therefore, reiterate their recommendation and desire the Government to reconsider Committee's recommendation for implementation. The Committee would like the Government to expand their selecting horizons with regard to the positions of the Commissions by identifying and inducting experienced and excellent talents of the respective fields rather than limiting it to exhausted and retired bureaucrats. Illustratively it can begin by inclusion of banking, revenue or other financial core areas into the criteria for selection at Board level to look after financial activities.

B. Forum of Regulators

Recommendation (SI No. 5, Para No. 2.5)

12. The Committee had noted that The Forum of Regulators (FOR) was constituted *vide* the Ministry of Power's Notification dated 16th February, 2005 in pursuance of the provision under section 166(2) of the Electricity Act, 2003 with the primary objective of harmonization of regulation in the power sector. The Forum consists of Chairperson of CERC and Chairpersons of SERCs. The Chairperson of CERC is the Chairperson of the Forum. The Committee were informed that FOR provides a platform for the regulators at the Centre and State level to exchange ideas and best practices. Issues of importance (at inter-state level or intra-state level) are discussed and consensus is evolved in FOR. In order to encourage uniformity of regulations among SERCs, the Forum has evolved several Model Regulations which can be adopted by the State Regulatory Commissions. The Electricity being the concurrent subject, the Committee had found FOR a vital instrument to bring all the State Regulatory Commissions at a platform where consensus can be built for smooth and effective implementation of regulations meant for bringing reforms, restructuring and revitalizing of power sector of the Country. However, the Committee were agonized to find that the FOR has miserably failed to achieve the desired result due to some or other reasons. The Committee had found that in regard to implementation of model regulations on various issues *viz.* open access, rationalization of tariff, reduction of AT&C losses etc. there is great disparity in States as some have done well while the others' performances are far from being satisfactory. For the Committee it was a matter of concern that even regulations made with consensus were either not being implemented satisfactorily or not being implemented at all. The Committee were surprised that FOR has failed to enforce even the decisions/regulations arrived at through consensus among SERCs. The situation somehow indicates to the ineffectiveness of the Forum The Committee, therefore, had recommended the Government to come up with some orders/regulations providing much needed teeth to the Forum to make it effective in enforcing the model regulations/ guidelines prepared by FOR itself in all the participant States in a time bound manner. The Committee had desired that the FOR should meet more frequently. They had also recommended that the SERCs should be given due autonomy as envisaged under the Electricity Act, 2003 enabling them

to discharge their mandated duties effectively without any pressure from respective State Governments.

13. The Ministry of Power in their Action Taken Reply stated as under:

“Ministry of Power made a reference to the Appellate Tribunal for Electricity raising the issues of tariff revisions and tariff adequacy and Appellate Tribunal of Electricity (APTEL) in its judgment dated 11th November, 2011 has inter-alia ruled that fuel and power purchase cost is a major expense of the distribution company which is uncontrollable. Every State Commission must have in place mechanism for fuel and power purchase cost in terms of Section 62 (4) of the Act. The fuel and power purchase cost adjustment should preferably be on monthly basis on the lines of the Central Commission’s Regulations for the generating companies but in no case exceeding a quarter. Any State Commission which does not already have such formula/mechanism in place must within 6 months of the date of this order must put in place such formula/ mechanism. The Ministry has also requested all the State Governments to take necessary action accordingly.

FOR provides a platform for the regulators at the centre and state level to exchange ideas and best practices. The frequency of meeting of the Forum has been increasing continuously. In the last two years the Forum has held meetings on an average every two months. In FY 2012-13, the Forum has already held 4 meetings in the first six months. A detailed account of meetings held in the last five years is presented in the table below-

Financial Year	No. of Meetings
2008-09	5
2009-10	5
2010-11	6
2011-12	6
2012-13	4

Issues of importance facing the sector (at inter-state level or intra-state level) are discussed and consensus is evolved in FOR. In order to encourage uniformity of regulations among SERCs, the Forum has evolved several Model Regulations. These help bring regulatory certainty in the sector. Some of the important Model Regulations are mentioned below:

- Model Regulations for Multi Year Distribution Tariff
- Model Regulations for Protection of Consumer Interest
- Model Terms and Conditions of Intra-State Open Access Regulations
- Model DSM Regulation for SERCs

- Model Regulation for SERCs for Renewable Energy Certificate (REC) Framework
- Model Regulation on Standards of Performance for Distribution Licensees
- Model Supply Code

A brief account of some of the initiatives/decisions of the Forum is as follows:-

- Tariff revision and tariff adequacy are the primary issues with respect to the financial viability of Distribution companies. The financial viability of State Distribution has been deliberated at length in various meeting of FOR. In this regard the Forum of Regulator conducted a study – Assessment of Financial viability of Discoms which analysed the tariff orders of various State commissions and the reasons for increasing revenue gap in state utilities.
- The detailed study carried out for ten States revealed that the revenue gap of utilities has been increasing due to non revision of tariff, absence of true-up mechanism, shortfall or delay in payment of subsidy by the State Governments and dis-allowance of the legitimate cost in tariff. Based on the diagnosis of the problems facing the distribution sector, the Forum evolved consensus on the need for taking corrective measures to restore the health of this critical element of distribution of electricity. Consequently, the Forum evolved Model Tariff Regulations to address the issues revealed by the ten state study.
- The proposal for inclusion of additional Unscheduled Interchange (UI) charge imposed on the utilities under CERC's UI Regulation for overdrawal during the time blocks when frequency was below 49.2 Hz was discussed by the Forum. It was decided that the SERCs should not allow the same in the Annual Revenue Requirement (ARR).
- Another significant achievement of the Forum in renewable energy sector was in terms of evolution of the Renewable Energy Certificate (REC) mechanism.
- The Forum also deliberated and evolved consensus on measures for encouraging Demand Side Management and Energy Efficiency (DSM & EE).

The Forum endorsed the proposal from the Bureau of Energy Efficiency (BEE) for regulated Multi- State DSM Programme.

- Yet another initiative of the Forum was on the development of benchmark capital cost for distribution.
- The Forum has also submitted its proposal on amendments to Electricity Act, 2003 after evolving consensus on various issues which is under examination by the Committee constituted under the Chairmanship of Chairperson, Central Electricity Authority.

Further, Ministry of Power has also written to the State Governments to peruse the model regulations on 'Terms & Conditions on Intra-state Open Access' and 'Model Tariff Regulations' framed by the Forum of Regulators and take necessary action for notification of regulations on similar lines by the State Regulatory Commission.

From the number of meeting and action taken by FOR as brought out above it is inferred that FOR has successfully performed their functions as per the mandate given in the Electricity Act. Central Government has also supplemented and forwarded the recommendations/model of FOR from time to time to States. This has helped in adoption of enabling regulations by SERCs.

As regards granting more powers to FOR, it is brought out that the powers and responsibilities of the statutory authorities have been appropriately balanced in the Act whereas, the SERCs and CERC have been made accountable to State Legislatures/Parliament through the process of laying of Annual Report, regulations and are subject to Questions/Detailed examination by Committee etc, no such mechanism for accountability for FOR has been provided. In view of the same, granting powers to FOR without any accountability may not be desirable and may also disturb the existing framework.

14. In regard to recommendation of the Committee for providing teeth to the Forum of Regulators to make it more effective in enforcing the model regulations/ guidelines prepared by FOR, the Committee find Ministry's action taken reply contradictory. On the one hand the Ministry has stated that the Forum has successfully performed their functions which has led to adoption of enabling regulations by SERCs while on the other hand they have disagreed to the idea of providing more power to FOR due to apprehension of resultant

power and responsibility imbalance. However, the Committee are happy to note that the frequency of the meetings of FOR has increased in the recent years which shows its growing relevance. Taking into account the composition of the FOR which include Chairperson of CERC and Chairpersons of SERCs and the purpose of its formation viz. to provide a platform for the exchange of ideas and best practices, the Committee find it hard to believe that it will not be prudent to provide more resources and power to this set up - which has so far proved useful in not only formulation of model regulations but also in adoption of the same by the States. It is a platform where the issues can be discussed and consensus among various States can be arrived, more so when CERC does not have power to enforce the Model Regulations in States and the due autonomy of SERCs has yet to be ensured. In view of this the Committee would like to reiterate their recommendation of providing more resources and power to FOR.

The Committee are unhappy to find the Ministry's action taken reply is silent about Committee's recommendation for giving due autonomy to the SERCs as envisaged under the Electricity Act, 2003. The Committee, therefore, reiterate their recommendation that every efforts should be made to provide due autonomy of the SERCs so that they can discharge their assigned functions of regulating the Sector impartially without facing any pressure from State Governments.

C. Grid Discipline

Recommendation (SI No. 10, Para No. 2.10)

15. The Committee had noted that the Electricity Act, 2003 has entrusted CERC the responsibility of regulating Inter-State Transmission System and also notifying Grid Code for smooth conveyance of electricity across States. In discharge of this responsibility CERC issued the revised Regulation on Indian Electricity Grid Code (IEGC) in April, 2006. IEGC brings together a single set of technical rules, encompassing all the utilities connected to or using the Inter-State Transmission System. The Committee had further noted that Unscheduled Interchange (UI) charges are imposed when a generator generates less or beneficiary overdraws power than the schedule thereby decreasing the normal frequency of 50Hz. The Committee find that though this mechanism has been helpful in containing the problem of UI to some extent but the scrutiny by the Committee of the data as provided by the CERC regarding grid frequency leaves much to be desired. The minimum frequency of Grid has dropped even below 49.Hz during all the three years i.e. 2009-10 to 2011-12 putting the smooth functioning of the Grid at stake. The scrutiny of the Committee had revealed that UI charges for the period 2002-03 to 2011-12 have cumulative value of Rs. 74,181 crore which itself indicates to the degree of problem of Unscheduled Interchange and misuse of the mechanism. The UI charges system has perhaps failed to enforce the desired grid discipline as it is found to be an easy alternative of short term electricity trading by overdrawing power from the grid by Discoms at the cost of lesser power supply to the actual beneficiary and also resulting in lowering of frequency endangering the safety of the grid. The Committee had also noticed that there is no uniformity in realization of UI charges due to several reasons. The Committee, therefore, had recommended that necessary changes may be effected in Indian Electricity Grid Code (IEGC)/ and the UI charges/ penalty should be increased to the extent that it effectively deter Discoms/ Generators from Unscheduled Interchange. For repeated offences of overdrawing and putting the grid safety at risk, penal provisions, apart from hefty financial penalty, should be made harsh enough to pose as deterrence. They had desired that required amendments to provide more authority to CERC/FOR for effective realization of financial penalty imposed for the offenses should also be

made in the regulation. Simultaneously, the Committee had also recommended the Government to explore the possibility of ancillary market for the purpose of ensuring strict grid discipline.

16. The Ministry of Power in their Action Taken Reply stated as under:

“In order to ensure better grid discipline, the IEGC and UI Regulations have been amended by CERC and the operating frequency band has been narrowed down from 49.5-50.2 Hz to 49.7-50.2 Hz. The CERC (Indian Electricity Grid Code) (First Amendment) Regulations, 2012 and CERC (Unscheduled Interchange Charges and related matters) (Second Amendment) Regulations, 2012 have become effective from 00 hours of 17th September 2012.

Regarding recommendation for increase in penalty to ensure grid discipline, it is to state that implementation of the above provision itself would also lead to enhancement in penalty for overdrawal by the states at grid-frequency below 49.7 Hz. This apart, CERC has powers to impose penalty for grid indiscipline in the inter-state power system under sections 29 and 143 of the Electricity Act, 2003. CERC is also empowered to impose penalty under section 142 for violation of provisions of the Act, Rules or Regulations made there under, or any direction issued by the Commission. The amount of penalty mentioned in the Act, does not appear to be deterring one and it is felt that even multiples of that penalty may not make much difference as long as it is imposed upon the defaulting organisation. However, if the penalty is imposed upon the head of the organisation in the individual capacity for recovery from his own pocket, it is expected to make the difference.

As regards realisation of the financial penalties if not paid, section 170 of the Act already has the provision for recovery of the penalty in the same manner as recovery of arrear of land revenue. This section also needs revisit as it is also not easily implementable.

Many times the commercial penalty etc. does not serve the purpose of sufficient deterrent against grid indiscipline. In this case physical measures of reducing/stopping supply to defaulting utility from grid may be used as effective tool. In this direction, CERC in its order dated 17.08.2012 directed NRLDC to identify feeders, in consultation with CEA, CTU and STUs/ SLDCs, at higher voltage level under control of agency other than STUs, which can be opened in case of over drawal by a State and submit the details by 30.09.2012. This is under finalization by NRLDC. Similar exercise could be undertaken by other regions also.

Regarding opinion of the Standing Committee on Energy that UI system has perhaps failed to enforce the desired grid discipline, The Enquiry Committee on Grid Disturbances of 30th & 31st July 2012 has also in its report recommended review of UI mechanism in view of its impact on these grid disturbances. It has been further recommended that frequency control through UI may be phased out in a time bound manner and Generation

reserves/Ancillary services be used for frequency control. Appropriate regulatory mechanism needs to be put in place for this purpose. POSOCO had filed Petition No. 351/2010 on 01.12.2010 for introduction of Frequency Support Ancillary Service in Indian Electricity Market. Ancillary Services implied in relation to power system (or grid) operation, the services necessary to support the power system (or grid) grid operation in maintaining power quality, reliability and security of the grid. The Commission had initiated separate action on the question of introduction of Frequency Support Ancillary Service by placing it before the Central Advisory Committee meeting on 14.3.2012. On the recommendations of the CAC, the Commission is in the process of framing the regulations. In view of the said developments, POSOCO had withdrawn its petition during the hearing on 10.7.2012. As regards the progress of the regulation on Ancillary Service, the Commission had approved the basic framework of the regulation. The draft regulation is under preparation and would be placed in the public domain shortly for inviting public comments/ suggestions/ objections. The regulation on Ancillary Services will be notified after following the due process. The petition (No. 208/MP/2012) filed by POSOCO on 7th September, 2012 related to amendment to relevant provisions of CERC (UI) Regulations, 2009. The Commission while disposing of the said petition vide order dated 05.12.12 directed initiation of the process of amendment to UI Regulations and permitted POSOCO to submit further necessary information in furtherance of the proposal. The draft amendment to UI Regulations is under consideration of the Commission.

As regards the imposition of commensurate financial penalty and its realization, there is a need to address the limitations of penal powers available with the regulators under section 142 of the Act. In this regard, the proposals for amendment in Section 142 & 146 related to punishment for non-compliance of directions by Appropriate Commission and other provisions is under consideration of the Committee constituted under the Chairperson, Central Electricity Authority on the proposed amendments in the Electricity Act, 2003.

Further, it may be mentioned that in our country, though there is perennial shortage of power, some generation capacity, at times, remains un-requisitioned. By introducing frequency support ancillary services, this un-dispatched capacity can be harnessed and it can be brought into the grid to mitigate shortage. The payment for this additional power may be made by overdrawing States. This in turn would bring reliability and security in grid. Introduction of ancillary service may reduce dependence on UI which should be resorted to only as a last mile imbalance settlement mechanism. The CERC has initiated steps towards introduction of ancillary market which is required for balancing power and grid security. While the underlying theme remains reliability and security of grid, the ancillary services will help harness the untapped generation capacity, mitigate load shedding, and address transmission congestion in a limited way. It will also supplement the need arising out of variability of renewable energy sources like wind and solar.”

17. The Committee, on finding the misuse of UI mechanism and its failure in deterring the nuisance of overdrawl by the Utilities, had recommended to effect changes in IEGC and increase the amount of penalty for the defaulters. The Ministry in their reply have stated that operating frequency band has been narrowed down from 49.5-50.2 Hz to 49.7-50.2 Hz w.e.f. 17th September, 2012. However, in regard to recommendation of raising the penalty amount which will consequently be increased due to narrowing of frequency band, they have added that the amount of penalty does not appear to be deterring one and it is felt that even multiples of that penalty may not make much difference as long as it is imposed upon the defaulting organization. However, if the penalty is imposed upon the head of the organization in the individual capacity for recovery from his own pocket, it is expected to make the difference. Further, in regard the recommendation of providing more authority to CERC/FOR for realization of financial penalty imposed, it has been stated that Section 170 of the Act, which has the provision for recovery of the penalty in the same manner as recovery of arrear of land revenue, needs revisit as it is not easily implementable. The intention of the Committee in their recommendation was to create strong deterrence to prevent the utilities to overdraw power. It is for the Government to decide the ways and means to implement the recommendation of the Committee in letter and spirit. The Committee are in agreement with the methods suggested by the Government to make the UI mechanism more effective. However, they would have appreciated had the Government instead of mere suggesting these methods to the Committee, had enumerated the efforts made to implement the same. The Committee expect that the Government will expedite the implementation of the suggested

measures and will apprise the Committee about the amendments/changes in the code/rules governing the UI mechanism to curb the problem of overdrawl by the utilities.

