

Minutes of the 4th meeting of the State Advisory Committee held on 11.8.2003 at 11.00 a.m.

Shri P. Subrahmanyam, Chairman, MERC welcomed the members of the State Advisory Committee (SAC) to its 4th meeting, which was being held after a considerable time. He stated that the meeting was being held shortly after the new Electricity Act, 2003 had come into force. The Act brings in fundamental changes in the framework for the development of the power sector, and replaces the earlier legislation such as the Indian Electricity Act 1910, the Electricity (Supply) Act 1948 and the Electricity Regulatory Commissions Act 1998. It gives the Regulatory Commissions much wider functions and powers, and a large number of actions have to be initiated by the Commissions as well as the State and Central Govts. Rules and Regulations are to be framed covering a much more extensive range of functions and processes. It is in this context that the first item on the Agenda is a discussion on the way forward for MERC under the new Act. Related to this are two items suggested by BSES, viz. the grievance redressal mechanism to be set up by utilities/ licensees and the designation of an Ombudsman. Thereafter, M/s Kirloskar Consultants Ltd. would make a presentation on a report prepared for the Commission on the share of electricity in the total cost of production, and electricity consumption in the agriculture sector in Maharashtra.

I. AGENDA ITEMS (1), (3) and (4)

1.1 Shri A.M. Khan, Secretary, MERC informed the SAC that the Commission had initiated the process of formulating draft Rules to be suggested to the State Govt. and Regulations to be notified by the Commission. The Rules and Regulations required under the new Act are far more extensive than in the past, and require multi-disciplinary inputs. Given the nature and urgency of the task and the administrative and other constraints of the Commission, the logistical and other support of the utilities was being taken, and the process of finalization would involve stakeholders, including consumer representatives. Sections 180 and 181 summarized the nature of work to be done. They include all matters in the various Sections which have to be prescribed by the State Govt. (i.e. by Rules) and specified by the Commission (i.e. by Regulations). The intention behind the first Agenda item was to have a free-wheeling exchange of ideas on the way forward for the Commission under the new Act, not restricted to devising the Rules and Regulations.

1.2 With regard to the process by which the Rules and Regulations would be framed, Shri Shantanu Dixit of Prayas made a short slide presentation (copy annexed). While agreeing with Chairman and Secretary regarding the fundamental changes brought about by the new Act, the comprehensiveness and multi-disciplinary inputs required for preparing the Rules and Regulations as well as the urgency, the Prayas presentation emphasized the need for a transparent and participatory process to instil confidence in all stakeholders. Prayas suggested that the consultants be appointed by MERC, and that the participation of all the stakeholders be ensured in all major decisions such as framing of Terms of Reference for the consultants. Prayas concluded by suggesting that the Committee formed by the utilities for having the drafts prepared through consultants should have balanced representation, and that Secretary, MERC should administratively co-ordinate the process.

1.3. Chairman clarified that the consumer representatives had felt that the process of preparing the Rules and Regulations should have been done directly through MERC itself, but MERC had sought logistical support from the utilities given the time and other constraints. However, MERC was clear that the persons on the receiving end should be a part of the process in an appropriate manner. The relevant drafts would be thrown open for wider suggestions, and the process itself would involve the consumer representatives. At this stage, the draft ToRs had been prepared, and the consumer representatives should give their comments urgently. As far as the involvement of the Secretary, MERC is concerned, he would be a permanent invitee to the Committee to facilitate the process and liaise with the Commission, though the views expressed by him may not necessarily be those of the Commission.

1.4. Stating that the process is at the stage of finalizing ToRs and modalities for the appointment of Consultants, Shri Swadhin Kshatriya, GM (BEST) felt it would be more appropriate if the agreement with the consultants is with MERC and not with the utilities, and agreed with Prayas to that extent. He mentioned that Tata Power Company (TPC) had sought the status of lead utility vis-à-vis others in a recent communication. Secretary, MERC clarified his impression that this might have been suggested by TPC to provide a single administrative point of contact for the consultants, and the modalities were left to the utilities to decide.

1.5. As far as the Rules to be framed by the State Govt. were concerned, Shri Jayant Kawale, Secretary (Energy) (Invitee) stated that, since most of the Rules concerned the Commission directly or indirectly, MERC would be asked to make suggestions. He understood that the process initiated by MERC included proposing draft Rules to the Govt.

