

Protecting Consumer Interests – Greater customer participation is the key to growth

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The basic problem of the Indian power sector, many believe, is the shortage of capital to meet the increasing demand. This shortage is, in turn, attributed to the increasing gap between the cost of supply and money recovered from consumers. The high cost is due to the low efficiency of the sector (in terms of high theft, equipment procurement etc.), where as the low revenue is attributed to lack of consumer satisfaction / willingness to pay.

Initially, the losses of utilities were primarily attributed to political interference in tariff setting. But despite the formation of the regulatory commissions, the situation has not changed much. Several utilities have been unable to achieve the efficiency targets set by the commissions, resulting in continuing losses.

The distribution utilities have a key responsibility to ensure consumer satisfaction - an area sadly neglected so far. There is a glaring lack of attention to consumer needs. Consumer is the ultimate stakeholder in the power sector. The whole exercise of generating power, distributing it etc is carried out because consumers want power. But in most consultation exercises, seminars and workshops, the only stakeholders considered important are financing agencies, private investors in IPPs or utilities, the regulatory commissions, government, contractors, consultants, equipment suppliers, manufacturers and fuel suppliers. The views of consumer groups are generally not included.

Clearly a paradigm shift is required. In fact, aside from consumers, the interests of the non-consumers (those who are yet to become consumers) should also be represented. The broader public interest should be kept in mind too. Society at large is a big stakeholder, as it pays the price for the power generation, which may be through environmental or social impacts. Thus consumers, non-consumers and society at large are three key stakeholders.

This article primarily addresses issues associated with consumers. It also looks at the expectations from the Electricity Act, contrasts them with the emerging reality and suggests the required actions.

Consumers and the Electricity Act: Expectations belied?

Distribution is the first interface of the utility with the consumer. It is the source of revenue and an instrument of state policy. But it has not received the attention it deserves in terms of investment or performance analysis. While many states and the Central Electricity Authority (CEA) have been preparing annual reports on performance of generating stations, it is only recently that CEA has announced a similar report on performance of distribution utilities in India. Reasons cited for this neglect include lack of credible data. The distribution sector has the dubious image of insensitive consumer interface, corruption and inefficiency at all levels. However, there is growing realisation that a performing distribution sector is crucial to improve the power situation. T&D losses, percentage of billing & collection and revenue arrears are the few performance indications of the distribution sector that have gained attention in the past few years. Recent initiatives towards improving the quality of consumer service are the signs of this increased attention. Public declaration of the Citizens' Charter (on performance and service), formation of the consumer grievance redressal forum (CGRF)/electricity ombudsman and regulations on standards of performance are some of these initiatives.

The Electricity Act 2003 and associated national policies were said to be a step in the direction of making the required correction in the utility's attitude towards consumers. The Act, for instance, includes provisions for better handling of consumer grievances. It advocates the setting up of the CGRF offices and an ombudsman. The state electricity regulatory commissions (SERCs) are expected to protect consumer interests and prevent abuse of monopoly by the utilities. They have been required to notify regulations for the setting up of CGRF and ombudsman offices and specify the quality of service. These are landmark regulations, whereby for the first time, the utilities have been made accountable for service quality. In case of failure to meet the specified benchmark, utilities are expected to pay a fine to the consumers. Every distribution utility is expected to have one or more CGRFs and every state one or more office of an ombudsman. Today, as per a Prayas report, most states have regulations in place for the CGRF and ombudsman - 19 have CGRFs for utilities and 14 have set up an ombudsman.

The CGRF is a two-four member body, set up by the distribution utility. It typically has retired judges, working/retired utility employees, lawyers and in many cases representatives of consumer groups as members. Any consumer can approach the CGRF after exhausting the normal complaint procedure of the licensee. The regulations typically provide timeframes of 45-60 days for disposing of a complaint. The consumer can further appeal to the ombudsman, if still not satisfied. An important point to note is that only a consumer can appeal against the decision of the CGRF.

The ombudsman is to be appointed by the SERC. Senior personnel with expertise in legal issues, engineering, education, industry, administration or consumer affairs are expected to be appointed in this position. The ombudsman has the power to call for documents and is expected to settle disputes within 3 months.

The CGRFs are funded by the utility and the ombudsman by the SERC. Of course, money for this is raised from the consumers. With good consumer participation, utility support and supervision by the regulatory commissions, these provisions can go a long way in consumer empowerment and changing the utilities' perception, leading to improved consumer satisfaction.

While these are all welcome provisions, situation on ground has not changed much. The utilities and SERCs have not ensured implementation of the regulatory provisions on quality of service. The utilities have hardly ever paid a fine to the consumer. The much-talked about 'IT in power sector' is used primarily to facilitate ease of utility management and operations – not for ensuring accountability of utilities towards consumers. Very often it is difficult to track even the number of complaints received by a utility despite having spent crores on building and maintaining computerised complaint centres.