Further, in regard to the recommendation of the Committee to explore the possibility of ancillary market for the purpose of ensuring strict grid discipline, the Ministry have stated that the CERC has initiated steps towards introduction of ancillary market. The Committee are not satisfied with the curt reply of the Ministry as no details regarding steps taken by the CERC have been furnished. Nonetheless, the Committee would be happy if the said steps lead to positive outcome in the sector. The Committee would like to be apprised of the development made in this regard at the time of final action taken statement.

D. Trading of Electricity

Recommendation (SI No. 13, Para No. 2.13)

18. The Committee had noted that Electricity Act, 2003 has recognized the transaction involving purchase and sale of electricity as a distinct licensed activity. Prior to that the electricity industry recognized generation, transmission and supply as the three principal activities. The SEBs/Discoms who have the obligation to provide electricity to their consumers mainly rely on supplies from long-term contracts. The responsibility of developing the market in electricity has been vested with the Regulatory Commissions. CERC grants inter-state trading license, which is mandatory under the provisions of the Electricity Act, 2003, to electricity traders and registration with the power exchanges. The Committee were informed that there are two Power Exchanges operational presently namely Indian Energy Exchange and Power Exchanges of India Limited. Regarding benefits of electricity trading the Committee were apprised that the power prices in the short term market have

decreased in the last three years and the volume has increased. Both Discoms and open access consumers, who participate in this market actively, have benefited due to the price decrease in this market. The Committee had expressed their satisfaction over the fact that trading has helped bringing down the power price. However, the Committee had felt that the electricity trading in the Country is still at rudimentary stage, characterized by low volume and fewer numbers of transactions limited to specific section of society and absence of favourable rule and regulations attracting more traders to take part in the process. The Committee, had therefore, recommended the Government/CERC to take steps in framing such set of rules and regulations that should prove not only conducive for electricity trading and invite more and more players in this field to make it more competitive but also effectively prevent/ tackle any malpractices by big players of the Sector.

19. The Ministry of Power in their Action Taken Reply stated as under:

“The action taken for creating conducive environment for electricity trading and invite more and more players in this field to make it more competitive are given below-

1. The Central Commission has formulated specific regulations to promote development of markets and trading in power thereby creating fair, transparent and competitive market for trading in electricity. The following regulations have been notified in this regard :-

a. Procedure, Terms and Conditions for grant of trading licence and other related matters Regulations, 2009 - To issue licence to electricity traders, define the business conduct and monitor their business.

b. Fixation of Trading Margin Regulations, 2010 - To regulate the short term trading margin of electricity

c. Power Market Regulations, 2010 - To issues licences to power exchanges and the overall markets structure and definite market structure.

d. Open Access in inter-State Transmission Regulations, 2008 - To provide open access to distribution companies generators and large consumers to power efficiently.

2. The Commission has created a Market Monitor Cell (MMC) under the Economics and Power Markets division for market oversight and market surveillance. The MMC which regularly monitors inter-state trading undertaken by electricity traders and the transactions in the power exchange. All transactions undertaken by trader and power exchange are reported to the MMC. Monthly market reports are published by the MMC for information dissemination purpose.

3. Further steps being taken to prevent malpractices :

The Commission has recently amended the grant of trading licence regulations and included non serious and serious category of offences depending on the gravity of the violation. Penalties commensurate with the gravity of the violation have been added. These will act as appropriate deterrents on malpractice if any to ensure that strict compliance by market participants. Penalty clauses like debarring a trader from trading for a certain period, etc have been introduced. Further, the Commission is in the process of formulating regulations on prevention of market dominance by market player defined under Section 60 of EA 2003. This will help prevent abuse of dominant position or any action which is anti competitive.

Power markets in India are growing at a rapid pace. The nature of the participants is varied with divergent interests and the complexity of transactions is increasing. The market oversight and surveillance will be one of the key focus areas of the Central Commission to ensure that markets remain fair and competitive.”

20. The Committee note that the Ministry had taken a series of actions with a view to create conducive environment for electricity trading and to make it more competitive by inviting more and more players to join the foray. This *inter alia* included framing of Procedure, Terms and Conditions for grant of trading license and other related matters Regulation, 2009, Fixation of Trading Margin Regulation, 2009, Power Market Regulation, 2010 and Open Access in inter-State transmission regulation 2008. The Committee would like the Government to ensure implementation of these regulations to achieve the stated objectives. The Committee have also been informed that for preventing malpractices and market dominance, efforts are underway to formulate regulation with a view to prevent abuse of dominate position or any action which is anti competitive. Admittedly, the nature of participants in the market is varied with divergent interests and the complexity of transactions is increasing due to rapid Power Market expansion in the Country. The Committee, therefore, again emphasize that more effective regulations should

be formulated so as to create conducive atmosphere for healthy competition in the power sector.

E. Promotion of Renewable Energy

Recommendation (SI No. 16, Para No. 2.16)

21. The Committee had noted that section 86(1) (e) of the Electricity Act mandates the State Electricity Regulatory Commissions to promote, *inter alia*, 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, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee. The Committee were informed that a number of SERCs have already specified such percentage of the electricity to be procured in the area of a distribution licensee and have also notified cost plus tariff for different technologies of renewable energy exploitation. However, the Committee had found that the level of Renewable Energy Purchase Obligation (RPO), i.e. the percentage of electricity to be procured from such sources varies significantly from State to State. A few States like Tamil Nadu and Karnataka have already achieved a RPO level of more than 10%, but there are number of States which have not even touched RPO level of 2%. Further, the Committee were informed that though Delhi Electricity Regulatory Commission has prescribed two per cent but actually Delhi is not using any green energy. To overcome the issue of mismatch between availability of RE Resources in a State and the requirement of the obligated entities to meet the renewable purchase obligation (RPO), the Secretary of CERC stated that they have come up with a mechanism of renewable energy certificates under which States endowed with abundant renewable energy potential generates more power than required under RPO and can sell the certificate of excess generation to States bereft of renewable energy source so that they can fulfill their RPO. The Committee while endorsing this concept felt that it is a step in the

right direction to promote the optimum utilization of renewable energy as it incentivises the production of energy from renewable sources and will encourage the endowed States to fully utilize their renewable sources. The Committee, had therefore, recommended that RPO should be fixed uniformly for each State at 7% for the year 2012 and thereby increasing 1% every year to reach 15% in year 2020 as envisaged under National Action Plan on Climate Change (NAPCC) in year 2008. The Committee also expected that the Government will take sincere and prompt action in this regard under their intimation.

22. The Ministry of Power in their Action Taken Reply stated as under:

“The responsibility of promoting cogeneration and generation of electricity from renewable sources of energy has been entrusted on the Appropriate Commission in section 61 and in particular to the state commissions under section 86 (1) (e) of the Electricity Act 2003. Pursuant to this provision of the act, the tariff policy stipulates that the Appropriate Commission shall fix minimum percentage of purchase of power from such sources taking into account the availability of renewable resources in the region and its impact on the retail tariff. Accordingly, almost all State Electricity Regulatory Commissions (SERCs)/ Joint Electricity Regulatory Commissions (JERCs) have specified the Renewable Energy Purchase Obligations (RPO) for their licensee distribution companies. Specified RPO varies across the states.

In order to accelerate the large-scale deployment of renewable energy, the National Action Plan on Climate Change (NAPCC) envisages dynamic renewable purchase obligation target of 5% at national level for 2010 with annual increase in trajectory over long term so as to reach around 15% RPO target by 2020 at national level.

The Ministry of Power also amended the Para 6.4(1) of Tariff Policy which inter alia states that purchase of energy from non-conventional sources of energy should take place more or less in the same proportion in different States and for achieving this objective in the current scenario of large availability of such resources only in certain part of the country, an appropriate mechanism such as Renewable Energy Certificate (REC) would need to be evolved.

The Tariff Policy was amended on 20.1.2011 for fixing a minimum percentage of the total consumption of electricity in the area of a distribution licensee from solar energy in accordance with the National Solar Mission strategy. The minimum percentage for purchase of solar energy will go up to 0.25% by the end of 2012-2013 and further up to 3% by 2022.

In this connection in order to bring in an element of harmony in approach, the FOR had, in 2010, carried out a study to assess the feasible renewable

energy potential in different states to enable setting the possible RPO trajectories and its likely impact on consumer tariff. This study had revealed that to achieve the NAPCC suggested target, availability of renewable energy capacity would not be a constraint to meet the National Action Plan on Climate Change (NAPCC) target of 10% by 2015 and around 45000 MW RE generation capacities will be required. Further study report revealed that the pan India incremental impact of increasing RPO by a uniform rate of 1.2% every year from the present level of 4% would not be substantial and the incremental impact was estimated to be less than 1.5 paise per unit which reduces to almost zero in 2015. Almost 25000 MW capacities are required to be added in the next 4 years to achieve 10% target as suggested by NAPCC by FY 2015, in accordance with the above referred study. In June, 2012 another study was carried out by FOR for suggesting RPO trajectories based on resource assessment for the period from 2012 to 2017.

Further, in order to accelerate development of Renewable Energy through legislative & policy changes and to evolve competitive bidding guidelines for procurement of power from renewable energy by distribution licensees under section 63 of the Electricity Act, 2003 and also to suggest measures for addressing the issues relating to connectivity and evacuation infrastructure for large scale deployment of renewable energy, a Committee has been constituted in the Ministry of Power.

The recommendation of the Committee regarding prescribing uniform RPO in line with the NAPCC will be examined for further action in this regard in consultation with States as the same is likely to have financial implications on the distribution utilities.”

23. With a view to incentivize the production of energy from renewable sources and encourage the endowed States to fully utilize their renewable sources, The Committee had recommended that Renewable Energy Purchase Obligation (RPO) should be fixed uniformly for each State at 7% for the year 2012 and thereby increasing it 1% every year to reach 15% in year 2020. The Ministry in their action taken reply have stated that the recommendation of the Committee regarding prescribing uniform RPO in line with the NAPCC will be examined for further action in consultation with States as the same is likely to have financial implications on the distribution utilities. However, they have also stated that the study done by FOR in 2010 had revealed that to achieve the National Action Plan on Climate Change (NAPCC) suggested target of

increasing share of renewable energy to 10% by 2015, availability of renewable energy capacity would not be a constraint to meet as around 45,000 MW RE generation capacities will be required. Further, study report revealed that the pan India incremental impact of increasing RPO by a uniform rate of 1.2% every year from the present level of 4% would not be substantial and the incremental impact was estimated to be less than 1.5 paisa per unit which will reduce to almost zero in 2015. Further, a fresh study was done in 2012 by FOR and the incremental impact of varying levels of RPO on the power purchase cost (PPC) has been analyzed for each State as well as at the pan India level. It has been found that the incremental impact on the Power Purchase Cost (PPC) is only 1.0 paisa per unit for the first year, which gradually decreases to negative incremental impact to the extent of 0.5 paisa per unit in FY 2017. In view of the above it is clear that neither generation capacity nor cost implication is major constraint in increasing RPO. The Committee strongly believe that increasing RPO will incentivize the utilization of renewable energy which will motivate the endowed State to optimally utilize the RE potential as the same will not only help in meeting their mandatory RPO but also they can sell the excess renewable energy produced to other States having less or no renewable energy potential to fulfill the RPO. The Committee believe that this way the participation of all the States, directly or indirectly in optimal development of renewable energy potential available in the Country, can be ensured.

The Committee, however, are surprised to note that even though there is hardly any major barrier in the implementation of increased RPO, the Ministry has neither initiated any step to actualize it nor furnished the details of the

roadmap to implement it in future. The Committee find the reply of the Government on this important issue rather routine and the same is not acceptable to the Committee. It appears that after the presentations of the Report the issue has not even been discussed in FOR and the Ministry has merely stated that the recommendation will be examined. The Committee expects that Government action is prompt and conclusive. As huge renewable energy capacities are lying unutilized in some pockets/States across the Country, it becomes imperative that all the States collectively should share the responsibility of developing Renewable Energy sources in the Country. The Committee believe that the provision to increase RPO and making it uniform and mandatory, provides a solution to the problem of economic un-viability of renewable energy due to its high cost as the same could be shared by all the States thereby making the consequent increase in power cost negligible. The Committee, therefore, would like the Government to expedite this matter by placing it before Forum of Regulators for discussion and its subsequent implementation. Needless to emphasize the Government would continue to pursue the matter with State Governments at appropriate levels.

CHAPTER II

OBSERVATIONS/ RECOMMENDATIONS WHICH HAVE BEEN ACCEPTED BY THE GOVERNMENT

Mandate vis-à-vis Performance of CERC

Recommendation (SI No. 1, Para No. 2.1)

The Committee note that the Electricity Act 2003 has given the CERC a renewed mandate vis-à-vis its status emanating from Regulatory Commission Act, 1998. After 2003, it was expected to make the power sector modern, vibrant efficient, responsive and productive. To achieve this the Commission has been entrusted with the responsibilities which among others include tariff determination, regulating inter-state transmission and grid code, regulating market development, licensing, adjudication and giving advice to the Government. These objectives are sought to be achieved by notifying regulations, passing orders and tendering policy advices to the Government of India. The Mission Statement of the Commission intends to promote competition, efficiency and economy in bulk power market, improve the quality of supply, promotes investment and to advice the Government on the removal of institutional barriers to bridge the demand supply gap and foster the interest of the consumers. The Committee observe that despite given mandate for transforming the power sector, CERC has done precious little in discharge of its duties to achieve the objectives. The duties assigned in principle, are efficacious to shape and revive the sagging sector into its new and ideal incarnation making it efficient, economic, energized and ebullient. However, it is regretted that it is still a controlled, traditional and non-resilient labyrinth confounding the consumers. The Committee, therefore, strongly recommend that the CERC, adopting the true spirit of the Electricity Act 2003 must shed its inhibition, laid back approach and be in the forefront of heralding a new era in the Power Sector. The importance this Sector hold to the development of this Country, its economy, people, agriculture, industry etc. cannot be overemphasized and hence it dwells more on CERC to function in an efficient and responsive manner. The Commission cannot ignore the fact that while developing the Sector in a competitive manner it has to protect the large sections of the society and hence its action should be guided not only by the letter and spirit of the Act but also by the invisible yet important element of the welfare of the poor of the Country.

Reply of the Government

The Electricity Act, 2003 assigns distinct functions and responsibilities to various organizations and entities. The Central Electricity Regulatory Commission (CERC) has been broadly assigned the following functions and responsibilities within the Electricity Act, 2003:

- (a) Regulation of tariff of Generating Stations owned or controlled by the Central Government, generating stations having composite scheme for generation and supply of electricity to the Distribution Companies in more than one State and the determination of tariff for Inter-State transmission of electricity.

- (b) Regulation of Inter-State transmission of electricity.
- (c) Specifying the grid code and maintenance of grid discipline.
- (d) Issue Inter-State transmission and Inter-State trading license.
- (e) Promotion of market in power.
- (f) Facilitation of non-discriminatory open access in Inter-State transmission system through appropriate regulations.
- (g) Advice to the Central Government on the matters of formulation of policies, promotion of competition, promotion of investment, efficiency and economy in activities of the electricity industry and any other matter referred to the Commission.
- (h) Adjudication of disputes involving generating companies and Inter-State transmission licensees who fall within the jurisdiction of the Commission.

By virtue of the nature of functions being discharged by the Central Commission, it does not have the opportunity to directly deal with the end consumers.

Nevertheless, it is the consistent endeavour of the Central Commission to ensure that various steps and actions taken by the Commission in discharge of its statutory functions and responsibilities result in benefit to the power sector, the economy and the end consumers. The Central Commission in discharge of its responsibilities balances the interests of the consumers and the investors.

