# Power Sector Restructuring:

# Challenges, Lessons, and Suggestions

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# PART ONE
# Challenges of Power Sector Restructuring

The Indian power sector is undergoing major transformations, the most important of these changes are the planned reforms of SEBs. This fundamental structural change will have long term implications, hence is of enormous importance. Orissa, being the first state which started this process, has become the focus of these discussions.

Today, the word "Reforms" has come to mean effectively three things; un-bundling, privatisation and creation of an autonomous regulatory body. International consultants (mostly under the WB affiliated programs) and even some of the national experts have suggested the same 'remedy' to the present problems.

The reform policies are expected to achieve several objectives, including,
1. Attracting much needed (private) capital,
2. Tariff rationalisation,
3. Improved efficiency of the sector (especially theft reduction),
4. Improved financial viability of the sector (combined effect of 2,3)
5. Reduced government interference, and
6. Decreased dependence on government budgets.

Some also expect this to achieve:
- Competition,
- Improved services to customer,
- Rationalisation policies, etc.

Though, this is a list of goals, not an automatic result of policies, it is believed that the inherent advantages in the new structure will make it fairly easy to achieve these goals. It is true that the proposed structure has some inherent advantages, but they come with inherent threats and dangers also. We wish to focus attention on the dangers / threats so that we can take precautions to minimise the dangers or at least the damages. I request you to see the presentation in that context.

Before we proceed, for the sake of clarity, we need to ask ourselves some questions:

**1. Do we consider : privatisation = competition ?**
We have learned it very hard way that privatisation cannot be equated to competition. The fact that MOUs were signed for 100,000 MW is a monumental evidence in itself. Now, international competitive bidding is mandatory. But it is said that even that process has problems.

Beyond these obvious problems, there are several other ways that the private business can employ to try and avoid real competition. These barriers to competition can be subtle or not so subtle. In Chile, for example, the transmission monopoly created a hell for the national regulator. To add to the problems, it was partly owned by the large generating company, leading to conflict of interests. Another example from Chile is really chilling. While privatising the hydel generation, government also handed over the water rights to the private company. One can imagine implications of such monopoly rights on natural resources.

In Hungary, the private companies have acquired both power as well as gas pipe lines leading to monopoly energy service companies. As the gas based co-generation (steam-power) is expected to be very cheap, this will prove a barrier to competition. There are several such examples of barriers to competitive market. Many of these can operate surreptiously.

When generator owns a part of distribution (cross-holding), he can use its monopoly in distribution area to charge excessive tariff and then use profits to cross-subsidise the generating company (which might be operating in competitive environment). Or he can manipulate generation market in variety of ways. In such cases, the regulator has to prevent this, and this may not be an easy task. More seriously, such cross holding may not always be visible. Large business can achieve cross-holding using several tricks, such as creating complex ownership structures (in the form of financial institutions, mutual funds, trusts' holding or even *benami* ownership), or creating multiple layers of ownership. Many Industrialised countries has strict "anti-trust laws" and vigilant regulation to keep check on this. Our provisions as well as vigilance is far too weak in this regards.

In Poland, coupon privatisation (shares equally distributed to population), was seen as a fantastic move. But soon financial institutions acquired shares from people. And then the financiers of power sector became the owner. This severely diluted power sectors accountability to financial market.

In US, when the private integrated utilities were allowed to set up IPPs, they used this to back-mail other utilities. The controversy between utilities in Southern and Central California are well know for this. Fears of non-competitive behaviour still remain, even while the US is moving towards complete market system (where even apartments can directly buy power from generators and T&D companies acting only as carriers, collecting toll). Large trading houses are emerging, with coalition of interest of power generators, telecommunication and allied services. Such companies can dominate the market using their financial strengths and the expertise in multiple areas.

I just want to point out that there is a lot to learn from the international experience. We should not be doing the mistake that we did in IPP policy. Despite the bad experience of Philippines on fast track projects, we did the same mistakes.

Moreover, we need to understand / imagine other issues / problems that may arise. For example, in the critique of the World Bank model, the EdF points out that un-bundled privatised structure requires a set of compete contracts, that are costly and difficult to write and monitor. These contracts will have to be complete at all stages, such as, coal mining, transportation, generation, transmission and distribution. Considering the problems of relatively simple fuel supply contracts for liquid fuel based projects, we should imagine the time and cost involved in complete contracts and the difficulty in achieving such contracts at every stage.