1.6. On behalf of BSES, Shri Satish Seth, Executive Vice Chairman and Shri P.S. Pandya informed the SAC of the structure of the grievance redressal mechanism in BSES, which could be a model for guidelines to be issued by MERC. BSES had a long-standing grievance redressal mechanism functioning under its own officers. However, since last year, an apex forum (the Consumer Disputes Appellate Committee) had been set up to resolve disputes which could not be sorted out at the lower level. Any consumer aggrieved by BSES' decision can approach the Appellate Committee without payment of fees. Unlike the first level forum, the Appellate Committee has three members, all of whom are outsiders, viz. a retired High Court judge as Chairman; a consumer activist (Shri Manubhai Shah) and a technical member (who happens to be a retired senior official of MSEB). The Appellate Committee meets once a month and is serviced by BSES. The consumer may have to deposit a part of the disputed dues before approaching the Appellate Committee. However, his option to approach the Courts or other fora remains, whereas the decision of the Committee is binding on BSES. BSES' expectation is that, if the system gains credibility, the Courts themselves might refer cases to the Appellate Committee. In fact, this has happened at Ahmedabad. 35 appeals have been dealt with by the Committee so far, but it has to be remembered that the number of cases dealt with by the in-house forum is much higher. The BSES representatives felt that, given their experience, there should be a multi-level grievance redressal system, with an Appellate Committee with outsiders in each utility, and an independent Ombudsman designated by the Commission separately as provided for under the Act.

1.7. Shri R.B. Goenka of Vidarbha Industries Association (VIA) pointed out that the Act makes a distinction between theft, authorised use of energy and un-authorised use in Sections 42 to 48, 126 and 135 to 139. The grievance redressal system is relevant to Sections 42 to 48, i.e. authorised extraction of electricity in terms of billing disputes, service complaints etc. He felt

that there should be fora at the Circle level chaired by retired Judges. Members should include a representative of the utility/ licensee at the Superintending Engineer level, and a representative each from industry, commerce and agriculture. Appeals would lie to the Ombudsman, Commission and Appellate Tribunal, etc. as prescribed under the Act. In case of unauthorized use of energy, the Act provides for assessing officers (i.e. Electrical Inspectors) and appeals to Government. In the case of theft, Special Courts have been provided for. This distinction needs to be borne in mind.

1.8. Dr. Ashok Pendse of Mumbai Grahak Panchayat (MGP) mentioned that the High Court had referred 12 cases to the BSES Appellate Committee, which shows the usefulness of the system in reducing litigation and resolving disputes. He pointed out that wrong billing was a major cause of complaints affecting the common electricity consumer. Therefore the first tier of the grievance redressal system should be at the Circle level. At this level, although the forum could be handled by in-house officers, it would be preferable to include outsiders also, who need not necessarily be retired Judges. In any case, the utility's appellate forum could be similar to the one set up by BSES and should consist of outsiders.

1.9. Shri Kshatriya, General Manager, BEST stated that a Review Committee mechanism has been functioning effectively in BEST since 1995 under the Dy Chief Engineer. He felt that the present system is expeditious inasmuch as, even if a Judge or other outsider were to chair the forum, its decisions would have to go through the process of financial scrutiny, etc. in the concerned wings of BEST before final approval and implementation. However, the present in-house forum could be expanded in scope and in terms of reference, and could also be multi-level. He felt that including outsiders might be difficult. Dr. Pendse of MGP responded that the system might be improved by including an outside technical person from another utility, and a consumer representative who can contribute the viewpoint of another important stakeholder. There was no reason why this should affect the expeditiousness of the process, which is quite short in the case of BSES. GM, BEST said that, from his experience of bodies such as the Sales Tax Tribunals, this may work well initially, but large arrears accumulate over time and the system becomes ineffective.

1.10. Dr. Anil Rajvanshi, Director, Nimbkar Agricultural Research Institute (NARI) raised the issue of how the Act would transform the role of micro-utilities in rural areas. The discussion had centred on complaints regarding supply, but we should be even more concerned about areas which have no access to power at all. In this context, he referred to the establishment of the Rural Electricity Technology Mission by the Prime Minister, and stated that micro-utilities can become important suppliers of power. Chairman and Secretary (Energy) pointed out that a specific duty has been cast on the State Govt. under the Act with regard to rural areas, e.g. under Section 6. Dr. Pramod Deo, Commissions' Member added that rural areas have to be defined/ notified first, and thereafter there can be several different models, including stand-alone suppliers, franchisees or private players or Panchayats. He pointed out that a Policy for rural electrification has to be framed under the Act by the Central Govt. after consultations. Chairman stated that, thereafter, issues relating to rural electrification could be taken up in the SAC or separately to discuss how to proceed in Maharashtra.

1.11. Referring to the ARR and tariff determination proposal of MSEB which had been submitted to the Commission under the ERC Act, Shri Goenka of VIA raised the issue of how that proposal can be dealt with in view of the coming into force of the Electricity Act, which requires prior framing of Regulations. Dr. Pramod Deo, Member responded that this legal aspect would be considered in the course of those proceedings.

1.12. GM, BEST pointed out that the institution of Lok Ayukta is already in place. A separate Ombudsman to whom all electricity consumers could appeal would, in his view, constitute unnecessary duplication. Chairman pointed out that that the designation of a separate Ombudsman is a statutory requirement under Section 42 (6) of the Electricity Act. To a query from Shri Gupta of Tata Power Company, Chairman and Dr. Deo clarified that the grievance redressal forum would have to be separate for each utility/ licensee, but the Ombudsman (who may be a single individual or a set of individuals) would be common for all.