Consumer Interest

It has been a constant endeavor of the Commission to enhance power supply by improving availability of generating plants and transmission system for the benefit of the end consumers. The Commission induces efficiency in operation of the power plants by tightening the operating norms for the power plants in its tariff regulations. Benefits of efficiency gains were shared with buyers and in turn with the end consumers in every successive control period of tariff regulations. The Commission has provided alternatives to procure power for the consumers through its efforts on development of power market and facilitating open access. The Commission regulates inter-state transmission grid for better operation and to improve reliability.

Investment Promotion

The Electricity Act, 2003 and tariff policy both have assigned the responsibility to the Commission for development of market in electricity. Adequacy of supply and promotion of investment in the sector serve consumer interests in the long run. One of the thrust areas for the Commission, to improve power availability, is investment promotion in the power market. For the development of power market the Commission has provided enabling framework for market access to the generators. By facilitating establishment of power exchanges in India, the Commission has

provided multiple alternatives to the generators to sell power i.e. either directly to the consumers or through traders or through power exchange. The Central Commission has been making efforts to facilitate investment in transmission sector, with implementation of Point of Connection (POC) mechanism being the latest initiative in this direction.

The Commission realizes the importance of development of renewable sector for rural consumers and has been promoting green energy for both grid connected and off grid projects. Apart from preferential tariffs, a market based instrument viz., Renewable Energy Certificate (REC) was introduced by the Commission in coordination with the Forum of Regulators. With this mechanism in place, the renewable energy generators now have another avenue for sale of power and at the same time the obligated entities have another option to meet their renewable purchase obligation. The Commission has also sought to address the issues around grid integration of the renewables by enabling connectivity to the CTU network for hydro generating stations and renewable energy source of 50 MW and above.

CERC is also responsible for oversight of the market and grid security. Introduction of UI mechanism and Grid Code has improved grid discipline.

The Commission understands its responsibility for Indian Power Sector and in the national interest or on recognizing any impediment in implementation of a concept such as open access, the Commission has time and again advised Central Government on a number of issues which have been duly examined and acted upon appropriately.

**[Ministry of Power O.M. No. 277/2010(Vol-IV)-R&R
dated 18.03.2013]**

Recommendation (SI No. 4, Para No. 2.4)

The Committee find that there is shortage of adequate manpower in the Commission. As of now the sanctioned staff strength of CERC is 80 only and almost all of these post are required to be filled up through deputation from other Government Departments. The pay structure, service conditions and other amenities available to CERC employees are also discouraging. Certain benefits which are available to the Central Government employees are denied to the officials of the CERC. These benefits among others include pensions, CGHS facilities and Government accommodations etc. Independent regulation is an emerging concept and to make it a reality adequate manpower with required qualification and skill have to be arranged for making CERC more dynamic and result oriented. The certainty of service with career progression on a regular basis is an essential motivating factor in any organization to succeed. The Committee, therefore, strongly recommend that the personnel policy of the organization should be well laid down having its own cadre with adequate promotional prospects and better amenities to the officials of the Commission corresponding to the job profile to ensure the high standards of professional approach and dedication in the accomplishment of the task cut out for

the Commission. Needless to emphasize, deputation should be an exception rather than the main source of meeting man power needs of CERC.

Reply of the Government

The Central Electricity Regulatory Commission (CERC) was set up by the Government of India at New Delhi under the provisions of the erstwhile Electricity Regulatory Commissions Act, 1998. CERC is recognized as the Central Commission under the provisions of the Electricity Act, 2003 which repealed the Electricity Regulatory Commission Act, 1998.

CERC has stated that since the inception of the Commission in 1999, the activities of the Commission have increased manifold. From merely, a tariff setting mechanism, initially, the Electricity Act, 2003 enjoined upon the Commission various other functions. The Commission had to come out with various regulations, not only covering the terms and conditions of tariff but also other regulations on licensing activities, Grid Code, Open Access regulations etc. the subject of each of which has a wide range covering financial, technical, regulatory, managerial, legal, commerce, economics and the like. This calls for apart from discipline based knowledge, thorough understanding of the complexity of power sector and its operations as also the expectations of investors, customers and all other stakeholders. This definitely calls for attracting the best talents which can happen only if apart from job enrichment, the remuneration is attractive and growth opportunities are provided.

The Government has been responsive to the difficulties faced by CERC due to inadequate staff-strength. In October 2005, 20 additional posts under various categories were created for the Commission. The present sanctioned staff strength of CERC is 80. Further, Certain restrictions imposed while creating the additional posts that some of the posts should be filled up from CEA only on deputation, have been removed by the Government in October 2012 for the smooth functioning of the Commission. Although deputation has been prescribed as the method of recruitment in the Commission in terms of the service regulations of the Officers and staff of the Commission, there is provision in the service Regulations that the personnel engaged by the Commission on deputation can get absorbed in the Commission permanently. This gives the Commission the option of creating its own cadre with efficient and suitable officers and staff. A number of officers and staff have already got absorbed in the Commission permanently in terms of the above provision.

CERC has stated that certain benefits like Pension, CGHS facility, Govt. accommodation etc. available to Central Govt. Employees are not available to CERC officials, it may be mentioned that even in the case of Government servants who joined on or after 1.1.2004, the old Pension scheme has been replaced with the New Pension Scheme (NPS) under which the employees and the employer contribute equally towards pension fund. As per the CERC service regulations, provisions of Pension/General Provident Fund as applicable to Central Government servants of corresponding level are applicable to the staff of CERC absorbed permanently. CGHS facilities are not available to employees of regulatory bodies. However, in lieu of CGHS facilities, Government had given approval for the Commission's medical

regulations under which medical facilities are being availed by CERC employees. Government accommodation is also not available to employees of regulatory bodies. However, Government had also given approval for the Commission's regulations for availing leased accommodation by the employees at a rent equivalent to two times of the HRA admissible.

Ministry of Power has been responsive to the proposals of CERC, including those relating to Staffing, and facilitated necessary approvals in consultation with other concerned Ministries/ Department with a view to provide all possible assistance to the Commission in discharge of its functions from time to time.

**[Ministry of Power O.M. No. 27/7/2010(Vol-IV)-R&R
dated 18.03.2013]**

Forum of Regulators (FOR)

Recommendation (SI No. 6, Para No. 2.6)

The Committee note that the Electricity Act, 2003 empowers the State/Joint Electricity Regulatory Commissions (SERCs / JERCs) to fix tariffs for consumers. The Act also stipulates under section 61 that the SERCs while fixing the tariff should be guided by the factors which inter-alia include that tariff progressively reflects the cost of supply of electricity and also, reduces cross-subsidies in the manner specified by the Appropriate Commission. The Committee were informed that Model Tariff Regulations have been formulated by Forum of Regulators which *inter-alia* address the major issues responsible for financial distress of the distribution companies. The Model Tariff Regulations have been designed to arrive at a set of uniform practices that the various State Electricity Regulatory Commissions could adopt. The major objective of these model regulations is to standardize the process of determination of tariff for a distribution utility and which smoothens the cost transfer in retail tariff appropriately. The Committee note that under section 131 of Electricity Act 2003, it has been mandated to reorganize the State Electricity Boards in the country to separate entities of Generation, Transmission and Distribution segments with the purpose of making them self sustaining. A study conducted by the Indian Institute of Public Administration (IIPA) on the impact of reorganization of the State Electricity Boards has revealed that despite some shortcomings, the overall impact of restructuring has been positive and in the right direction. The Committee have been informed that so far 18 SEBs have been reorganized. Out of the remaining States, Bihar, Jharkhand and Kerala are in the process of formulating schemes for reorganization of their SEBs.

Against this backdrop the Committee note that over the years, owing to factors such as very high Transmission and Distribution losses, irrational tariffs and several shortcomings on the distribution side, the financial health of the SEBs have deteriorated. Also the 13th Finance Commission has projected the losses of the SEBs, which are now the Discoms, to the tune of Rs.70,000crore. The Secretary of

the Ministry of Power while explaining this situation stated that there are State Commissions which have not rationalized tariff for seven to eight years. All this has contributed to the State Electricity Boards coming back to the situation which they were in 2001 and probably getting even worse. The Committee are aghast to note the critical financial situation of the State Electricity Boards (SEBs)/ Discoms. More surprisingly, the precarious financial positions of the Discoms were known and need for rationalization of tariff was felt for a very long time. Nonetheless, any concrete remedial efforts in this regard have been delayed for reasons which are not known to the Committee. The losses have been allowed to accumulate to the extent that it cannot be cleared by the Discoms themselves. The Committee are concerned that due to negligence and non-performance of concerned organizations ultimately the common man has to bear the brunt of these huge losses either in the form of increase in tariff or taxes or surcharges. The Committee believe that delay in taking corrective measures will only exacerbate the issue. The Committee, therefore, strongly recommend the followings:

- (i) Work related to reorganization of SEBs in remaining States should be expedited as it is an important strategy in the pursuit of reforms for encouraging competition, promoting greater efficiency by streamlining operations of distribution, transmission, generation and trading, while promoting transparency and accountability.
- (ii) FOR should ensure that adequate steps are taken by every State's Regulatory Commission and Discoms to rationalize their tariff annually by taking into account all the aspects including distribution losses and their management inefficiency. The endeavor should be that the price of inefficiency of Discoms in the form of distribution losses should not be passed on to the common man in the form of increase in tariff. Also a target should be fixed to reduce the AT&C losses in a time bound manner failing which this component should be dealt within a manner wherein DISCOMs are made accountable for their inefficiency without passing it on to the consumers.
- (iii) Energy audit of each and every Discoms should be mandatorily by third party, which should invariably be taken into account for tariff rationalization purposes.
- (iv) The Government, CERC and FOR should come up with some innovative ideas to overcome the menace of huge losses incurred by various SEBs, which in the view of the Committee is nothing but the result of inefficiency, lack of vision and will power of the Government on this issue. The Committee would like to be apprised of the sincere efforts taken by the Government/CERC/FOR in this regard.

Reply of the Government

The Electricity (Supply) Act, 1948, provided for creation of State Electricity Boards (SEBs) to handle the power sector in each State. Over the years, owing to factors such as very high Transmission & Distribution losses, irrational tariffs and

several shortcomings on the distribution side, the financial health of the SEBs deteriorated.

Reorganization of SEBs was an important strategy in this pursuit of reforms for encouraging competition and improving efficiency in operation. Restructuring these boards is aimed at promoting greater efficiency by streamlining operations of distribution, transmission, generation and trading, while also promoting transparency and accountability.

Under Section 131 of Electricity Act 2003, it has been mandated to reorganize the State Electricity Boards in the country to separate entities of Generation, Transmission and Distribution segments with the purpose of making them self sustaining.

Ministry of Power has got conducted a study by the Indian Institute of Public Administration (IIPA) on the impact of reorganization of the State Electricity Boards. The study concluded that “despite some short coming, the overall impact of restructuring has been positive and in the right direction”. The report given by IIPA states that the following overall improvements have been noticed in four States which have reorganized their SEBs (Andhra Pradesh, Haryana, Karnataka and Orissa).

- (i) Trend towards reducing AT&C losses.
- (ii) Increased and more focused investments.
- (iii) Capacity addition and strengthening of the power systems.
- (iv) Localisation and reduction of inefficiencies.
- (v) Improved customer care.
- (vi) Progress in metering, billing and collection etc.
- (vii) Increased accountability of the Utilities.
- (viii) Establishment of Regulatory Mechanism.
- (ix) Empowerment of consumers.
- (x) Reporting and reviewing of performance of the Utilities on a regular basis.

So far 19 numbers of SEBs have been reorganized. The remaining States of Jharkhand and Kerala are in the process of formulating schemes for reorganization of their SEBs. Time to time, correspondences and follow up is being taken up with the States who have not yet reorganized their SEBs. States are urged to make sincere efforts for development of the Power Sector on various platforms including Power Minister Conference.

It may, however, be emphasized that it is not enough to expedite the work related to reorganization of SEBs in remaining States. It is equally important that the single buyer model, which is continuing in some of the reorganized SEBs, should also be abolished. Single buyer model – that is, the practice of an intermediary agency procuring power on behalf of the distribution utilities and allocating differential power purchase cost - distorts competition. Even after reorganization of SEBs, the restructured entities in States continue to operate under an umbrella holding company.

The single buyer model camouflages inefficiency of discoms and perpetuates cross-subsidisation between discoms. These are not only undesirable but also against the letter and spirit of the Act. There is an urgent need to engage with the States to persuade them to do away with the single buyer model by assigning the existing PPAs with the generators directly to the distribution companies, and facilitating differential tariff based on efficiency of discoms. If need be, necessary clarity to this aspect may also be brought through amendment to the Act which is under examination of the Committee constituted under the Chairmanship of CEA.

Forum of Regulators (FOR) carried out a study “Tariff revision assessment for financial viability of discoms” for 10 States in the country. The study of the 10 States highlighted inter-alia the following major issues responsible for financial distress of the distribution companies:

- Timeliness of tariff determination process.
- Disallowance of legitimate costs.
- Fuel Purchase Adjustment.
- Untreated gap/Regulatory Assets.

The findings of the study were used as reference points for evolving Model Tariff Regulations. The Model Tariff Regulations address each of the major issues revealed by the study of the 10 States. The model regulations provide for SERCs to issue suo-motu tariff order in case of delay/non submission of tariff application. The Model regulations also propose to conduct year-long studies for correct estimation of metered sales and un-metered sales. Based on the assessment of metered and un-metered sales, the Commission shall update existing baseline of distribution losses and approve circle-wise distribution loss reduction targets. On the basis of circle-wise distribution loss, circle-wise differential tariff by way of separate and distinct distribution loss surcharge is proposed to be implemented under the Model Regulations. Circle-wise differential tariff shall mobilize support/push from the consumers on the distribution licensee to drive loss reduction. The responsibility primarily now rests with the State Regulators to take the recommendations forward and implement Model Tariff Regulations in their respective States.

Highlighting the facts in the study report of FOR, Ministry of Power made a reference to the Appellate Tribunal raising the issues of tariff revisions and tariff adequacy and Appellate Tribunal of Electricity (APTEL) in its judgment dated 11th November, 2011 has inter-alia ruled that fuel and power purchase cost is a major

expense of the distribution company which is uncontrollable. Every State Commission must have in place mechanism for fuel and power purchase cost in terms of Section 62 (4) of the Act. The fuel and power purchase cost adjustment should preferably be on monthly basis on the lines of the Central Commission's Regulations for the generating companies but in no case exceeding a quarter. Any State Commission which does not already have such formula/mechanism in place must within 6 months of the date of this order must put in place such formula/mechanism. The Ministry has also requested all the State Governments to take necessary action accordingly. Following APTEL's judgment OP No. 1 of 2011, 28 SERCs/JERCs have issued the tariff order for retail supply for FY 2012-13.

As regards energy audit of discoms by third Party, it may be stated that Para 8.2.1 (2) of Tariff Policy provides that third party verification of energy audit results for different areas/localities could be used to impose area/locality specific surcharge for greater ATC loss levels and this in turn could generate local consensus for effective action for better governance. Further, this Ministry has asked all the SERCs to furnish the details of third party verification of energy audit results for their tariff determination in their respective States. Further, the Forum of Regulators constituted a Working Group on "Loss Reduction Strategies" for detailed examination of issues around reduction of distribution losses. The report finalized by the FOR based on the inputs of the working group emphasizes that third party verification of the technical and financial data submitted by the utility is crucial, before such data is taken into account for determination of tariff. Further, FOR in its report on Multi Year Tariff and Distribution Margin has recommended that data on distribution loss levels should be verified through a third party as envisaged in the Tariff Policy. FOR has indicated that the services of accredited energy auditors and academic institutions such as Indian Institute of Technology (IITs) and other engineering colleges could be utilized for this.