**2. Do we consider competition = efficiency ?**

It is worth noting that even competition may not always lead to sectoral efficiency. Competition can maximises firm level efficiency and not sectoral efficiency. For optimising sectoral efficiency (especially the long term investment efficiency) proper planning has to be enforced. Such planning can be against the interests of the firms. This is expected to be the task of the regulator. Market is only interested in getting its money back and is not interested in sectoral efficiency, long term fuel security, national interest etc. Ensuring this is the task of policy and the regulator. In any case, the prudence and effectiveness of even the limited objectives of the international financial market as well as IMF/WB are under very serious question, after the South Korean crises.

Here, it is worth mentioning the conclusions of a research conducted by Lawrence Berkeley National Lab, USA. Their study of IPP contracts in the US shows that long tradition of competitive bidding for generation, has not been able to achieve economic efficiency in the IPP market. The question is, with serious capital scarcity in India, can we ensure real competition even in IPP market and will it lead to economic efficiency in generation ?

Share Market : We have limited experience of possible hazards of allowing the share market to influenc the power sector. Privatisation is not static. Mergers / take-overs, at the minimum, shares changing hands, are usual processes. Hence, situation remains in flux and needs continuous monitoring.

Once the power sector is privatised, power companies will form a large part of share market transactions. There have been cases where the regulators have dithered to reduce utility profits, due to fear of impact of their decision on the share market. Fall in share prices of utilities was feared to cause a cascading effect, resulting in crash in the share market. We all know the impacts of share market crash on the economy.

In a nut shell, we wish to point out that we are dealing with a very important sector of the economy. This is going to be fairly complex. We need to remind ourselves that our objective is not just improving efficiency but also to safeguard national interests (in terms of fuel and food security, building up technological capability, equitable development etc.) Where as, the interest of international players and institutions is focused only on short term economic efficiency.

There are several other issues which I will just mention,

- Under public ownership, regulatory failure resulted in low tariff, bad service and deteriorating financial health of SEBs. Under private ownership, it might reflect in high tariffs, poor or restricted service, excessive profits etc.

- Do we agree with the views of the US Executive Director on the WB, that privatisation should be "unleashed" even without waiting for evolution of the institutions and measures essential for arresting the social and environmental disruptions. These measures will follow, due to public demand.
- It is said that most benefits of privatisation are really benefits of "proper set of rules" and "proper incentives". What do we think of this?
- What do we plan to do with the proceeds from the sale of assets of SEBs ? There is a view that, SEBs hold historic assets created, by using public monies, with a implicit social promise. Hence, this money has to be set aside for fulfilling this promise.

There are several issues relating to privatisation and un-bundling, but leaving them aside, let us focus on the regulatory commission.

**The Regulatory Aspect :**

In the Orissa model and other similar models, the structure of the power sector is broadly decided first and the regulator is appointed later. But usually the details of the structure and agreements are decided by the regulator. The saying goes "*God Lies in Details*". Hence, RC has tremendous responsibility even in terms of deciding the structure. The RC can minimise many of above threats, if they are well identified at an early stage and acted upon.

Even after deciding the structure, the RC has a continuous role of "custodian of public interest" to play. It is in the form of preventing excessive tariff, preventing non-competitive elements from entering, safeguarding long term social as well as national interests of fuel security, limit exposure to foreign exchange rates, etc. Also RC has to maintain a balance between social goals of equitable access to electricity, efficiency and cost of power.

While performing this balancing act, the RC is going to come under a tremendous pressure from a variety of players. The government trying to push its goals; power companies trying to maximise short term profits, and various sections in the consumers trying to minimise tariff / improved access. In a way, regulator is the King of the power sector, who is to protect this diverse set of public interests.

Hence, it is important that the model has sufficient provisions to enable RC to perform these duties in an un-biased manner. There are four important factors which may result in regulatory failure : (a) asymmetry of information (using which the RC is supposed to regulate) favours utilities, (b) regulator can be corrupt, (c) government can try to excessively protect consumer, (c) consumer groups or labour can hijack the process.

To minimise the chances of sabotaged by a small section of vested interests, we need a robust system. In this context, it is important to look back at the history and remind ourselves of the lessons.