1.13. While agreeing that a decentralized system of grievance redressal was required, Shri Kawale, Secretary (Energy), pointed out that, in a large organization such as MSEB, it may be difficult to include outsiders at each place. Shri Asoke Basak, Chairman, MSEB stated that his

organization was spread across the State, unlike the other utilities. MSEB have their own grievance redressal mechanism. Certain types of cases go to the Electrical Inspectors, with appeals decided at the level of Minister/ Govt., and others to the Consumer Courts, and this is often a long-drawn process. The Act requires that the Commission lay down formal guidelines. Taking into account the structure of MSEB or its successor bodies, it is necessary to have both a decentralized in-house mechanism as well as a higher-level independent forum. 90% of the complaints can be resolved in-house. The number of disputes arising after every billing cycle is very large, so there has to be a sieving process or else the system would break down. The remaining unresolved disputes should go to a relatively independent body within the utility. Since this body would not be concerned so much with points of law but with findings of fact, the involvement of the utility would be necessary (for instance, in order to check meters). Of course, the Ombudsman to be designated by the Commission would have to be completely independent and at arm's length from the utilities. Theft cases would have to be kept out of this system, as provided in the Act. Shri Ranade of Maharashtra Chamber of Commerce, Industry & Agriculture (MCCIA) mentioned that the Chamber has set up an interactive Committee with MSEB in one Circle, which has been useful.

1.14. Concluding the discussion on the three inter-related items concerning the Electricity Act, Chairman stated that the relevant draft Rules and Regulations would be eventually thrown open to stakeholders for their inputs before they are given final shape.

II. AGENDA ITEM

2.1 Shri Pavangadkar and Shri Apte of Kirloskar Consultants made a slide presentation summarizing their study report on the share of electricity in the total cost of production, and electricity consumption in the agriculture sector, hard copies of which had been circulated earlier. Several queries were raised and points made during the discussion by Chairman, MSEB; Secretary (Energy); Shri Ranade (MCCIA); Shri Girish Sant, (Prayas); Dr. Anil Rajvanshi, (NARI); Shri S.A.Kaparde, (IIT Mumbai) and others, in particular regarding the nature and apparent inconsistencies in the data from Govt. sources, the methodology followed and the findings based on Kirloskar Consultants' own survey data. Kirloskar Consultants' representatives clarified that their findings were based primarily on the results of their own survey, and that the

methodology has been spelt out in the detailed report. The issues raised by the Members would be reviewed and explained or incorporated where appropriate while submitting the restructured report to the Commission. However, the thrust of the study had been to provide the tools for drawing conclusions.

2.2 Chairman pointed out that Kirloskar Consultants had attempted a pioneering study of wide interest which had thrown up a number of issues which needed to be addressed. The objective behind commissioning the study had been to draw policy lessons which would be useful in the determination of tariff, for which a comparative study of this type was not available. The issues involved would also confront utilities other than MSEB in the future.

2.3 Chairman, MSEB agreed that the study, after suitable restructuring, would help in determining the ability of agriculture to bear a certain tariff, and pointed out that the wider gamut of pricing and costs of agriculture has to be taken into account. The data available with the Agricultural Costs and Prices Commission could also be tapped. Dr. Anil Rajvanshi pointed out that only 25% of the electricity consumption is in agricultural, but much of the criticism is focused on that sector whereas there is an urgent need to improve the efficiency of consumption by the remaining 75%. Secretary (Energy) mentioned the World Bank studies of Andhra Pradesh and Punjab which indicated that the cost of un-served power is very much higher than the Kirloskar Consultants' findings. They also show that agriculturists are willing to pay more if they are better served.

3.1 In his closing remarks, Dr. Deo, Member, MERC welcomed Shri Basak (Chairman, MSEB) and Shri Satish Seth (Executive Vice Chairman, BSES) who were joining the SAC for the first time in their present capacities, and Shri Jayant Kawale, who was participating as an Invitee for the first time as Secretary (Energy).

3.2 Summarizing the discussions, Dr. Deo stated that MERC had a critical role under the new Act, and that Rules and Regulations had to be framed on a war footing to enable it to go forward. This process would be transparent, and consumer representatives would be consulted at key stages of it. It would include guidelines for a grievance redressal mechanism, and today's discussions were a valuable input. An effective system would go a long way in providing a

better interface with the public, and obviate the need for consumers to approach the Courts and Commission. Rural electrification was another critical area which would have to be addressed, and interactions would be necessary both during and after the formulation of a Central policy. One of the options could be for co-operative sugar factories to supply electricity in their catchment areas. Such a model will transcend the issues addressed earlier by the Commission in its Order on bagasse-based cogeneration. He stated that the Kirloskar report was an ambitious attempt to study a complex set of issues which, as the discussions showed, raised a host of new issues and questions to which conclusive answers might not be possible. With these remarks, the SAC meeting was concluded.

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