

Electricity Regulatory Commission

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INTRODUCTION

Power in relation to economy has always been the first priority of any government. Moreover, the emphasis is also on how sustainable this sector can be in terms of development and infrastructure activities. The sectors like households, governments, business, and industries are heavily dependent on power to maximise their full utility. The absence or presence of power dictates the success or failure of an economy in terms of expanding production, trade, reducing poverty and enhancing the environmental dynamics. The structure of Indian Power Sector has been so designed that the policy making is done by the Central and the respective State Governments, like the Ministry of Power and other government bodies. When it comes to regulation of power across the country, there is Central Electricity Regulatory Commission (CERC) and State Electricity Regulatory Commissions (SERC) for the States. Then there is the process of Generation, Transmission and Distribution of the power. In the Generation Stage, there is Central Genco's done by companies like NTPC, NHPC which is done at the central level. At the state level, we have State Genco's such as Thermal Hydral Renewable, etc. We also have the Independent Power Producers such as the Tata Power, the Adani Power, the Reliance Power, etc and the generation of power is completely taken care by these companies independently. The transmission of power is mainly done by the POWERGRID which is the Central Transmission Utility (CTU). Similarly, for power transmission in States, there is provision of State Transmission Utility (STU), and Independent Power Transmission Companies also exist in the power market for the same purpose. The Distribution of Power is a State subject and for this the State Discoms are responsible for timely distribution of power. We also have some Private Discoms for major cities in India like Mumbai, New Delhi, Ajmer, etc. Nowadays, there is also the presence of Franchise Model for distribution of power.

One of the main purposes behind formation of the Electricity Regulatory Commissions in States and the Centre is protecting the interests of the consumers by promoting competition when appropriate. Also, the promotion of green energy sources to produce electricity with reasonable charges for the consumers should also be kept under the goal list of these regulatory commissions. There has to be a shift from current mode of electricity generation from examples like that of coal to solar energy and others with a renewable and sustainable alternative. It remains to be seen whether the Regulatory Commissions or the Electricity Act, 2003 need any further amendments so as to the functioning of each sector is concerned.

ROLE & FUNCTIONS OF CENTRAL ELECTRICITY REGULATORY COMMISSIONS (CERC)

The Central Electricity Regulatory Commissions (CERC) is a statutory body functioning under Section 76 of the Electricity Act, 2003. Initially, the CERC was constituted under the Electricity Regulatory Commissions Act, 1998. The Commission aims to boost healthy amount of competition, efficiency and economy in bulk power markets, enhance the quality of supply, encourage investments and advise government on the removal of institutional barriers to bridge the demand supply gap and thus foster the interests of consumers. The constitution of SERCs is optional for states.

In pursuit of these objectives, the Commission aims to¹:

1. Enhance the operations and management of the regional transmission system through Indian Electricity Grid Code (IEGC), Availability Based Tariff (ABT), etc.
2. Develop an efficient tariff setting mechanism
3. Help with open access in terms of inter-state transmission
4. Facilitate inter-state trading
5. Encourage development of power market
6. Give better access to information for all stakeholders
7. Notify and suggest on the removal of barriers to entry & exit for capital and management, within the limits of environmental safety and security concerns and the existing legislative requirements, as the first step to the creation of competitive markets.

¹ <http://cercind.gov.in>

As entrusted by the Electricity Act, 2003 the Commission has the responsibility to discharge the following functions:-

Mandatory Functions:-

- to regulate the tariff of generating companies owned or controlled by the Central Government;
- to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;
- to regulate the inter-State transmission of electricity ;
- to determine tariff for inter-State transmission of electricity;
- to issue licences to persons to function as transmission licensee and electricity trader with respect to their inter-State operations;
- Improve access to information for all stakeholders.
- to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;
- to levy fees for the purposes of the Act;
- to specify Grid Code having regard to Grid Standards;
- to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees;
- to fix the trading margin in the inter-State trading of electricity, if considered, necessary;
- to discharge such other functions as may be assigned under the Act.

Advisory Functions:-

- formulation of National Electricity Policy and Tariff Policy;
- promotion of competition, efficiency and economy in the activities of the electricity industry;
- promotion of investment in electricity industry;
- any other matter referred to the Central Commission by the Central Government.