The present crisis in the power sector is caused by many factors, such as, low tariffs, low efficiency (technical and financial), excessive interference by government. But, this condition of SEBs could have been changed if we could have ensured:

- Rational power tariffs,
- Complete Metering (energy audit),
- Proper billing and recovery,
- Cost minimisation, and
- Easing financial strings (i.e. debt restructuring and allied measures)

These effectively mean granting autonomy to SEBs and making them accountable for their performance. Government was eminently authorised to take steps for ensuring this. For example, government had the freedom to appoint SEB management, not to interfere in day-to-day operations, appoint Consultative Councils (that would assure a direct representation to the public), support policies with a long term vision etc.. These actions fell not just within government's rights, but were also government's duties as the "custodian of public interests". But unfortunately, a powerful coalition of vested interests has succeeded in taking over the control of system. This is nothing but a regulatory hijack.

This hijack could take place because the Electricity Acts placed total reliance on government to protect the public interests. When the control of the government itself was taken over by the vested interests, the shortcomings of the Act came out glaringly. This was not envisaged while writing the law. The government

and SEBs were expected to be accountable to people indirectly through the legislature. But we have seen the limitations of this indirect accountability. When the judiciary was called upon to intervene, it did not. The rest of the provisions in the act were very weak and sabotage-prone. We know how well intentioned provisions, without binding procedures to make them meaningful, have been misused. There are numerous examples of how terms "expeditiously", "government may", "to consider", etc., have been misused.

At the time of writing the law, if some one had objected to the monolithic control bestowed on to the government, it would have been seen differently than today. At that time, the reaction would have been, "if you cannot trust popularly elected government that seeks mandate every five years, what else do you trust on ? What better alternative can you find to people's elected representatives ?" But today, we are trying to find alternative to this system.

When we are trying to reduce government control on the power sector, we cannot trust any other body / institution that has authority without sufficient checks and balances. Hence, we need to carefully evaluate whether Orissa Model has helped us in moving towards a robust and sabotage proof system.

Apart from the failure of indirect accountability, we have also seen law makers themselves not following the law ! Failure to achieve the required 3% ROR is most glaring. Hence, now we need to create multiple checks and balances and procedures for direct accountability to people. Ensuring this without letting it be a road block is a difficult task. This should be preceded by an in-depth analysis at the time of drafting the law and deciding the structure. Binding provisions for ensuring transparency, right to information, and public intervention (including public hearings) in the decision making process; would form the basic building block of such a system.

These are not new concepts and have been tried and implemented in many countries.
Imagine what could have been impact of ensuring implementation of following principles in the past.

1. Transparency
2. Information access to public
3. Forecasts of impacts of decisions, analysis of rejected options
4. Public participation in decision-making (intervention / ability to question), and
5. Capability building of civil society actors to analyse and intervene,

If these principles were adopted, I am sure that many harmful decisions, such as, allowing Enron project in Maharashtra could have been avoided.

Systems to implement such provisions do exists. For example, after consultations with people, government can finalise a list of documents / information that needs to be made public, and select a dozen of public libraries where this information will be make available. The libraries will have a mandate to make it available to people at a reasonable reproduction cost. Contrary to this, currently all govt documents are secret unless specified. And even the public documents such as the "Statement of Accounts" of SEBs are not available even to us (leave aside common public) despite writing to the energy secretary, SEB and meeting them.

It should be a matter of right that the public can question decisions and it should be binding on the decision-maker to reply to such queries. If we cannot ensure this in a democracy, there is some thing wrong.

But just making these provisions is not sufficient. We cannot forget our past, which was not conducive to such paradigm. Now, we need to have systematic steps to build the public capability to understand the issues, to carry out objective analysis of situation, and then to intervene. Even after this process, there are going to be large sections of society that will be left out. These section are fighting to secure their daily meals and do not have time and resources to devote for these issues. We need to make provisions to help them articulate their concerns. For this purpose, the US has a separate 'Office of Public Advocate'. Only mandate of this office, is to intervene on the behalf of sections of society that have not been represented in the regulatory processes.

Implementing these principles, and setting up capable institutions for this task is must if we want to minimise the abuse of power by the authority.

To summarise; we wish to point out that restructuring involves several complex issues. We need to pay close attention to all of these before making structural and legal changes. We can learn a lot from the international experience, but cannot totally depend on the consultants and advisors supported by financiers. We need to remember that our challenges are not limited to the immediate problems relating to finances and efficiency but also include several long term issues. Lastly, we need to ensure that the new structures will be robust and not sabotage-prone.