(iv)- It may be mentioned here that the distribution of power is the responsibility of the Discoms. Central Government acts as a facilitator in supplementing the efforts of States to provide power to consumers in an improved manner. However, the steps taken by the Union Government to improve distribution sector and to reduce the losses of SEBs/power distribution companies of the country are given below:-

R-APDRP:

To reduce the AT&C losses in the country and to improve the power distribution sector of state utilities, Government of India has launched the Restructured-Accelerated Power Development and Reforms Programme (R-APDRP) during 11th Plan period. The focus of R-APDRP is on actual demonstrable performance by utilities in terms of sustained AT&C loss reduction in the project areas. Projects under the scheme are taken up in two parts in towns having population more than 30,000 (10,000 for special category States) as per census 2001. Part-A of the scheme is for establishing IT enabled system for energy accounting / auditing and Supervisory Control and Data Acquisition (SCADA) for big cities (population:4 lacs and Annual Energy Input: 350MU) whereas Part-B is for up-gradation, augmentation & strengthening of electrical infrastructure in project towns.

So far, under R-APDRP, projects worth Rs.32323.70 crores (Part-A: Rs 6638.79 crores covering 1402 towns and 63 SCADA projects in 63 towns; Part-B: Rs. 25684.91 crores in 1132 towns) have already been sanctioned.

Rating of Utilities

In order to enable a unified approach by Financial Institutions (FIs)/ Banks for funding State Distribution Utilities, Ministry of Power has developed an integrated rating methodology for State Distribution Utilities. The overall objective of the integrated rating methodology is to devise a mechanism for incentivizing/ disincentivizing the distribution utilities so as to improve their operational and financial performance, enable regulatory compliance and influence respective State Govts. to fulfill commitments on subsidy, equity support including transition funding support to achieve self-sustaining operations.

Order of Appellate Tribunal for Electricity (APTEL)

Ministry of Power has requested "Appellate Tribunal for Electricity" to issue directions under section 121 of the Electricity Act to the State Regulatory Authorities to revise the tariff appropriately (suo-motto, if required), in the interest of improving the financial health and long term viability of electricity sector in general and distribution utilities in particular.

The Appellate Tribunal for Electricity (APTEL) in its order dated 11th November, 2011 has issued directions to the State Commissions with a view to improve the financial health of SEBs/ Discoms and ultimately help to deal with the mounting arrears of pending dues of the distribution utilities, which inter alia include automatic fuel & power purchase adjustment cost, suo-motto determination of tariff, if petition is not filed by utility, annual truing up of accounts and no reverse gap to be left uncovered by SERCs. The regulatory assets are to be created only in extraordinary circumstances & to be liquidated in maximum 3 years.

Model Tariff Guidelines:

Forum of State Regulators and Central Electricity Regulatory Commission (CERC) have resolved to implement **Model Tariff Guidelines**, which address issue of rationalization of tariff. FOR (Forum of Regulators) has circulated Model Tariff Guidelines to SERCs, for their adoptions. Now SERCs are required to adopt these tariff guidelines and make regulation. Adoption of Model Tariff Guidelines is a precondition for disbursement of loan by Power Finance Corporation and Rural Electrification Corporation to utilities.

Financial Restructuring of State Distribution Companies

A scheme for Financial restructuring of State Owned Discoms has been notified by the Government of India to enable the turnaround of the State Discoms and ensure their long term viability. The scheme contains measures to be taken by the State Discoms and State Govt for achieving financial turnaround by restructuring their debt with support through a Transitional Finance Mechanism by Central Govt.

Tariff Regulation

Recommendation (SI No. 9, Para No. 2.9)

The Committee note that prior to the Electricity Act 2003 there was no concept of competitive bidding or tariff discovery through competitive bidding. The Electricity Act 2003 has brought in the concept of tariff discovery through complete bidding process and the Commission is required to adopt the tariff so discovered. Section 63 of the Act provides that the CERC has to adopt the tariff if such tariff has been determined by the complete bidding process in accordance with the guidelines framed by the Central Government in this regard. In response to Committee's inquest whether any study has been carried out to find out as to which category of tariff is cheaper between the two i.e. tariff through competitive bidding or through cost plus process, it was informed that in the year 2011 CERC had carried out a study of 14 competitively bid power plants with commercial date of operation between 2011 and 2014 comparing the bids with cost plus approach and the prices under cost plus approach were found higher in respect of 11 of the 14 projects. In 3 plants (2 in Maharashtra and 1 in Madhya Pradesh) tariff for competitive bids were found higher than the cost plus approach. It was concluded that in general competitive bid can lead to lower tariff. The Committee have also been apprised that "however, these were levelized prices and actual payments over the years depends on bid structure (particularly proportion of variable part in tariff) and how the parameters really vary in future. While replying to a specific question of the Committee whether 85% tie up of power through bidding will not stall the process of development of thermal power projects by private power developers, the Committee were informed that "the provisions of 85% tie up of private power through competitive bidding is to ensure availability of power to the distribution licensee at a relatively cheaper rate in power shortage condition. The 85% tie up of power would not stall the development of thermal power stations by the project developers because by this, the developer would be assured of the customer for his 85% output and balance 15% power could be sold by him based upon prevailing power merchant rate." The Committee find that the exercise of tariff determination through competitive bidding is not akin to reality. The comparison between the two systems of tariff determination with the projects whose COD are between 2011-14 with the running plants is nothing but chimera. The justification of tariff discovered through competitive bidding being lower in 11 plants is specious for the fact that despite tariff being quoted for these plants none of these plants are operational, neither there is any likelihood of them becoming operational as scheduled. It is a near certainty that most of them will be mired with the several issues including tariff for final decision or adjudication before concrete action is taken for them becoming a reality. The contention of the Ministry that 85% power tie-up will not stall the development of the plants as it assures developers the market of their product is also not sustainable on the ground that the

situation in the Country regarding availability of power is still far from the satisfactory leading to scarcity and hence any prior tie-up of sale is not going to reassure developers to keep pace of the plant as planned particularly when they find the tariff uneconomical due to several factors. The Committee as such are not averse to idea of competitive bidding per se but definitively have inhibition about the shoddy manner in which it has been done and projected thereafter. The Committee, therefore, strongly recommend that entire process of competitive bidding for determination of tariff has not been tested on the touchstone of the system and hence there is nothing to cheer about this policy. It should be framed in such a way so as to encompass the future variables also of the various constituents within the policy otherwise it is not going to fructify as conceived and projects attained through this process are highly unlikely to reach their logical stage.

Reply of the Government

The Ministry of Power had issued Guidelines for determination of tariff by bidding process for procurement of power by distribution licensees under section 63 of the Electricity Act, 2003 on 19.1.2005. As per these Guidelines the Standard Bidding Document were issued on 31st March, 2006.

The underlying idea was to attract private investments and availability at reasonable rates to consumers in a fair, transparent and competitive process based on an arrangement of legally enforceable contract.

As per the study carried out by CERC based upon 14 projects had revealed that tariff under competitive bidding route in case of 12 projects is lower than the cost plus approach. The details of UMPP projects awarded through competitive bidding route and the prices discovered and adopted by CERC are as under:

Project	(L1-Bidder)	Levelling Tariff adopted (Rs/kWh)
Sasan UMPP	Reliance Power Ltd	1.19616
Mundra UMPP	Tata Power Company Ltd	2.26367
Krishnapatnam UMPP	Reliance Power Ltd	2.33296
Tilaya UMPP	Reliance Power Ltd	1.77040

As per information made available by CERC, presently following petitions have been filed before the Central Commission in cases involving Competitive Bidding:

- (1) Mundra UMPP of CGPL (Tata Power Limited)CGPL
- (2) Mundra Power Plant of Adani Power Ltd.
- (3) Krishnapatnam UMPP of CAPL (Reliance Energy Limited)
- (4) Sasan UMPP of SPL ((Reliance Energy Limited)

The Commission has not yet issued final orders on these Petitions.

Further, this Ministry received a number of references from various stakeholders including private power producers regarding fuel availability risk of domestic coal, price risk due to change in prices of fuel in coal exporting countries, delay/denial in environment & forest clearance pertaining to coal blocks and different options for termination of projects etc. and seeking amendment in the Standard Bidding Documents. To examine the references received from various stakeholders including private power producers, the Ministry of Power had constituted a Committee. The Committee had a number of meetings and consultations with stakeholders including State Govts, Discoms, developers, financial institutions and concerned Ministries/Departments. Based on the decisions taken in the various meetings/deliberations held with stakeholders, the Draft Model Power Purchase Agreement(MMPA) was prepared and with the approval of after approval of Hon'ble MOP, the same was circulated on 7th Sept, 2012 for seeking comments stakeholders. Further, an Inter-Ministerial Group (IMG) was also constituted under the chairmanship of Secretary (Power) to consider the suggestions of stakeholders and to fine-tune the document. The IMG has approved the Standard Bidding Document in its meeting held on 11th December, 2012.

**[Ministry of Power O.M. No. 277/2010(Vol-IV)-R&R
dated 18.03.2013]**

Grid Discipline/Transmission

Recommendation (SI No. 10, Para No. 2.10)

The Committee note that the Electricity Act, 2003 has entrusted CERC the responsibility of regulating Inter-State Transmission System and also notifying Grid Code for smooth conveyance of electricity across States. In discharge of this responsibility CERC issued the revised Regulation on Indian Electricity Grid Code (IEGC) in April, 2006. IEGC brings together a single set of technical rules, encompassing all the utilities connected to or using the Inter-State Transmission System. The Committee further note that in respect of regulation for Unscheduled Interchange (UI) the concept of Availability Based Tariff (ABT) which primarily has two components, namely fixed cost and variable cost has been introduced by the Commission. Under ABT a generator is allowed to recover the fixed cost only if it is able to make its capacity available for use, whereas, the energy charge is recoverable as per the pre-committed schedule of supply. This mechanism also provides for charges of Unscheduled Interchange (UI) which are imposed when a generator generates less or beneficiary overdraws power than the schedule thereby decreasing the normal frequency of 50Hz. The Committee find that though this mechanism has been helpful in containing the problem of UI to some extent but the scrutiny by the Committee of the data as provided by the CERC regarding grid frequency leaves much to be desired. The minimum frequency of Grid has dropped even below 49.Hz during all the three years i.e. 2009-10 to 2011-12 putting the smooth functioning of the Grid at stake. The scrutiny of the Committee have revealed that UI charges for the period 2002-03 to 2011-12 have cumulative value of Rs. 74,181 crore which itself indicates to the degree of problem of Unscheduled

Interchange and misuse of the mechanism. The UI charges system has perhaps failed to enforce the desired grid discipline as it is found to be an easy alternative of short term electricity trading by overdrawing power from the grid by Discoms at the cost of lesser power supply to the actual beneficiary and also resulting in lowering of frequency endangering the safety of the grid. This set up also indicate to the possibility of gaming - an intentional mis-declaration of declared capacity by any generating station or seller to make an undue commercial gain through UI charges. The Committee strongly feel that the safety and smooth functioning of the Grid is of utmost importance so that the legitimate beneficiaries and generators should not suffer due to malpractices indulged by some Discoms/Generators. The Committee also notice that there is no uniformity in realization of UI charges due to several reasons like stay granted by the Court, petition for waiver of penalty, setting aside of penalty by APTEL and also without any genuine reasons. Since 2005, 46 cases of indiscipline were reported of which in 24 cases penalties were imposed and only in 17 cases the penalty were paid. The Committee, therefore, recommend that necessary changes may be effected in Indian Electricity Grid Code (IEGC)/ and the UI charges/ penalty should be increased to the extent that it effectively deter Discoms/ Generators from Unscheduled Interchange and this practice should be resorted to only under emergency and unforeseen circumstances rather to be misused as ill-practice of gaming and short term electricity trading. For repeated offences of overdrawing and putting the grid safety at risk, penal provisions, apart from hefty financial penalty, should be made harsh enough to pose as deterrence. The required amendments to provide more authority to CERC/FOR for effective realization of financial penalty imposed for the offenses should also be made in the regulation. Simultaneously, the Government should also explore the possibility of ancillary market for the purpose of ensuring strict grid discipline as prevalent in Western Countries.

Reply of the Government

In order to ensure better grid discipline, the IEGC and UI Regulations have been amended by CERC and the operating frequency band has been narrowed down from 49.5-50.2 Hz to 49.7-50.2 Hz. The CERC (Indian Electricity Grid Code) (First Amendment) Regulations, 2012 and CERC (Unscheduled Interchange Charges and related matters) (Second Amendment) Regulations, 2012 have become effective from 00 hours of 17th September 2012.

Regarding recommendation for increase in penalty to ensure grid discipline, it is to state that implementation of the above provision itself would also lead to enhancement in penalty for overdrawal by the states at grid-frequency below 49.7 Hz. This apart, CERC has powers to impose penalty for grid indiscipline in the inter-state power system under sections 29 and 143 of the Electricity Act, 2003. CERC is also empowered to impose penalty under section 142 for violation of provisions of the Act, Rules or Regulations made there under, or any direction issued by the Commission. The amount of penalty mentioned in the Act, does not appear to be deterring one and it is felt that even multiples of that penalty may not make much difference as long as it is imposed upon the defaulting organisation. However, if the penalty is imposed upon the head of the organisation in the individual capacity for recovery from his own pocket, it is expected to make the difference.

As regards realisation of the financial penalties if not paid, section 170 of the Act already has the provision for recovery of the penalty in the same manner as recovery of arrear of land revenue. This section also needs revisit as it is also not easily implementable.

Many times the commercial penalty etc. does not serve the purpose of sufficient deterrent against grid indiscipline. In this case physical measures of reducing/stopping supply to defaulting utility from grid may be used as effective tool. In this direction, CERC in its order dated 17.08.2012 directed NRLDC to identify feeders, in consultation with CEA, CTU and STUs/ SLDCs, at higher voltage level under control of agency other than STUs, which can be opened in case of over drawal by a State and submit the details by 30.09.2012. This is under finalization by NRLDC. Similar exercise could be undertaken by other regions also.

Regarding opinion of the Standing Committee on Energy that UI system has perhaps failed to enforce the desired grid discipline, The Enquiry Committee on Grid Disturbances of 30th & 31st July 2012 has also in its report recommended review of UI mechanism in view of its impact on these grid disturbances. It has been further recommended that frequency control through UI may be phased out in a time bound manner and Generation reserves/Ancillary services be used for frequency control. Appropriate regulatory mechanism needs to be put in place for this purpose. POSOCO had filed Petition No. 351/2010 on 01.12.2010 for introduction of Frequency Support Ancillary Service in Indian Electricity Market. Ancillary Services implied in relation to power system (or grid) operation, the services necessary to support the power system (or grid) grid operation in maintaining power quality, reliability and security of the grid. The Commission had initiated separate action on the question of introduction of Frequency Support Ancillary Service by placing it before the Central Advisory Committee meeting on 14.3.2012. On the recommendations of the CAC, the Commission is in the process of framing the regulations. In view of the said developments, POSOCO had withdrawn its petition during the hearing on 10.7.2012. As regards the progress of the regulation on Ancillary Service, the Commission had approved the basic framework of the regulation. The draft regulation is under preparation and would be placed in the public domain shortly for inviting public comments/ suggestions/ objections. The regulation on Ancillary Services will be notified after following the due process. The petition (No. 208/MP/2012) filed by POSOCO on 7th September, 2012 related to amendment to relevant provisions of CERC (UI) Regulations, 2009. The Commission while disposing of the said petition vide order dated 05.12.12 directed initiation of the process of amendment to UI Regulations and permitted POSOCO to submit further necessary information in furtherance of the proposal. The draft amendment to UI Regulations is under consideration of the Commission.

As regards the imposition of commensurate financial penalty and its realization, there is a need to address the limitations of penal powers available with the regulators under section 142 of the Act. In this regard, the proposals for amendment in Section 142 & 146 related to punishment for non-compliance of directions by Appropriate Commission and other provisions is under consideration of the Committee constituted under the Chairperson, Central Electricity Authority on the proposed amendments in the Electricity Act, 2003.

Further, it may be mentioned that in our country, though there is perennial shortage of power, some generation capacity, at times, remains un-requisitioned. By introducing frequency support ancillary services, this un-dispatched capacity can be harnessed and it can be brought into the grid to mitigate shortage. The payment for this additional power may be made by overdrawing States. This in turn would bring reliability and security in grid. Introduction of ancillary service may reduce dependence on UI which should be resorted to only as a last mile imbalance settlement mechanism. The CERC has initiated steps towards introduction of ancillary market which is required for balancing power and grid security. While the underlying theme remains reliability and security of grid, the ancillary services will help harness the untapped generation capacity, mitigate load shedding, and address transmission congestion in a limited way. It will also supplement the need arising out of variability of renewable energy sources like wind and solar.