The CERC generally consists of 7 major divisions²:

1. Legal: This division primarily deals with petitions. Validates and scrutinizes the petitions, schedules hearing dates, performing legal activities as and whenever required. They basically handle all the disputes which is presented to them on matters such as tariff, grant of licenses, incentives, prepare notices, keep a record of the proceedings, unscheduled interchange like DSM, petitions concerning the inter-state matters including the petitions filed in the Supreme Court, High Courts and Appellate Tribunal for Electricity. One of the important facts about CERC is that it specifically deals with “inter-state” issues and not “intra-state” issues. The latter is handled by the SERCs.
2. Engineering: They provide inputs on technical matters wherever required. Major responsibilities include dealing with general tariff issues, incentives, etc. They handle the technicalities of power operations and management. They also prepare the fact sheets and brief notes for the oral hearing.
3. Finance: Deals with drafting of regulations, norms, setting up of financial parameters, determination of tariff generation for hydro and thermal power projects, as well as interstate transmission and activities. They support the other teams in technical validation relating to financial affairs. They also issue trading licenses by checking the net worth of a company. Preparation of budget, scrutiny of proposals for financial expenditure, cash management is done for various audits like that of CAG and others.
4. Regulatory Affairs Division: Provides policy and regulatory inputs to the decision making process of the Commission. Major task of this division is to monitor emerging trends, policy matters involving the Electricity Act. Identifying the need of policy to provide inputs on implementations of policies, to regulate compliances on a regular basis, assessment and impact of regulations through quantitative studies. They also analyse the functions and operations of the Commissions and spot the opportunity to strengthen the action according to the changing environment and policies. It also analyses the reports of the commissions of other countries for better understanding and implementation of the policies.

² <http://cercind.gov.in>

5. Economics: Deals with petitions relating to power exchange, compliance from inter-state trading licensees and escalation rates available for the projects through competitive bidding process. Also deals with framing of regulations, amendments relating to power markets. They also prepare monthly and annual reports on short term power markets.
6. MIS (Management Information System): They are more of internal strategic business for CERC. They run the website management software, in house development of the software, purchase of software, network and facility management and library management.
7. Administrative: This division looks after the human resources requirement like CERC employees' salaries, perks, P.Fs, employment generation mechanisms, emoluments, etc.

HISTORICAL BACKGROUND OF THE ELECTRICITY ACT & THE REGULATORY COMMISSIONS

- *The Indian Electricity Act, 1910*

The first legislation on electricity in India was enacted in 1910. It provided basic framework for electric supply industry in India. The growth of the sector was made available through private licensees. The licenses which were to be issued were governed by the State Government. Provision for license for supply of electricity in a specified area was made available through this legislation. Legal framework for laying down of wires and other works were also included in the picture. Provisions regarding the relationship between licensee and consumer were also given priority.

- *The Electricity (Supply) Act, 1948*

This Act mandated creation of State Electricity Boards in every State. The need for the States to step in with the help of the State Electricity Boards to extend electrification which was then limited only to cities to all over the country was highlighted through this legislation.

- *The Electricity Regulatory Commissions Act, 1998*

With the advent of this very legislation in 1998, the provision for setting up of the Central as well as the State Electricity Regulatory Commissions (SERC) with powers to determine tariffs was laid down. It was also mentioned that the constitution of SERC remains optional for the States. Government was distanced from tariff determination factor by the help of this Statute.

- *The Electricity Act, 2003*

This legislation which has been in use to this date has been considered as a dynamic change in the electricity sector. The provisions of this Act included that of encouraging private sector participation in Generation, Transmission & Distribution mechanisms of electricity across India. This also removed the responsibilities of regulating the power sector from the government and shifted the same towards the coveted Regulatory Commission.

RELEVANT JUDGEMENTS REGARDING ELECTRICITY ISSUES IN INDIA

1. *Suresh Ganpati Halvankar v. The State of Maharashtra & ors. {SC (Crl.) No.3670/2017}*³: In this case, the Supreme Court stated that interference or maliciously injuring meters under Section 138 of the Electricity Act would be considered as theft of electricity and thus will be treated as a compoundable offence under Section 152 of the Electricity Act, 2003 .

Some observations were made below in the case by the Apex Court during delivering the said judgment:

- Sections 135 & 138 of the Electricity Act imposes a maximum sentence of three years, simultaneously both refer to the theft of electricity.
 - Also, section 138 of the concerned Act deals with theft of electricity, when it is by intentionally tampering the electricity measuring meters, comes within the purview of section 152 thus making it a compoundable offence in the process.
2. *GMR Energy Ltd. v. State of Karnataka, 2014 (APTEL)*: This dealt with national electricity policy under the Electricity Act, 2003: Off setting the adverse financial

³ <https://sci.gov.in/>

impact on a generator which supplied electricity to the distribution licensees in compliance of the directions of the State Government under Section 11(1) of the Electricity Act, 2003 would mean fixing a rate keeping in view the revenue the generator could have realized in short term market subject to the condition that the rate covers the cost of generation so that the generating company does not incur a loss.