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# PART TWO

## Regulation in the Orissa model : Promises and lacunae

The Orissa model of power sector restructuring is a major effort by the state government, in close association with the World Bank, to address the ills besetting the Indian Power Sector. In this model, a separate body, called Regulatory Commission (RC) is created.
Many responsibilities and powers vested earlier in the state government have been delegated to the RC. For example, the RC has to ensure and promote "efficiency, economy and safety" in the power generation, transmission and distribution business. RC has to regulate generation, transmission and distribution of power, purchase of power, the service conditions, and quality of supply. RC has the authority to grant licences ( for G , T & D), regulate tariffs, promote competition, etc. Thus, the RC is vested with sufficient powers and authorities, on behalf of the society, to protect the larger public interest and, at the same time, ensure long term health of the power sector.

Looking back, the Indian Electricity Act 1910 and Electricity Supply Act 1948, envisaged nearly the similar powers and responsibilities for the state government. But, over the years, we have seen that a coalition of vested interests from a small section of society, such as consumers, politicians, bureaucracy and the SEB management, have succeeded in taking control of the system. Often, decisions are made and implemented, with an objective of furthering personal and partisan political goals rather than to fulfil larger social goals or to ensure long term health of the power sector. In such a situation, if we are creating an independent body separately from the state government ( which is expected to be accountable to the public through legislature and has to face elections at the most every five years), we need to be careful about a) Authority b) Autonomy and c) Accountability of the new institution. Here, we will briefly discuss the salient features of the Orissa model in the context of authority and autonomy of the RC, but our main objective is to present a critical view of the Accountability procedures of the RC.

In terms of Autonomy and Authority of RC, the Orissa RC structure certainly has some improvements over the present state of affairs.

- The Orissa model has very strict conditions to ensure that members of RC do not have "Conflict of Interest" while performing their duties. The RC members or their close family members can not have any direct or indirect financial interest in any business activity related to the power sector, neither can they hold shares of power companies. The RC members can not be re-appointed on the RC, nor can they take any government or even private job related to the power sector after retirement.
- The Orissa model also has stringent provisions to prevent arbitrary selection of RC members or termination of their services. The members are selected by a "Selection Committee" consisting of i) Secretary of Power, Orissa, ii) Chairman, Public Service Commission, Orissa, and iii) Chairman of the Central Electricity Authority or his representative. The committee would suggest two names for each vacancy and the state government will have to appoint any one person suggested by the Committee on the RC. After appointments, the members can not be removed for five years. The remuneration and allowances of the Chairman and the members of RC can not be inferior to that of the Chairman and the members of the Orissa Public Service Commission respectively. RC member can not be removed until a sitting high court judge (nominated by the Chief Justice) conducts an investigation and submits his report.
- The RC has powers of Civil Court, under the Code of Civil Procedure, 1908, for trying a suit. It also has same powers as of Inspector under section 240 and 240 -A of the Companies Act to conduct search and seizure operations for collection of information and evidence, etc. The orders of RC have to be enforced by law as a decree passed by a Civil court. These provisions would greatly enhance RC's ability to collect information, evidence and enforce it's decisions.

Thus, the provisions are far improved, as they enable the RC to work in an independent manner and without any pressure and as they provide sufficient powers to enforce it's decisions. Similarly, there are other improvements in the Orissa model, which are listed below :

- All decisions, directions, and orders of the RC will be in writing and supported with reasons. Copies of these decisions will be available to public at a reasonable cost.
- RC has the authority to grant license, decide tariff, allow new capacity and investments, etc. Moreover, it has the responsibility to give decisions in a time-bound manner. This can bring in the much-needed clarity for approvals and reduce delays in project sanctioning or tariff hike.
- State government is allowed to give only policy directives under the Act, and if a dispute arises about the "policy nature" of government directives, then CEA will act as an arbitrator and it's decision will be final.
- State government can provide subsidies over and above those sanctioned by RC but it will have to compensate utilities for this

However, there are certain problems in the regulatory aspect of the Orissa model, such as,
- The decisions of the commission are to be taken by majority, but it is not clear what will happen if only two regulators are on the commission and both differ in opinion.
- RC has to take approval of the Government for staff and budget, this can affect it's autonomy and functioning.
- State government has the authority to lay down terms and conditions while providing subventions for compensating subsidy to utilities. The government may use such provisions to delay compensation to utilities.
- All members of the RC are expected to be experts in any of the following field; Generation, Transmission, Distribution, Economics, Accounts, Finance, Law and Administration. With such professional experts on RC, though it can ensure techno-economicaly rational decisions, there are chances that the RC's functioning will be more and more technical and social, political and environmental concerns may not get the attention that they deserve.