**[Ministry of Power O.M. No. 277/2010(Vol-IV)-R&R
dated 18.03.2013]**

Comments of the Committee

(Please see Para No. 17 of Chapter I of the Report)

Grid Discipline/Transmission

Recommendation (SI No. 11, Para No. 2.11)

The Committee note that it is difficult to dispense with UI mechanism as there is deficit in generation of electricity vis-à-vis its demand. Surplus electricity is a distant dream and may take decades before becoming a reality. Hence, the UI System will be in place till the time the generation outpace the demand. As it involves financial transactions, a relative degree of transparency with regard to fixation of such charges, the process of their realization from overdrawing and under-injecting entities, disbursement of these charges to entitled entities (under-drawing and over-injecting entities) and upkeep of the amount so collected, will go a long way to ensure the seemingly fairness of the affairs. In reply to a question about the amount collected by CERC through UI charges, the Committee have been informed that cumulative amount of Rs.74,181 crore from the year 2002-03 till October, 2011 has been charged under this head. After the capping of UI rates for generator, some funds are available which are maintained as Regional Unscheduled Interchange Pool Account Fund maintained by respective Regional Load Dispatch Centre. Subsequently, the UI charges standing to the credit of Unscheduled Interchange Pool Account Fund has been credited to the Power System Development Fund. As on May 2012, the surplus amount of UI charges is Rs. 3404 crore as deposited in PSDF. The utilization of this amount for the purposes identified by CERC in PSDF Regulation 2010 is yet to be notified as the consultation with the Ministry of Finance are on. The Committee, therefore strongly recommend a final decision with regard to

the utilization of money may be taken at the earliest in the best interest of this sector and it should be in consistent with the concept of public money with regard to its deposit and usage.

Reply of the Government

The “Power System Development Fund” was constituted under the CERC (Power System Development Fund) Regulations, 2010 notified by the Central Commission after previous publication in the Official Gazette dated 4th June 2010. The objective of the PSDF Regulations was to utilize the surplus fund generated in the UI Pool account, congestion amount account, congestion charge account and reactive energy charge account inter-alia primarily for servicing the investment made in transmission with the larger objective of removing congestion. However, the PSDF in its existing framework faces some practical implementation challenges, especially in terms of disbursement of fund from the PSDF. Efforts are being made to address these issues to ensure that the objectives that have gone into making the regulations are achieved.

CERC had submitted a proposal to the Ministry of Power regarding operationalisation of PSDF and the same was examined in the Ministry. Ministry of Power requested CERC to send a draft proposal regarding PSDF “to evolve a system for depositing the congestion charges/revenue and other charges levied under the PSDF and other regulations of CERC into a separate and exclusive Public Account to be maintained by NLDC consistent with the definition of ‘Public Money’ and subject them to the accounting/audit procedures as per the established norms. However, to ensure that the PSDF can be utilized for the purposes identified by the CERC in PSDF Regulations 2010 with certain modifications, if required, may be notified with the approval of the Ministry of Finance, before codifying the procedure.”

The revised proposal received from CERC, with certain modification has been referred to Deptt. of Economic Affairs, Ministry of Finance for comments.

**[Ministry of Power O.M. No. 27/7/2010(Vol-IV)-R&R
dated 18.03.2013]**

Recommendation (SI No. 12, Para No. 2.12)

The Committee note that provisions under Section 63 of the Electricity Act, 2003 and the guidelines of National Electricity Policy, issued by the Ministry of Power, on 13-4-2006 aim at laying down a transparent procedure for facilitating competition in the transmission sector through wide participation in providing transmission services and tariff determination through a process of tariff based competitive bidding. They further note that since 6.1.2011, all the ISTS transmission schemes are to be implemented through Tariff based Competitive Bidding as given

in the Tariff Policy. Selection of transmission service provider (TSP) for implementation of the transmission project is through the bidding process. The Committee were informed that 8 transmission projects have been awarded through the process of competitive bidding. 3 projects have been awarded to Sterlite Grid Limited, 1 project to Consortium of M/s Patel Engineering Limited, M/s Simplex Infrastructures Limited & M/s BSTRansComm Limited, while Reliance Power Transmission Limited and Power Grid Corporation of India Limited bagged 2 projects each.

When enquired by the Committee as to why any of the awardees have approached Government/ CERC expressing their inability to carry out the work on terms and conditions agreed to at the time of competitive bidding / award of work, it has been informed that three awardees have approached the CERC due to one difficulty or the other which includes inordinate delay in the issuance of approval under section 164 of the Electricity Act, 2003 by the Ministry of Power, cost escalations of various component, delay in notification of suitable sponsoring authority etc. The Committee feel that the work related to construction of transmission projects will play a vital role in evacuation of electricity from the surplus to deficient regions and are disappointed to note that it is not progressing satisfactorily. It is well known that the upcoming power stations generation capacity will be of no use if required transmission lines for transmission of electricity to the designated regions are not put in place in time. Thus augmentation of transmission lines proportionate to capacity addition in generation of power is of equal importance. The Committee feel that the problems plaguing the transmission projects are neither unexpected nor insurmountable. The Committee are of the opinion that in the cases of competitive bidding, the issues like approvals and notification of sponsoring authority are automatically taken care of. Any delay in this regard will enable the bidders to take the plea of cost escalation and thus abandon the project. This nullifies the entire exercise and process come to a naught. The Committee are unhappy to note response on specific issues raised such as alternative course of action, action proposed against the defaulters or any contingency plan and future event have been intentionally evaded. The Committee observe that in most of the cases of competitive bidding, the successful lower bidder, starts complaining about the non-viability even before the start of the project. The Committee, therefore, recommend that the Government should ensure that necessary clauses should be inserted in the terms and conditions of projects meant for award through competitive bidding to the effect that this problem of projects becoming economically unviable due to cost escalation or other reason can be taken care of at the time of bidding itself. Further, the Committee also recommend the Ministry to expedite the process of issue of approval under section 164 of the Electricity Act, 2003 to the concerned transmission companies. They also desire the progress of the above mentioned transmission projects as well as 9 High Capacity Tower Transmission Corridors projects involving investment to the extent of Rs.58,000crores approved by CERC, should be closely monitored and appropriate remedial action should be taken to overcome the impediments being faced, if any. The Committee would also like to be apprised of the action taken by the Government with regard to progress of three transmission projects which have been held up following the inability of the successful bidder to carry on the work.

Reply of the Government

As per information made available, the present status of the 8 transmission projects awarded under Tariff Based Competitive Bidding process and High Capacity Power Transmission Corridors is as under:

(A) Projects under Tariff Based Competitive Bidding:

Sl. No.	Scheme	Implementing agency	Remarks
1.	Talcher-II Augmentation system	Reliance Power Transmission Ltd.	Strengthening in ER for enabling reliable export of power to SR
2.	North Karanpura Transmission System	Reliance Power Transmission Ltd.	System Strengthening in NR & WR for import of power from North Karanpura and other projects outside NR/WR
3.	East – North Interconnection – Scheme	Sterlite	For enabling import of NER/ER surplus power by NR
4.	Raichur – Sholapur Transmission System	Consortium of Patel Engg with Simplex Infrastructure & BS Transcom	Scheme for enabling Synchronisation of SR with NEW grid
5.	Dharamjaygarh – Jabalpur – Bina Transmission System	Sterlite	Transmission system associated with evacuation of power from IPP projects in Orissa
6.	Jabalpur - Bhopal – Indore and Aurangabad – Dhule – Vadodara Transmission System	Sterlite	Strengthening of Transmission System in WR for dispersal of power in WR from IPPs in Orissa and Jharkhand
7.	Vemagiri Transmission System	POWERGRID	Evacuation of Power from Gas based IPP projects in Vemagiri area of Andhra Pradesh
8.	Nagapattinam Transmission System	POWERGRID	Evacuation of Power from Gas based IPP projects in Nagapattinam area of Tamil Nadu

- **The schemes at Sl. No. 1 & 2 (viz., Talcher – II Augmentation system; and North Karanpura Transmission System):**

These two schemes were entrusted to Reliance Power Transmission Ltd. (RPTL) in Dec.'09. These two projects awarded to Reliance transmission Company are pending in CERC and there is no progress on the ground since the companies, viz., North Karanpura Transmission Company Ltd (NKTCL) and Talcher Transmission Company Ltd (TTCL) have filed a petition in CERC seeking revision in tariff and extension of time on the ground of *force majeure* and Change of Law. **The case is still with CERC and the final order is yet to be received.**

These systems are strengthening schemes. Commissioning of various elements was to be made progressively from Sept, 2012 onwards up to March, 2013. However, work on both these schemes is yet to take-off due to the reasons indicated above.

- **The scheme at Sl. No. 3 i.e., East – North Interconnection – Scheme:**

The scheme was entrusted to M/s.Sterlite in Jan.'10. The commissioning of various elements are scheduled by March, 2013. **The developer of this system has also approached CERC claiming for relief due to discrepancies with respect to the terminal station co-ordinates.** However, the work on the construction of transmission lines is in progress.

- **The scheme at Sl. No. 4 i.e., Raichur – Sholapur Transmission System:**

The scheme has been awarded to consortium of M/s Patel Engineering Ltd, M/s Simplex Infrastructure Ltd and M/s BS Transcom Ltd. The implementing agency has been granted license in August, 2011. The completion schedule as per the award is January, 2014. However, it has been learnt that the progress is poor and the work has been slowed down considerably. It is pertinent to mention here that this link shall be of vital importance for synchronisation of Southern Region grid with rest of Indian grid [North-East-West (NEW) grid]. Any delay in its completion or underperformance shall have a direct impact in the establishment and operation of the National Grid.

- **The schemes at Sl. No. 5 and 6 (viz., Dharamjaygarh – Jabalpur – Bina Transmission System; and Dharamjaygarh – Jabalpur – Bina Transmission System) :**

The schemes were awarded to M/s Sterlite. Transmission license for both the schemes has been granted in October, 2011. The completion schedule as per the award is March, 2014.

- **The schemes at Sl. No. 7 & 8 (viz., Vemagiri Transmission System; and Nagapattinam Transmission System) :**

The schemes have been recently bagged by POWERGRID through bidding in March/April, 2012. Hearing for grant of Transmission license and adoption of Tariff as per Section – 63 of the Electricity Act is still going on. The completion schedule for both the systems as per the award is March, 2015. Pre-award activities for the projects are under progress and expected to be completed shortly.

(B) High Capacity Power Transmission Corridors (HCPTCs):

Regarding progress of 9 High Capacity Power Transmission Corridors it may be mentioned that the various elements are being implemented by POWERGRID (except projects at Sl. No.: 5 & 6 at para “A” above which are also part of HCPTCs and executed through Tariff based Competitive Bidding). The HCPTCs are progressing in a phased manner matching with commissioning of generation projects. Most of these HCPTCs are scheduled to be commissioned during XII Plan i.e. by 2016-17.

A Joint Co-ordination Committee consisting of representatives from Independent Power Producers (IPPs), Central Transmission Utility (CTU) and Central Electricity Authority (CEA) is monitoring the progress of these transmission corridors and report of the meetings of this committee is regularly sent to the CERC.

Any over-head line needs approval of the appropriate Government under Section 68 of the Electricity Act, 2003. Subsequent to the approval under Section 68, the appropriate Government grants approval under Section 164 of the Electricity Act 2003 on request made by the transmission developer. The Government of India has laid out a procedure for processing the request of the transmission developer for grant of approval under Section 164. The approval under Section 68 is a primary approval which establishes the essentiality of the over-head line. The route of the transmission line is not decided at this stage. When the lines are bid out for implementation through tariff based competitive bidding process, the approval under Section 68 is obtained by the Special Purpose Vehicle (SPV) created for the purpose. However, approval under Section 164 has to be taken by the developer by following the specified procedure which includes detailed survey and public notices intimating the detailed route.

The tariff to be quoted by the bidder is in two components, one of which is escalable and is directly linked to the annual inflation rate as specified by the Central Electricity Regulatory Authority (CERC). Therefore, the specified bidding format is in order in this respect. It is up to the bidder to not quote aggressively so that they do not have to back out later on. **It may be appreciated that the bidders need to**

quote responsibly considering the risks involved and should not under-quote for the sole purpose of winning the award.

**[Ministry of Power O.M. No. 27/7/2010(Vol-IV)-R&R
dated 18.03.2013]**

Trading of Electricity

Recommendation (SI No. 13, Para No. 2.13)

The Committee note that Electricity Act, 2003 has recognized the transaction involving purchase and sale of electricity as a distinct licensed activity. Prior to that the electricity industry recognized generation, transmission and supply as the three principal activities. The SEBs/Discoms who have the obligation to provide electricity to their consumers mainly rely on supplies from long-term contracts. However, it is neither feasible nor economical to meet short term, seasonal or peaking demand through long term contracts. Be it a deficit scenario or otherwise, power trading is essential for meeting the short-term demand at an appropriate cost. Similarly, power trading is essential for distribution utilities for selling short term surpluses in order to optimize the cost of procurement. A few captive generating plants participate in trading in order to optimize their operating cost and in the process, supply electricity to the grid.

The responsibility of developing the market in electricity has been vested with the Regulatory Commissions. CERC grants inter-state trading license, which is mandatory under the provisions of the Electricity Act, 2003, to electricity traders and registration with the power exchanges. It constantly monitors the function of these institutions through regular reporting of transactions undertaken by them. In case of traders, the trading margin charged by them is also monitored. The Committee were informed that there are two Power Exchanges operational presently namely Indian Energy Exchange and Power Exchanges of India Limited. These are operational from June, 2008 and October, 2008 respectively. Regarding benefits of electricity trading the Committee were apprised that the power prices in the short term market have decreased in the last three years and the volume has increased. Both Discoms and open access consumers, who participate in this market actively, have benefited due to the price decrease in this market. The Committee express their satisfaction over the fact that trading has helped bringing down the power price. However, the Committee feel that the electricity trading in the Country is still at rudimentary stage, characterized by low volume and fewer number of transactions limited to specific section of society and absence of favourable rule and regulations attracting more traders to take part in the process. The Committee, therefore, recommend that the Government/CERC should take steps in framing such set of rules and regulations that should prove not only conducive for electricity trading and invite more and more players in this field to make it more competitive but also effectively prevent/ tackle any malpractices by big players of the Sector.

Reply of the Government

The action taken for creating conducive environment for electricity trading and invite more and more players in this field to make it more competitive are given below-

4. The Central Commission has formulated specific regulations to promote development of markets and trading in power thereby creating fair, transparent and competitive market for trading in electricity. The following regulations have been notified in this regard :-
 - a. Procedure, Terms and Conditions for grant of trading licence and other related matters Regulations, 2009 - To issue licence to electricity traders, define the business conduct and monitor their business.
 - b. Fixation of Trading Margin Regulations, 2010 - To regulate the short term trading margin of electricity
 - c. Power Market Regulations, 2010 - To issues licences to power exchanges and the overall markets structure and definite market structure.
 - d. Open Access in inter-State Transmission Regulations, 2008 - To provide open access to distribution companies generators and large consumers to power efficiently.
5. The Commission has created a Market Monitor Cell (MMC) under the Economics and Power Markets division for market oversight and market surveillance. The MMC which regularly monitors inter-state trading undertaken by electricity traders and the transactions in the power exchange. All transactions undertaken by trader and power exchange are reported to the MMC. Monthly market reports are published by the MMC for information dissemination purpose.
6. Further steps being taken to prevent malpractices :

The Commission has recently amended the grant of trading licence regulations and included non serious and serious category of offences depending on the gravity of the violation. Penalties commensurate with the gravity of the violation have been added. These will act as appropriate deterrents on malpractice if any to ensure that strict compliance by market participants. Penalty clauses like debarring a trader from trading for a certain period, etc have been introduced. Further, the Commission is in the process of formulating regulations on prevention of market dominance by market player defined under Section 60 of EA 2003. This will help prevent abuse of dominant position or any action which is anti competitive.

Power markets in India are growing at a rapid pace. The nature of the participants is varied with divergent interests and the complexity of transactions is increasing. The market oversight and surveillance will be one of the key focus areas of the Central Commission to ensure that markets remain fair and competitive.