It was held that the principles of determination of tariff under Section 61, 62 and 86(1)(b) of the Act shall not be applied for deciding how much compensation is to be given to the generating company to offset the huge level of financial impact of the direction under Section 11(1) of the Act.

The State Commission has rightfully determined the rate of power for supply by GMR during the period of operation of Section 11(1) from January 2009 to May 2009 which in the court's opinion fairly offsets the adverse financial impact of Section 11(1) direction on GMR⁴.

3. *GMR Energy limited v. Government of Karnataka, (2015) APTEL*: This case referred to the issue of rural electrification under Sections 4 & 5 of the Act.

It was held that the “Appellant (i.e. GMR Energy Ltd) is entitled to be charged for import of power at temporary HTP category tariff as determined by the State Commission in retail supply tariff order from time to time and the amount is to be adjusted in the bill to be paid for supply of solar power by the Solar PV plant to GUVNL”⁵.

4. *Tata power Company Ltd. v. MERC, (2011) APTEL*: This case was concerned with the generation of electricity under Section 7 of the Act.

It was held that the State Commission is supposed to take care of the interest of the consumers' along with the interest of licensees. Thus, the State Commission, while deciding that the changeover consumers are liable to pay cross subsidy surcharge to the company RInfra for using their network has finally considered taking into consideration the interest of both the consumers and licensees. Thereby, justifying the

⁴ <https://indiankanoon.org/doc/13709705/>

⁵ <http://aptel.gov.in/judgements>

findings and directions given in the impugned order by the State Commission which would from now onwards, promote healthy competition.

5. *Chattisgarh State Power Distribution Co. v. Aryan Coal Beneficiations, (2010) APTEL*: This case law discussed Section 9 of the said Act regarding dedicated transmission lines and distribution.

It was held that the Aryan Plant Company is entitled to use its own dedicated transmission line to transfer power to its own coal washeries (in contrary to earlier situation where it was not allowed to do so in a fair manner), provided there has to be payment of cross subsidy surcharge to the Distribution Company as compensatory charge to the same Distribution Company for the future period as well.

RECOMMENDATIONS

- Time and again it has come to the notice that there has been concurring issues of shortage of power all over the country. There has been situation of power blackouts in major cities. And without power, the city comes to a standstill. So this issue of shortage of power has to be taken care of effectively. No power clearly leads to no work and no development.
- From the past few years, there has been a sudden rise in increased litigations in the electricity sector. This is a major concern for a developing economy like that of India. Plus, the courts are already overburdened with civil and criminal cases. And with increase in power theft issues, it becomes difficult for the courts and tribunals to solve such matters on a timely basis. A better implementation of the Electricity Act has to be done by the respective State Commissions and the Central Regulatory Commission.
- India still lacks development in renewable energy sector. There is hardly any rise in the use or production of renewable sources of generating electricity. This also has to be taken care of if the goal is sustainability in the energy sector. The green resources available in India have to be utilized to the fullest.
- Another relevant issue which remains to be solved is availability of power for everyone at affordable price across the country. Though the private players

like that of Adani and Reliance have improved the quality of services but the pricing of the same remains highly unfair to those who cannot afford it. As electricity has become one of the essential components for survival, the pricing has to be regulated effectively and should be made available to all. Recently, there was an issue with the Adani group itself regarding high meter readings in Mumbai. The Maharashtra Electricity Regulatory Commission filed a complaint regarding the unfair charges levied by Adani to the consumers. Such cases have to be taken seriously.

CONCLUSION

To conclude it can be said that though India has come a long way in the development of the power sector through the effective implementation of the Electricity Regulatory Commission, there are certain areas which has to be monitored and the faults should be rectified on a daily basis. As the consumer is the king, their interests have to be safeguarded by the Regulatory Commissions of respective States. Likewise, the Grievance Redressal Mechanism should also be strengthened so as to facilitate the quicker way to dissolve pending legislations under the Electricity Act, 2003.

Secondly, the renewable energy alternatives have to be considered on an emergency basis. Now that there is privatization of the power sector, such companies can come up with developing green alternatives to production of electricity in India.