But the biggest set back to the well intentioned provisions of the act for protecting consumer interests has come from slight modification of rules and recent legal orders. The Ministry of Power Electricity Rules, 2005 suggest that members of the CGRF should be drawn from the utility. A recent judgement (on average and supplementary billing in Maharashtra, March 2006) of the Appellate Tribunal for Electricity (ATE) concludes that matters relating to wrong billing practices are in the nature of billing disputes and SERCs have no jurisdiction to entertain consumer petitions on these issues even if the wrong / excessive bills are due to systemic violation by utility; non-compliance with statutes, SERC orders or regulations; and are affecting lakhs of consumers. The ATE maintains that CGRF and ombudsman are competent forums to deal with such complaints. This judgement, along with the CGRF regulations imply that the role of SERCs is limited only to prescribing tariff (through tariff orders) and beyond this, if a licensee

is found to charge a tariff other than the what is prescribed by SERC, the commission cannot intervene in the matter. Also, even if lakhs of consumers are affected by such non-compliance by a licensee, each individual consumer will have to approach the CGRF - a body manned by licensees' officers - which will decide whether actions of licensee are legal. This threatens to substantially reduce the importance of the tariff determination by the SERCs and the consumers will again be left at the mercy of the distribution licensees.

Issues to consider

At a broad level, consumer concerns can be divided into three areas:

- Quality of service: The utility staff's response to consumer requests and complaints
- Quality of supply: Robustness of the distribution and supply system as well as the O&M practices
- Sector governance: Involvement of the consumer in deciding the sector policies.

The first two concerns are grievance related (individual or group) and the last represents the broader public interest concern.

Initiatives taken following the Electricity Act address the first two concerns to some extent. However many lacunae remain, such as:

- a. Poor publicity to these measures
- b. Lack of steps to increase the capability of the ombudsman and CGRF staff to carry out the assigned tasks with a consumer oriented attitude and with a mandate to take up proactive measures.
- c. Low level of detail in reporting and rigour in monitoring the standards of performance of utilities
- d. Low availability of information in the public domain through websites, tariff orders or other publications (on consumer complaint handling, service performance levels and measures taken for improvement)
- e. Low credibility of the process (which could be addressed by setting up independent agencies to validate utility reports on performance levels - as suggested in the National Tariff Policy)
- f. Lack of ground work and consultation to assess the effectiveness of the process in terms of adequacy and relevance.

Issues to be debated include priority of performance indices; approach towards having different performance indices for different types of consumers; evolving the best practices; capability building of the CGRF, ombudsman and consumer groups to effectively participate in the process etc.

Other issues include linking of tariff with quality as well as payment capacity. Agricultural and rural consumers are being separated from those in urban areas in terms of hours of supply as well as quality of service. Naturally, the tariff has to be linked to it. Even in urban setting, there are consumers like in IT parks, who have very different demands from, say those in a slum.

Thus, even though steps have been initiated to protect consumer interest (addressing the first two concerns), this is a journey with many miles to go. Improvement is needed in the implementation aspect and there has to be focus on rural and poor consumers as well as future consumers. As mentioned earlier, recent events like the ATE judgement and the power ministry rule populating

the CGRFs with utility representatives are major setbacks. These events have compromised the consumer grievance redressal process.

The third concern- involvement of consumer in deciding the sector policies- involves a much longer journey. On the side of the government and utilities, it calls for openness in policy making and proactive efforts to include consumers in the process. On the part of consumer groups, it requires growth from grievance to policy – an increased capacity to appreciate and articulate sector issues.

What needs to be done?

End to end commitment is to be demonstrated to address all the three consumer concerns mentioned above. Several steps need to be taken if the utilities have to be held accountable for service. Some of them are given below:

1. Implementation of the existing regulations on quality of supply and service at the ground level, including penalty clauses. There has to be increased publicity about these provisions and periodic reviews to improve them. Proactive steps should be taken to increase the credibility and reliability of grievance redressal mechanism. The CGRFs should include consumer representatives and the selection process (for CGRF and ombudsman) should be transparent.
2. The process of independent validation of data provided by utilities to the SERC should be implemented.
3. Political will should be demonstrated to break the connivance of utility staff, selected consumers and politicians, which is reflected predominantly in the form of theft.

Despite of institutions like the CGRF, ombudsman and Regulatory Commissions and initiatives like consultation papers, advisory committees and public hearings, participation by consumer groups has been poor. Grievance redressal mechanisms have not yet started putting pressure on utilities to improve quality of service. Consumer participation is significant only during tariff fixing process. Then too most of the petitions are general in nature and utilities often do not satisfactory respond to objections raised. As pointed out in recent News paper article, “Legitimacy Issues in Electricity Regulation”, by Sudha Mahalingam for The Hindu, *“Electricity regulation — particularly tariff fixing — is already heavily loaded against consumers. Utilities prepare extremely complex and voluminous tariff proposals, which are usually incomprehensible to the common man. Although regulators conduct public hearings to decide tariff, consumers with little knowledge of how the sector functions or the regulatory processes are pitted against the utility, which hires expert consultants, accountants and lawyers to plead its case for tariff revision.”*

If the situation is to change, the major initiative has to come from the Regulatory Commissions and utilities, as indicated by the National Electricity Policy - *“The Central Government, the State Governments and Electricity Regulatory Commissions should facilitate capacity building of consumer groups and their effective representation before the Regulatory Commissions. This will enhance the efficacy of regulatory process.”*

The initiatives should include a public education drive, providing resources and training to consumer groups to facilitate intervention. This is essential to democratise the policy making processes. In these times of increasing complexity of the sector (with parallel licensees, variety of franchisee models, rural electrification drive etc), having the consumer as an informed stake holder is the only way to ensure that interests of the majority poor, future consumers and society are protected.