**[Ministry of Power O.M. No. 27/7/2010(Vol-IV)-R&R
dated 18.03.2013]**

Comments of the Committee

(Please see Para No. 20 of Chapter I of the Report)

Open Access

Recommendation (SI No. 14, Para No. 2.14)

The Committee observe that the concept of open access is central to bring about competition in distribution power. After de-licensing of generation a generator can sell its power anywhere in the country. For consumers also it is beneficial to have a choice to procure power from a reliable and efficient source. This can be achieved through open access besides facilitating flow of power from surplus to deficit areas. National Electricity Policy states that non-discriminatory open access shall be provided to the competing generators supplying power to licensees. As a result, during last five years the share of private sector in total generation has increased from 11% to 23%. In the last two years alone 12000 MW generation has come up from private sector.

Open access in transmission has helped make generation more competitive and has provided choice to Discoms as well as open access consumers. This is helping many captive generators as well as open access consumers to buy and sell electricity in the short-term market. Over 1000 open access consumers are buying power through Power-Exchanges. Electricity traders and Power Exchanges have started functioning. Short term trading in electricity through traders and power exchange has provided an alternative market for electricity other than long term PPA. This has reduced the Discom default risk for generators significantly. However, problems are also staring the system. They have been identified as difficulty of market access for buyers and seller of electricity, problems of evacuation infrastructure for seamless flow of electricity and safe and secure operation of Grid etc. These bottlenecks have been attempted to be resolved through regulations and orders for short-term open access in transmission and the regulations of “grant of connectivity, long-term access and medium term open access in inter-state transmission”. CERC has also provided for the deemed concurrence of SLDCs for open access if their decision is not given within a specified time frame. Short-term open access provides generators and open access buyer access to transmission corridors for period upto three months while the long-term and medium-term open access regulation provide upcoming generators grid connectivity to inter-state transmission grid to a period from 12 years to 25 years and medium-term from 3 months to 3 years respectively. The short-term open access regulation has facilitated development of short-term power market where trader, power exchange are allowed to indulge in electricity transactions. Also in medium term and long-term frame work the generator is allowed access to the national market and sell power to any buyer across the country. The Committee feel that all these developments are welcome sign but the entire frame work of open access is of limited significance to the majority of the consumers in the country. So long as the generation does not out pace the demand in the Country, the benefits of open access will be a distant dream to an ordinary consumer. Presently, the mechanism of open access does not provide any safety to common man from exploitation from high tariff of electricity. It is only the power exchanges, electricity traders, generators who have been benefited by the

exercise of open access and its achievements so far. Although distribution licensees and Discoms are also within the periphery of the open access but the gap between the demand and supply nullifies the benefits to common consumers that may have possibly accrued to them due to the presence of the multiple distribution licensees. Besides the network of distribution licensees wherever it exist is mostly monopolized and hence to conceive the situation of consumer having options of choosing a distribution company of his own choice at a competitive rate will remain a far cry in coming decades. While acknowledging the efforts made by the CERC to ease the system in electricity sector the Committee express their dissatisfaction over the fact that no strategy has been thought of to assess the possibility whether this sector can be developed on the lines of telecommunications sector providing multiples options to consumers. The Committee, therefore, recommend that despite the inherent bottlenecks, efforts should be made to strategize the sector in such a fashion wherein this could be developed with the objective of benefiting the common consumer having option to choose the agency of his preference amongst the multiple distribution companies.

Reply of the Government

As per 6th proviso of Section 14 of the Electricity Act “the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the applicant for grant of licence within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements *relating to* the capital adequacy, credit-worthiness, or code of conduct as may be prescribed by the Central Government, and no such applicant who complies with all the requirements for grant of licence, shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose”.

Further, the para 5.4.7 of the National Electricity Policy (NEP) defines the minimum area of supply which stipulates that “for grant of second and subsequent distribution licence within the area of an incumbent distribution licensee, a revenue district, a Municipal Council for a smaller urban area or a Municipal Corporation for a larger urban area as defined in the Article 243(Q) of Constitution of India (7th Amendment) may be considered as the minimum area”. This will ensure that second distribution licensee does not resort to cherry picking by demanding unreasonable connection charges from consumers.

In order to have two different types of distribution licensees, the power granted to Appropriate Commission, under Section 14 to grant a distribution licence, the Working Group on 12th Five year Plan on Power, has recommended that the provision may be amended to the affect it can grant two difference types of distribution licences stating that it is felt that the present requirement of laying network by the second licensee may not result in minimum engineering cost. This issue is under consideration of the Committee constituted under the Chairperson, Central Electricity Authority on the proposed amendments in the Electricity Act, 2003.

As regards the comparison between telecom sector and electricity sector is concerned, it may be noted that there is a basic difference in requirement of infrastructure and technology for the services provided by a telecom company and by a distribution licensee. Where telecom services rely more on wireless technology for transmission, electricity is transmitted by flow of electrons through wires.

**[Ministry of Power O.M. No. 27/7/2010(Vol-IV)-R&R
dated 18.03.2013]**

Recommendation (SI No. 15, Para No. 2.15)

The Committee note that the function of Central Commission in accordance with section 79 of the Act is to regulate the inter-state transmission of electricity and other role of the Commission (under section 66 of the Act) is development of market in power including trading. For power market development, it is necessary that open access is facilitated through regulations. Hence Commission brought out Open Access Regulation 2004 and later Open Access in Inter-state Transmission Regulation, 2008 was issued. Also, Grant of Connectivity, Long Term Access and Medium term open Access, 2009 was issued. Open Access regulations also provide DISCOMs and eligible consumers the choice of contracting powers to meet demand on long term medium and short term basis. However, regulation provides that the concurrence of States load dispatch center for open access can be denied only when surplus transmission capacity is not available in the State network or metering infrastructure is not available for energy metering and accounting in accordance with the Grid Code. The Committee are of the opinion that it will take a long time before the concept of Open Access, as envisaged, become a reality for common consumer. Presently, it is available in a limited manner, to generators giving them certain perceived protections with regard to evacuation of electricity, default payment, operation and liquidity risk etc. and also to certain extent in the inter-state transmission of electricity. The short term transaction of electricity facilitated through Open Access during the last three years is 9 per cent, 10 per cent and 11 per cent respectively of the total electricity generated. This amplifies that even at the market level the concept of Open Access is yet to bloom. As if, this was not enough, some States have issued orders under section 11 or section 108 of the Electricity Act, 2003 for restricting the sale of surplus power of the State thereby, prohibiting the sale to the consumers and utilities outside the State. They have also fixed the price for sale of power to the distribution licenses in the State. This has been done despite the ruling of the CERC on the matter which is contrary to the stand taken by these States. This exercise by some States negates the very concept of Open Access. The Committee feel that such issues can be settled only through bodies like FOR having enough power to deal with such issues. The action by some States is well within the foreseeable possibilities and cannot be handled by invoking section of the Electricity Act. It has to be dealt with within the ambit of ground realities and making the electricity sector a competitive and commercially viable entity. The Committee, therefore, strongly recommend that the limited scope of Open Access which has developed hitherto should be ensured to grow as conceived. It cannot be allowed to be mired into legal wrangling sending disappointing signals to stakeholders and efforts should be made to resolve the issues without invoking legal devices.

Reply of the Government

Open access is central to bringing about competition in the power sector. The Central Commission is responsible for facilitating inter-state transmission of electricity. Open access at intra-state level remains the responsibility of SERCs. Though open access has been one of the important drivers of reforms for market development, it has not been implemented in the same spirit as envisaged in the Act. The primary reason being existing cross subsidization between consumer categories. Open Access consumers are generally subsidizing consumers and their exit affects the distribution licensees Perpetuating Single Buyer Model in many states also allow distribution licensee to restrict open access with the help of SLDCs.

Ring fencing of SLDCs from Utilities and empowerment of Load dispatch centres would remove the hurdles from Open Access Implementation. Some states invoked Section 11 of Electricity Act to disallow open access to the generators within the state. As per the Act, Section 11 is meant to be invoked only in extraordinary circumstances.(e.g. threat to security of state, public order, natural calamity etc) and is not meant to restrict open access. CERC has raised the issue in its statutory advice to the government. The Central Government has also filed SLP in the Hon'ble Supreme Court against the order of the High Court of Karnataka and the matter is sub-judice. The Hon'ble Minister of Power has written letter to the State Governments in 2010 to ensure that no steps are permitted in their State which come in the way of operationalising open access in the transmission and distribution networks

Further, the Ministry of Power in consultation with M/o Law & Justice/Ld. Attorney General of India has issued clarification vide letter dated 30.11.2011 that "*all 1MW and above consumers are deemed to be open access consumers and that the regulator has no jurisdiction over fixing the energy charges for them*". All concerned including State Governments, have been requested to take necessary steps for implementing the provisions relating to open access in the Electricity Act, 2003 in light of the said opinion. A workshop was also held under the chairmanship of Secretary (Power) on this issue on 29.2.2012 where the officers of State Government and Power Utilities also participated to assess the progress made by States in respect of above legal interpretation. During the workshop it was clarified that the opinion on the subject of open access circulated by Ministry of Power vide letter dated 30.11.2011 based on the legal interpretation done by the first Law Officer of the country is final.

**[Ministry of Power O.M. No. 27/7/2010(Vol-IV)-R&R
dated 18.03.2013]**

CHAPTER III

OBSERVATIONS/ RECOMMENDATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE GOVERNMENT'S REPLIES

Tariff regulations

Recommendation (SI No. 7, Para No. 2.7)

The Committee note that provisions of section 79 read with 61 and 62 of the Electricity Act 2003 empowers the CERC to determine the tariff as per the provisions of the Act for supply of the electricity, transmission of the electricity, wheeling of the electricity and retail sale of the electricity. With a view to discharge this task the Commission notified terms and conditions of tariff initially for a period of three years with effect from March 2001. After the enactment of the Electricity Act 2003 new terms and conditions of tariff were notified in March 2004 for a period of five years providing for determination of generation tariff, station-wise and transmission tariff line-wise. The terms and conditions contain financial as well as technical norms. Capital cost of the projects being starting point for tariff calculation is called cost plus tariff. Introduction of Availability Based Tariff (ABT) and Multi Year Tariff (MYT) are also implemented by the CERC based on certain principles. ABT mechanism allows a generator to recover the fixed cost only if it is able to make its capacity available for use. The Committee find that the parameters which form basis for determining annual fixed charges and energy charges are not uniform and have been changing from time to time. Tariff regulation 2004-09 provided for computation of base energy charge rate by the Commission based on preceding three months price and Gross Calorific Value (GCV) of fuel and also provided fuel price adjustment formula for month to month variation in fuel price and GCV of fuel. However, tariff regulation 2009 has provided a formula for energy charge rate calculation on month-to-month basis based on specified operational norms and monthly price and GCV of fuel. However, specified operational norms have not been illustrated and it has also not been stated as to what prompted the change in formula adopted in the year 2004. It has also not been clarified whether the latter formula is more consumer friendly. Similarly, regarding energy charge rate, the Committee have been apprised that the energy charges depends on scheduled generations, gross stations heat rate, auxiliary energy consumption, gross calorific value of fuel and price of fuel. Simultaneously, it has also been stated that the Central Commission does not have control over the quality and price of the fuel used for power generation and the fuel prices are passed through in tariff. The Committee are amazed at the gear sifting about the norms laid down for determination of tariff. Though, it is technical and relatively complex issue for common man yet the bottom line theory is the cost (inclusive of all factors of fixed cost and energy charges) of the project including the trading or profit margin that should form the parameter for determination of the tariff. Despite the so-called elaborate formula laid down for tariff fixation, the general perception about it reflects that it is an extremely mystifying exercise devoid of transparency and accountability. Reported involvement of the common people, NGOs, Resident Welfare Associations in the process is superficial cover and therefore needs to be taken in meaningful and realistic manner. The Committee,

therefore, strongly recommend that the tariff fixation is an exercise having pervasive consequences about the sector to the extent of exploiting larger segment of stakeholders whereas enriching or thriving the minuscule percentage of stakeholders and hence requires to be undertaken in a truly participatory and transparent manner leaving no scope for any apprehension as to the genuineness of the exercise about the tariff fixation. All the stages and various constituents involved in the process should be clearly spelt out with a view to allay any misgiving in the mind of the people for an objective handling of the entire process.

Reply of the Government

The tariff fixation exercise is being undertaken in two stages. First, the tariff regulations are being made for a control period of five years after extensive stakeholder consultation and participation and by following the due process of law. Second, based on the tariff regulation, the tariffs are being determined. Section 178 (3) provides that the Commission shall comply with the conditions of the previous publication while making the regulations. The conditions of the previous publication have been prescribed in the General Clauses Act and Electricity (procedure for previous publication) Rules, 2005. It provides that the Commission shall publish a draft of the regulation likely to be affected in such manner as deemed to be sufficient and a notice regarding the date on or after which that draft regulation will be taken into consideration. After consideration of objections or suggestions received from any person with respect to that draft and finally, the Commission shall publish the regulation in the official gazette. As per the procedure being followed by the Commission, a draft regulation is prepared along with the explanatory memorandum containing the assumptions and the philosophy and the necessity for the regulation. The said draft regulation along with explanatory memorandum are posted on the website of the Commission inviting comments or suggestions from the stakeholders; wide publicity is given through the newspaper with regard to the proposed regulation specifying a date by which the comments or suggestions are to be received. Public hearings are held to listen to the views of the stakeholders and the consumers and after consideration of the comments or suggestions, the regulations are finalized and notified and published in the official gazette. Along with the final regulation, a Statement of Reasons is published which deals with the comments or objections of the stakeholders and the decision of the Commission thereof. As a step in furtherance of transparency, the Commission posts, on the website, the comments received from the stakeholder for the information of all concerned and create an atmosphere of informed debate and discussion. On the tariff fixation side, the Commission staff carries out technical validation of the tariff petitions. In the process, the generating company and transmission licensee are required to serve the copies of the replies to the beneficiaries. That way, the beneficiaries are made acquainted with the various aspects of the prudence check which is carried out in the process of tariff determination. After completion of the technical evaluation, open hearing is held in which, apart from the beneficiaries, the consumers and any other persons interested are free to participate. In accordance with the Section 94 (3) of the Electricity Act, the Commission has identified certain consumer organizations to represent views of the consumers during the proceedings of the Commission. Thereafter, the tariff orders are issued after carrying out the prudence check in accordance with the provisions of the tariff regulations. The Conduct of Business

Regulations of the Commission also provides opportunity to any person to inspect the judicial records of the Commission and take copies thereof.

The Commission facilitates stakeholder interaction on all the issues. The expenses of select consumers/representative organizations/NGOs are reimbursed for coming to public consultation processes.

**[Ministry of Power O.M. No. 27/7/2010(Vol-IV)-R&R
dated 18.03.2013]**

Recommendation (SI No. 8, Para No. 2.8)

The Committee find that Multi Year Tariff (MYT) regime are meant for generating companies and transmission licensees. This kind of tariff is determined as per the terms and conditions based on financial and technical norms. This tariff is usually called the cost plus tariff because the capital cost of the project is the starting point for the tariff calculation. In this formula except for the actual capital expenditure most of the financial and technical parameters adopted for tariff are normative and not actual. The tariff calculations are quite elaborate as various elements going into the tariff are computed to arrive at full tariff. This tariff is different for each generating station depending on its admitted capital cost, base fuel price, gross calorific value and applicable norms for the efficient operation. This exercise is done to ensure that the utilities do not misuse their dominant position to strike the high price from the buyer besides making them function in an efficient and economic manner. The MYT implies that various financial and operational norms specified by the Commission would remain valid and unchanged during the controlled period during the MYT regime. The principle of Availability Based Tariff has been adopted by the Commission for adoption in MYT period since its introduction. Thus ABT principles are like any other principle that remains in force during the currency of MYT period. The Committee are surprised to find that normally the terms and conditions of the tariff for five year period remains the same but in some exceptional cases the same may be reviewed also. Similarly, it is also not convincing that whereas the tariff principles and their applications generally remains same during the tariff period, the annual fixed charges and the energy charges do not remain static and vary from year to year and month to month respectively on account of inflation and increase in O&M cost, changes in interest rate and due to variation in quality and price of fuel. It is self-contradictory that various financial and operational norms specified by the Commission would remain valid and unchanged during the controlled period of MYT regime and the factors responsible for these norms have been stated to be changing on monthly and yearly basis. This incoherence provides the scope for tweaking in the tariff structure without any justification. More so when the ABT principle has also been included in it. The Committee therefore, strongly recommend that the concept of MYT should be re-evaluated with a view to provide stability in tariff regime and consistency to its different tariff structure.

Reply of the Government

The Multi Year Tariff (MYT) was envisaged to incentivize efficiency improvement and to address investors concern of regulatory risk arising from possibility of frequent changes in the principles of the Annual Review Process. The objective for MYT framework was to bring in more clarity and stability in the tariff fixation process. The cost plus regime required more stable structure with well defined trajectories to monitor the performance of the utility to incorporate incentives and penalties for the same. MYT Framework recognizes the need to allocate risk between the stakeholders based on controllable and uncontrollable factors.

Tariff Policy also provides that the uncontrollable costs, which would include (but not limited to) fuel costs, costs on account of inflation, taxes and cess, variations in power purchase unit costs including on account of hydro-thermal mix in case of adverse natural events, should be recovered speedily to ensure that future consumers are not burdened with past costs. These uncontrollable costs always lead to change in tariffs each year.

The Commission is guided by the Electricity Act, 2003 for framing Tariff Regulations. Section 61 of Electricity Act, 2003 stipulates the guiding principles of terms and conditions for determination of tariff and section 61(f) of the Electricity Act, 2003 specifies the principle of multiyear tariff. Based on the above mandate, the Commission has consistently adopted the principle of multi year tariff beginning from 2001-04, continued during 2004-09 and presently 2009-14.

The basic outlines of multiyear tariff principle start with the prudent capital expenditure which truly reflects the cost to be serviced during the life of the project by way of multiyear tariff. Looking into importance of the crucial parameter, the Commission has recently developed benchmark hard cost (tangible assets) parameters of thermal generating plants, transmission lines and substations of various specifications. This bench mark would be useful for prudence exercise in cost determination which in turn would enrich in house knowledgebase.

Once the prudent cost is determined, the Commission prescribes certain broad normative parameters for tariff determination which do not change throughout the duration of multi-year tariff period. These parameters are prescribed after detailed analysis and after balancing the views of various stakeholders. Some of them are debt equity ratio, rate of return on equity, duration of various components of working capital, rate of depreciation, method of recovery of depreciation, operation and maintenance expenses, target availability, compensation allowance, operational norms of station heat rate, auxiliary energy consumption, specific fuel oil consumption, lime consumption for lignite base stations etc.

There are, however, certain parameters influencing the tariff during multiyear tariff block which vary due to external factors. This aspect has been recognized in the section 62(4) of Electricity Act. Some of such parameters are interest movement in the debt market, variation in corporate / MAT tax rate, inflation rate, foreign exchange rate variation, fuel prices variation, etc. These factors are uncontrollable and cannot be predicted for a MYT period of 5 years. Hence, tariff parameter being affected by these factors would undergo change during the tariff period. The

treatment of uncontrollable cost has also been recognized in the tariff policy at Para 5.3 (h) (4) which mentions that uncontrollable cost should be recovered speedily to ensure that future consumers are not burdened with the past cost. Uncontrollable cost would include (but not limited to) fuel costs, cost on account of inflation, tax and cess, variation in power purchase cost including on account of Hydro-Thermal mix in case of adverse natural events.

In the light of above mentioned facts, variation in tariff on year to year basis during MYT period due to uncontrollable costs is unavoidable but it does not affect the overall stability of multiyear tariff regime.

**[Ministry of Power O.M. No. 27/7/2010(Vol-IV)-R&R
dated 18.03.2013]**

CHAPTER IV

OBSERVATIONS/RECOMMENDATIONS IN RESPECT OF WHICH THE REPLIES OF THE GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

Mandate vis-à-vis Performance of CERC

Recommendation (SI No. 2, Para No. 2.2)

The Committee note that regulatory provisions under the Electricity Act 2003 are being implemented through of the CERC. Functions of CERC relate to important areas of power sector, viz. regulating tariff of generating companies owned and controlled by the Central Government, of such companies having composite scheme for generation and sale of the electricity in more than one States, regulating inter-state transmission of the electricity, determining tariff for inter-state transmission of the electricity, issuing licenses to transmission licensees and the electricity traders with respect to their inter-state operations, specifying grid code, levying fee, specifying and enforcing quality, continuity and reliability of services by the licensee, fixing inter-state trading margin etc. The Commission is also responsible for balancing consumer interest and promoting investments besides being responsible for oversight of the market. In pursuit of these objectives, the CERC has taken steps for formulating an efficient tariff setting mechanism, improving the operations and management of the regional transmission centers, facilitating open access in inter-state transmission, facilitating inter-state trading, promoting development of power market, facilitating technological and institutional changes required for development of competitive market in bulk power and transmission services, advising on removal of barriers to entry and exit for capital and management etc. The Commission has also adopted certain guiding principles which inter-alia include protection of the interest of the society including the consumer and supplier, remaining equitable in conflict resolution, maintaining regulatory certainty, adopting participative process in formulation of its regulation etc. The Committee feel that had these activities been taken to their logical conclusion and been implemented in letter and spirit, the consumers/citizens of the country would have been in a better position than the prevailing situation in terms of cost and availability of the electricity. Similarly, open access to the common consumer is a far cry. The Committee are of the strong view that with more effective role of CERC the scenario could have been transformed phenomenally. Further, the collapse of Northern Grid on July 30, 2012 affecting 7 States and again total breakdown of Northern, Eastern and North-Eastern Grid on July 31, 2012 affecting 22 States across the Country has exposed the ineffectiveness of CERC as national electricity regulator. The Committee, therefore, recommend that the Commission should introspect and identify as to why the optimal results are not coming forth. Such a detailed analysis should identify whether there are legislative limitations, functional constraints, absence of entrepreneurship, lack of resources, dearth of qualified manpower or un-enabling environment, which jointly or severally, are hampering the growth of the Sector. The Committee also strongly recommend that reasons so identified be followed up with remedial measures with

utmost promptitude. The Government should not shy away from bringing amendment to the Electricity Act, 2003 if such measures are required to improve the efficacy of CERC. The Committee also recommend that the Government should take necessary steps to appoint an independent Committee of experts to review the functioning of CERC and identify the areas which require improvements in the working of the organization and limitations of the autonomy and legislation. Needless to emphasize such an exercise should be conducted in a time-bound manner and followed up with necessary action wherever required.

Reply of the Government

The Central Electricity Regulatory Commission (CERC) engages in continual review of its regulations and makes amendments based on the demands of time and need for facilitation of reforms in the sector. For instance, the Commission issued first Multi Year Tariff regulations for the control period 2001-04 and subsequently made changes in the regulations for the next two control periods of 2004-09 and 2009-14 based on the prevailing market conditions. The parameters of tariff were finalized after detailed analysis and wide stakeholder consultations during each of the control period.

The Commission has been discharging its mandated functions in accordance with the provisions of the Act, Government Policies and the resources available. Section 66 of the Electricity Act, 2003 mandates the Appropriate Commission to promote development of market in power. The Tariff Policy also emphasized on development of market and regulations on power exchanges. Accordingly, the Central Commission facilitated establishment of two power exchanges and made power market regulations.

CERC has mentioned constraints affecting the Commission in bringing optimal results which have been brought out as follows alongwith the response of the Government :-

C. Legislative limitations:

- (i) Any regulatory policy adopted by the Commission can translate into benefits to the end consumers only if such policy is followed uniformly. In a federal structure, the State Commissions are independent and the regulatory policy initiatives taken by the Central Commission are not binding on the State Commissions.
- (ii) In the matter of grid discipline and UI payments, there is a need for ensuring full and quick compliance of the directions of the Commission by the erring entities. To ensure this, the Commission not only needs to have power to take actions against the erring entities and the officers in charge of such entities but should have the power to impose penalty commensurate with the nature and gravity of the offense. At present, the Commission has the power to impose penalties upto an amount of Rs. 1 Lakh for non compliance of

the orders and directions of the Commission and upto Rs. 15 lakh for non-compliance of the orders of the Regional Load Despatch Centre. These powers need to be increased commensurate with the nature and gravity of offense so that it acts as an effective deterrent for future violations.

- (iii) The Commission should be vested with powers to penalize officers in charge of the erring entities by way of vicarious liability. The Commission does not have power to execute its own decisions except to initiate action under Section 142 of the Act for non-compliance of its earlier order imposing the penalty. The Commission needs to be armed with powers of execution of a Civil Court so that its orders can be executed through due process of law.
- (iv) Recently open access has been thwarted in many cases on account of two reasons. First, State Commissions have issued notifications under Section 11 of the Act to prohibit generators from selling electricity outside the state citing the ground of scarcity of power. Secondly, the SLDCs are not operating independently and are denying open access on some pretext or the other. There is a need to make the SLDCs independent so that they can discharge their functions impartially and in accordance with the Act and regulations. Section 11 needs to be suitably amended to specifically exclude shortage of electricity as the ground for invocation of the power of the State Government under the said provision.

With regards to the legislative limitations affecting the Commission in bringing optimal results, it is stated that amendment in Section 11 & 142 are under consideration of the Committee under that Chairmanship of Chairperson, Central Electricity Authority, constituted for examination for proposed amendments in the Electricity Act, 2003.

D. Autonomy of Regulator:

It has been stated by CERC that there are constraints arising out of lack of autonomy on the following issues relating to:

- Staffing,
- operationalisation of separate fund,
- flexibility in addressing needs for skill building involving foreign visit

Staffing: It may be stated the sufficient staff strength and compensation package etc. have been finalized as per the functional requirement and on the lines of other regulatory bodies. The Government has been responsive to the difficulties faced by CERC due to inadequate staff-strength. In October 2005, 20 additional posts under various categories were created for the Commission. The present sanctioned staff strength of CERC is 80. Further, certain restrictions imposed while creating the additional posts that some of the posts should be filled up from CEA only on deputation, have been removed by the Government in October 2012 for the smooth functioning of the Commission. In addition as per 91(4) of the Electricity Act, CERC has powers to appoint Consultants required to assist the Commission in discharge of

its functions. Accordingly, CERC has been appointing a number of consultants under the provisions of CERC (Appointment of Consultants) Regulations 2008 from time to time.

CERC Fund: As per the relevant provisions of the Electricity Act, Rules regarding constitution of the CERC Fund have been issued by the Government vide Notification dated 22.10.2007. The Fund is operational as per the provisions of the said Rules. CERC had recently made a representation that releases from CERC Fund should not be treated as grant-in-aid (General). This was examined in consultation with Department of Economic Affairs and Controller General of Accounts who did not agree to the views of CERC in the light of the provisions of the Act and Rules made thereunder. Views of Department of Economic Affairs and Controller General of Accounts have since been communicated to CERC.

Skill building needs for staff: It has been stated by CERC that they should also be delegated the powers of deciding and approving the needs for skill enhancement of officers/staff including those involving foreign visits. In this regard, it may be mentioned here that earlier proposals of Chairperson and Members of CERC for undertaking foreign visits used to go to the Screening Committee of Secretaries for approval. This has been done away with vide amendment made in the service Rules. At present, Chairperson, CERC powers for approving training programmes for skill enhancement of the officers/staff of the Commission except their foreign deputation for which approval are accorded by the Government in line with austerity measures of the Government (Ministry of Finance/ Department of Expenditure) from time to time.

The Commission has initiated to undertake impact assessment of regulations framed by it. However, to start with, Regulatory Impact Assessment (RIA) inter alia, of only CERC tariff regulations for all the three control periods shall be carried out. The following activities shall be carried out under the assignment:

- (a) Study of methodologies adopted for regulatory impact assessment by other Indian and Foreign regulators.
- (b) Development of RIA tools for impact assessment.
- (c) Comparative analysis of 2009 regulations vis-à-vis previous regulations.
- (d) Impact analysis of tariff norms, financial as well as technical, on generating companies, transmission companies and beneficiaries.
- (e) Impact analysis of external factors like Government policies and taxes, duties, funding etc.
- (f) Comparison of Tariff norms vs Actual Economic/Financial Conditions and operation efficiency.
- (g) Impact on investment promotion and environment
- (h) Way forward to tariff regulations.

Further, the Working Group on Power for 12th Plan has recommended that through suitable legislative changes, a Multi-disciplinary body shall be constituted comprising of representatives from Centre and States to review the performance of the Regulatory Commission periodically on the basis of a performance evaluation matrix and report to the appropriate Government for necessary corrective action. The same is being examined by a Committee under the Chairmanship of Chairperson

CEA constituted for examination of various proposals for amendment in Electricity Act, 2003. Therefore, there appears to be no need for appointment of an independent Committee of experts to review the functioning of CERC and identify the areas which require improvements in the working of the organization and limitations of the autonomy and legislation as recommended by the Standing Committee.

**[Ministry of Power O.M. No. 27/7/2010(Vol-IV)-R&R
dated 18.03.2013]**

Comments of the Committee

(Please see Para No. 8 of Chapter I of the Report)

Establishment of CERC

Recommendation (SI No. 3, Para No. 2.3)

The Committee find that the evolutionary process of CERC dates back to early 1980s when the National Development Council recommended the constitution of independent professional tariff Boards at the regional levels for regulating the tariff policies of public and private utilities. The need was further reiterated in 1996 in the Conference of Chief Ministers which felt that reforms and restructuring of State Electricity Boards are urgent and must be carried out in definite time frame and identified the creation of regulatory commission as a step in this direction. In 1998 with the enactment of the Regulatory Commission Act, way was paved for the creation of regulatory commissions at Centre and in the States with the objective to distance the Government from tariff regulation which was later replaced by the Electricity Act, 2003. The Commission functions in a quasi-judicial manner and consist of a Chairperson, three full time Members and the Chairperson of Central Electricity Authority as ex-officio Member. Owing to the efficient functional requirement the Act mandates that Chairperson and the Members shall be persons having adequate knowledge and experience in Engineering, Law, Finance, Management, Commerce etc. The Chairperson and the Members are appointed by the President of India on the recommendation of a Selection Committee as prescribed under the Act. The Act also provides for the appointment of a Secretary of the Commission whose powers and duties are defined by the Commission. The Committee find that given the functions of the Regulatory Commissions to transform the electricity sector, the constitution of a Board was enshrined in the Act itself to make these Commissions the proper bodies with adequate powers to develop and regulate the sector. However, over the years it has been found that the spirit of the Act has not been carried in the right perspective. Most of the Regulatory Commissions have become the refuge for the superannuated but influential officials. Their primary objective is to remain in employment rather than making any meaningful contribution with regard to the activities of the Commissions in the pursuit

of their objectives. Hence these bodies have lost sheen and the authority, which they were designed to represent. In the process they have also lost the autonomy, which the Act has provided them for functional purposes. Had these Commissions acted as mandated under the Act, there would have been hardly any justification for languishing electricity sector in the Country. The Committee is inclined to infer that Regulatory Commissions have squarely failed in performing their assigned duties. The Committee, therefore, recommend that with a view to revolutionize the Sector it has become imperative to recast these Commissions at Board level. These establishments should not become the sanctuaries for senior citizens to secure sinecure positions without any accountability and stakes. Hence, these positions should be manned by the senior technical brains of the respective areas who are alive in services, having sense of accountability.

Reply of the Government

It is understood that by constitution of Board, constitution of Commission is implied. Section 76(5) of the Electricity Act, 2003 provides for composition of the Central Commission as under-

- (a) a Chairperson and three other Members;
- (b) the Chairperson of the Authority who shall be the Member, ex officio.

The Chairperson and Members of the Central Commission shall be appointed by the Central Government on the recommendation of the Selection Committee. Composition of the Selection Committee for appointment of Chairperson and Members of CERC has been provided in the Electricity Act, 2003. The qualification and experience requirements for appointment to these posts are also provided in the Act. As per the provisions of the Act, the Central Commission shall consist of a Chairperson and three other members who shall be persons having adequate knowledge of, or experience in, or shown capacity in dealing with the problems related to engineering, law, commerce, finance or management. The Chairperson and Members of the Central Commission have been appointed in pursuance of the provisions of the Act. A glance through the experience of Chairperson and members appointed by the Central Commission in the past and at present would reveal that the persons having proven track record in finance, engineering, accounts, management and law have been appointed as chairperson and members of the Commission. With their contribution, the Commission has been able to create regulatory culture in the country and at present, the regulations and the decisions of the Central Commission are one of the guiding factors in the development of the power sector in the country. Further, the recommendations have been noted.

**[Ministry of Power O.M. No. 27/7/2010(Vol-IV)-R&R
dated 18.03.2013]**

Comments of the Committee

(Please see Para No. 11 of Chapter I of the Report)

Forum of Regulators

Recommendation (SI No. 5, Para No. 2.5)

The Committee note that The Forum of Regulators (FOR) was constituted *vide* the Ministry of Power's Notification dated 16th February, 2005 in pursuance of the provision under section 166(2) of the Electricity Act, 2003 with the primary objective of harmonization of regulation in the power sector. The Forum consists of Chairperson of CERC and Chairpersons of SERCs. The Chairperson of CERC is the Chairperson of the Forum. The Committee were informed that FOR provides a platform for the regulators at the Centre and State level to exchange ideas and best practices. Issues of importance (at interstate level or intra-state level) are discussed and consensus is evolved in FOR. In order to encourage uniformity of regulations among SERCs, the Forum has evolved several Model Regulations which can be adopted by the State Regulatory Commissions. The Committee were also informed that the FOR has issued various guidelines/ regulations for implementations of Open Access, reduction of AT&C losses, Grid Discipline, rationalization of tariff etc.

The Electricity being the concurrent subject, the Committee find FOR a vital instrument to bring all the State Regulatory Commissions at a platform where consensus can be built for smooth and effective implementation of regulations meant for bringing reforms, restructuring and revitalizing of power sector of the Country. However, to the agony of the Committee, the FOR has miserably failed to achieve the desired result due to some or other reasons. The Committee find that in regard to implementation of model regulations on various issues viz. open access, rationalization of tariff, reduction of AT&C losses etc. there is great disparity in States as some have done well while the others' performances are far from being satisfactory. It is matter of concern that even regulations made with consensus are either not being implemented satisfactorily or not being implemented at all. The Committee are surprised that FOR has failed to enforce even the decisions/regulations arrived at through consensus among SERCs. The present situation somehow indicates to the ineffectiveness of the Forum as it has reduced itself to a platform of unsubstantive deliberations with executive power to give a new orientation and definite direction to power sector. The area which require utmost attention of FOR is area of reduction of AT&C losses where there is hardly any progress across the country. This single issue has damaged the sector most and has blurred the reforms. And here FOR has done precious little to make any impact. This has raised questions about the usefulness of this body itself. The Committee, therefore, recommend that that the Government should come up with some orders/regulations providing much needed teeth to the Forum to make it effective in enforcing the model regulations/ guidelines prepared by FOR itself in all the participant States in a time bound manner. The Committee, further desire that the FOR should meet more frequently to discuss issues/obstacles coming in way to implementation of regulations/ guidelines of FOR in respect of promotion of open access, implementation of R-APDRP to reduces the distribution losses, grid discipline, tariff regulations etc. so that the remedies for their speedy and effective implementation can be chalked out. The Committee also desire that the SERCs should be given due autonomy as envisaged under the Electricity Act, 2003 enabling

them to discharge their mandated duties effectively without any pressure from respective State Governments.

Reply of the Government

Ministry of Power made a reference to the Appellate Tribunal for Electricity raising the issues of tariff revisions and tariff adequacy and Appellate Tribunal of Electricity (APTEL) in its judgment dated 11th November, 2011 has inter-alia ruled that fuel and power purchase cost is a major expense of the distribution company which is uncontrollable. Every State Commission must have in place mechanism for fuel and power purchase cost in terms of Section 62 (4) of the Act. The fuel and power purchase cost adjustment should preferably be on monthly basis on the lines of the Central Commission's Regulations for the generating companies but in no case exceeding a quarter. Any State Commission which does not already have such formula/mechanism in place must within 6 months of the date of this order must put in place such formula/ mechanism. The Ministry has also requested all the State Governments to take necessary action accordingly.

FOR provides a platform for the regulators at the centre and state level to exchange ideas and best practices. The frequency of meeting of the Forum has been increasing continuously. In the last two years the Forum has held meetings on an average every two months. In FY 2012-13, the Forum has already held 4 meetings in the first six months. A detailed account of meetings held in the last five years is presented in the table below-

Financial Year	No. of Meetings
2008-09	5
2009-10	5
2010-11	6
2011-12	6
2012-13	4

Issues of importance facing the sector (at inter-state level or intra-state level) are discussed and consensus is evolved in FOR. In order to encourage uniformity of regulations among SERCs, the Forum has evolved several Model Regulations. These help bring regulatory certainty in the sector. Some of the important Model Regulations are mentioned below:

- Model Regulations for Multi Year Distribution Tariff
- Model Regulations for Protection of Consumer Interest
- Model Terms and Conditions of Intra-State Open Access Regulations
- Model DSM Regulation for SERCs
- Model Regulation for SERCs for Renewable Energy Certificate (REC) Framework
- Model Regulation on Standards of Performance for Distribution Licensees

- Model Supply Code

A brief account of some of the initiatives/decisions of the Forum is as follows:-

- Tariff revision and tariff adequacy are the primary issues with respect to the financial viability of Distribution companies. The financial viability of State Distribution has been deliberated at length in various meeting of FOR. In this regard the Forum of Regulator conducted a study – Assessment of Financial viability of Discoms which analysed the tariff orders of various State commissions and the reasons for increasing revenue gap in state utilities.
- The detailed study carried out for ten States revealed that the revenue gap of utilities has been increasing due to non revision of tariff, absence of true-up mechanism, shortfall or delay in payment of subsidy by the State Governments and dis-allowance of the legitimate cost in tariff. Based on the diagnosis of the problems facing the distribution sector, the Forum evolved consensus on the need for taking corrective measures to restore the health of this critical element of distribution of electricity. Consequently, the Forum evolved Model Tariff Regulations to address the issues revealed by the ten state study.
- The proposal for inclusion of additional Unscheduled Interchange (UI) charge imposed on the utilities under CERC's UI Regulation for overdrawal during the time blocks when frequency was below 49.2 Hz was discussed by the Forum. It was decided that the SERCs should not allow the same in the Annual Revenue Requirement (ARR).
- Another significant achievement of the Forum in renewable energy sector was in terms of evolution of the Renewable Energy Certificate (REC) mechanism.
- The Forum also deliberated and evolved consensus on measures for encouraging Demand Side Management and Energy Efficiency (DSM & EE). The Forum endorsed the proposal from the Bureau of Energy Efficiency (BEE) for regulated Multi- State DSM Programme.
- Yet another initiative of the Forum was on the development of benchmark capital cost for distribution.
- The Forum has also submitted its proposal on amendments to Electricity Act, 2003 after evolving consensus on various issues which is under examination by

the Committee constituted under the Chairmanship of Chairperson, Central Electricity Authority.

Further, Ministry of Power has also written to the State Governments to peruse the model regulations on 'Terms & Conditions on Intra-state Open Access' and 'Model Tariff Regulations' framed by the Forum of Regulators and take necessary action for notification of regulations on similar lines by the State Regulatory Commission.

From the number of meeting and action taken by FOR as brought out above it is inferred that FOR has successfully performed their functions as per the mandate given in the Electricity Act. Central Government has also supplemented and forwarded the recommendations/model of FOR from time to time to States. This has helped in adoption of enabling regulations by SERCs.

As regards granting more powers to FOR, it is brought out that the powers and responsibilities of the statutory authorities have been appropriately balanced in the Act whereas, the SERCs and CERC have been made accountable to State Legislatures/Parliament through the process of laying of Annual Report, regulations and are subject to Questions/Detailed examination by Committee etc, no such mechanism for accountability for FOR has been provided. In view of the same, granting powers to FOR without any accountability may not be desirable and may also disturb the existing framework.

**[Ministry of Power O.M. No. 27/7/2010(Vol-IV)-R&R
dated 18.03.2013]**

Comments of the Committee

(Please see Para No. 14 of Chapter I of the Report)

CHAPTER V

OBSERVATION/RECOMMENDATION IN RESPECT OF WHICH FINAL REPLY OF THE GOVERNMENT IS STILL AWAITED

Promotion of Renewable Energy

Recommendation (SI No. 16, Para No. 2.16)

The Committee note that section 86(1) (e) of the Electricity Act mandates the State Electricity Regulatory Commissions to promote, *inter alia*, 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, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee. The Committee were informed that a number of SERCs have already specified such percentage of the electricity to be procured in the area of a distribution licensee and have also notified cost plus tariff for different technologies of renewable energy exploitation. However, the Committee found that the level of Renewable Energy Purchase Obligation (RPO), i.e. the percentage of electricity to be procured from such sources varies significantly from State to State. A few States like Tamil Nadu and Karnataka have already achieved a RPO level of more than 10%, but there are number of States which have not even touched RPO level of 2%. Further, the Committee were informed that though Delhi Electricity Regulatory Commission has prescribed two per cent but actually Delhi is not using any green energy. To overcome the issue of mismatch between availability of RE Resources in a State and the requirement of the obligated entities to meet the renewable purchase obligation (RPO), the Secretary of CERC stated that they have come up with a mechanism of renewable energy certificates under which States endowed with abundant renewable energy potential generates more power than required under RPO and can sell the certificate of excess generation to States bereft of renewable energy source so that they can fulfill their RPO. The Committee while endorsing this concept feel that it is a step in the right direction to promote the optimum utilization of renewable energy as it incentivises the production of energy from renewable sources and will encourage the endowed States to fully utilize their renewable sources. The Committee, therefore, recommend that RPO should be fixed uniformly for each State at 7% for the year 2012 and thereby increasing 1% every year to reach 15% in year 2020 as envisaged under National Action Plan on Climate Change (NAPCC) in year 2008. The Committee expect that the Government will take sincere and prompt action in this regard under their intimation.

Reply of the Government

The responsibility of promoting cogeneration and generation of electricity from renewable sources of energy has been entrusted on the Appropriate Commission in

section 61 and in particular to the state commissions under section 86 (1) (e) of the Electricity Act 2003. Pursuant to this provision of the act, the tariff policy stipulates that the Appropriate Commission shall fix minimum percentage of purchase of power from such sources taking into account the availability of renewable resources in the region and its impact on the retail tariff. Accordingly, almost all State Electricity Regulatory Commissions (SERCs)/ Joint Electricity Regulatory Commissions (JERCs) have specified the Renewable Energy Purchase Obligations (RPO) for their licensee distribution companies. Specified RPO varies across the states.

In order to accelerate the large-scale deployment of renewable energy, the National Action Plan on Climate Change (NAPCC) envisages dynamic renewable purchase obligation target of 5% at national level for 2010 with annual increase in trajectory over long term so as to reach around 15% RPO target by 2020 at national level.

The Ministry of Power also amended the Para 6.4(1) of Tariff Policy which inter alia states that purchase of energy from non-conventional sources of energy should take place more or less in the same proportion in different States and for achieving this objective in the current scenario of large availability of such resources only in certain part of the country, an appropriate mechanism such as Renewable Energy Certificate (REC) would need to be evolved.

The Tariff Policy was amended on 20.1.2011 for fixing a minimum percentage of the total consumption of electricity in the area of a distribution licensee from solar energy in accordance with the National Solar Mission strategy. The minimum percentage for purchase of solar energy will go up to 0.25% by the end of 2012-2013 and further up to 3% by 2022.

In this connection in order to bring in an element of harmony in approach, the FOR had, in 2010, carried out a study to assess the feasible renewable energy potential in different states to enable setting the possible RPO trajectories and its likely impact on consumer tariff. This study had revealed that to achieve the NAPCC suggested target, availability of renewable energy capacity would not be a constraint to meet the National Action Plan on Climate Change (NAPCC) target of 10% by 2015 and around 45000 MW RE generation capacities will be required. Further study report revealed that the pan India incremental impact of increasing RPO by a uniform rate of 1.2% every year from the present level of 4% would not be substantial and the incremental impact was estimated to be less than 1.5 paise per unit which reduces to almost zero in 2015. Almost 25000 MW capacities are required to be added in the next 4 years to achieve 10% target as suggested by NAPCC by FY 2015, in accordance with the above referred study. In June, 2012 another study was carried out by FOR for suggesting RPO trajectories based on resource assessment for the period from 2012 to 2017.

Further, in order to accelerate development of Renewable Energy through legislative & policy changes and to evolve competitive bidding guidelines for procurement of power from renewable energy by distribution licensees under section 63 of the Electricity Act, 2003 and also to suggest measures for addressing the issues relating to connectivity and evacuation infrastructure for large scale deployment of renewable energy, a Committee has been constituted in the Ministry of Power.

The recommendation of the Committee regarding prescribing uniform RPO in line with the NAPCC will be examined for further action in this regard in consultation with States as the same is likely to have financial implications on the distribution utilities.

**[Ministry of Power O.M. No. 27/7/2010(Vol-IV)-R&R
dated 18.03.2013]**

Comments of the Committee

(Please see Para No. 23 of Chapter I of the Report)

**New Delhi;
26th August, 2013,
Bhadrapada 4, 1935 (Saka)**

**MULAYAM SINGH YADAV
Chairman,
Standing Committee on Energy**

APPENDIX-I

MINUTES OF THE ELEVENTH SITTING OF THE STANDING COMMITTEE ON ENERGY (2012-13) HELD ON 22ND AUGUST, 2013 IN COMMITTEE ROOM 'G-074' PARLIAMENT LIBRARY BUILDING, NEW DELHI

The Committee met from 1000 hrs. to 1035 hrs.

PRESENT

LOK SABHA

Shri Motilal Vora - in the Chair

2. Shri P.C. Chacko
3. Shri Jagdambika Pal
4. Shri Gutha Sukhender Reddy
5. Shri Bajju Ban Riyan
6. Shri Nripendra Nath Roy
7. Shri Jagada Nand Singh
8. Smt. Pratibha Singh

RAJYA SABHA

9. Shri Y.S.Chowdary
10. Shri Bhubaneswar Kalita
11. Shri K.C.Tyagi

SECRETARIAT

1. Shri Brahm Dutt - Joint Secretary
2. Shri N.K. Pandey - Director

2. In the absence of the Chairman, the Committee chose Shri Motilal Vora, Member of the Committee to act as Chairman for the sitting in accordance with Rule 258 (3) of the Rules of Procedure and conduct of Business in Lok Sabha.

3. At the outset, the Chairman welcomed the Members and in particular Smt. Pratibha Singh who has been nominated to the Committee. w.e.f. 13.08.2013. He appreciated the work done by the Committee during its current term. Thereafter, he briefly apprised them of the agenda for the sitting. The Committee then took up for consideration of the draft 38th Report on Action Taken by the Government on the recommendations contained in 30th Report on the subject 'Functioning of Central Electricity Regulatory Commission (CERC)'.

4. After discussing the contents of the Reports in detail, the Committee adopted the aforementioned draft Report with minor modification.

5. The Committee also authorized the Chairman to finalise the above-mentioned Report and present the same to both the Houses of Parliament in the current Session.

The Committee then adjourned

APPENDIX-II

(Vide Introduction of Report)

ANALYSIS OF ACTION TAKEN BY THE GOVERNMENT ON THE OBSERVATIONS/ RECOMMENDATIONS CONTAINED IN THE 30th REPORT (15TH LOK SABHA) OF THE STANDING COMMITTEE ON ENERGY

(i)	Total number of Recommendations	16
(ii)	Recommendations/ Observations which have been accepted by the Government: Sl. Nos. 1, 4, 6, 9, 10, 11,12,13,14, and 15 Total: Percentage	10 62.5%
(iii)	Recommendations/ Observations which the Committee do not desire to pursue in view of the Government's replies: Sl. Nos. 7 and 8 Total: Percentage	02 12.5%
(iv)	Recommendations/ Observations in respect of which the replies of the Government have not been accepted by the Committee and which require reiteration: Sl. Nos. 2, 3 and 5 Total: Percentage	03 18.75%
(v)	Recommendation/ Observation in respect of which final reply of the Government are still awaited: Sl. No. 16 Total: Percentage	01 6.25%