Thus, there are many provisions in Orissa model regarding the RC that are advantageous. This will certainly help in simplifying the decision making process and decisions can be made quickly and without political dependence and interference. It must be remembered that RC has been created and given such responsibilities, authority, and autonomy to act as a custodian of the public interest, and to protect societal interests.

Earlier, similar powers and autonomy was residing with the state government. The government was expected to be accountable to the people through the legislature, which was required to seek public mandate every five years. But, as the present crisis demonstrates, such approach has proved ineffective in ensuring accountability of the government to people. Thus, it becomes crucial to analyse how the accountability of RC is ensured in the Orissa model.

The Orissa Model, in RC's context, has following main features. The Orissa Electricity Reform Act was passed in 1995. The Act created Orissa Electricity Regulatory Commission. The Act has certain broad provisions regarding the functioning of the RC. It is mandatory for RC to follow these provisions. But, the RC was empowered to make detail procedures and mechanisms for functioning of RC. In this regard, the RC has prepared "Conduct of Business Regulations"(CBR). The Act mandates that such Regulations should be laid before the Assembly, and, if Assembly modifies these Regulations, then the modified Regulations would apply. The CBR were notified (after assembly had approved it) on 28th November 1996. The CBR, provides for two routes for decisions i.e. the Proceedings route and the Administrative route. The "Proceedings" route would apply to matters for which the Act requires the RC to conduct hearing with affected parties. For all other matters, RC has the discretion to take decisions either through " Proceedings" or "Administrative" route. For decisions to be made through the "Proceedings" route, the RC has prepared an elaborate process, involving information sharing and hearings. For decisions to be made through "Administrative" route there is no specific procedure and the matter could be settled through meetings of the members or officers authorised.

To analyse, the accountability procedures in the Orissa model, we use an example of how a tariff amendment case would progress, through three different decision making routes viz. the "Proceedings" route, "Administrative" route and the provisions of the OER Act.

**Example of tariff amendment case decided through "Proceedings"**

The Conduct of Business Regulations has several provisions outlining how the RC should function. Though the CBR does not break up these procedures in different stages, we have separated the procedures in different stages for ease of explanation.

<u>Stage I : Filling of Application and Issue of Notice</u>

The Act allows utilities for tariff hike only once in a year.

When the utility desires to increase tariff, it has to file an application with the RC. The application format and the information to be submitted by the utility is prescribed by the RC. Utility has to file information such as : Present and Proposed Tariff, Expected gross revenue (from present as well as proposed tariff), Expected expenses and Capital base, Expected Return on Equity and reasons for that, proposed cross subsidy, how this subsidy will be distributed, how the proposed tariff hike will affect different consumer sections, etc. The Commission can ask utility to submit additional information.

When the commission receives all information, it orders utility to publish notice, in One English and One Oria daily, for two consecutive days. The notice invites comments and objections on the proposed tariff changes, to be filed with the commission within 30 days.

<u>Stage II :Information Sharing and Filing of Objections</u>

The Commission allows public to review and make copies of application and other information filed by the utility, from RC's office.

Public files objections and comments with the commission and also mentions whether they desire to be heard personally.

Copies of comments filed by the public are available to the utility, and utility can reply to the objections. All objectors have the access to utility's replies and they can send rejoinders. Such information exchange can continue till 30 days period of filing objections.

If the commission desires, it can appoint consultants, to study various issues, such as, to examine books of accounts of utility, to access the potential for T & D loss reduction or end use efficiency improvement, to access billing / recovery situation etc.

Consultant's reports can be made available to the public and the public can comment on it.

In the mean while, the RC may also consult the Commission Advisory Committee.

<u>Stage III : Public Hearing and Cross Questioning</u>

RC decides to hold a "public hearing" and announces dates for public hearing. During "public hearing", the RC allows the public to raise questions and forces utility to answer these questions.

Stage IV : Judgement and implementation of order

Based on information available with the commission, in the form of pleadings, consultant's reports and public hearings the commission makes decision by majority.

The judgement has important information such as :

Tariff that was proposed by the utility
Objections raised by public
Commission's views on these objections, whether RC accepts or rejects these objections, along with it's reasons
Tariff approved by the RC and reasons for that
Profits allowed for the utility, along with the assumptions made for calculations and any conditions imposed by the RC

If a member of the RC does not agree with the judgement, then a dissent note giving reason for such disagreement has to attached to the judgement.

After RC delivers judgement, it is communicated to the utility and utility abides by the judgement. Copies of RC's judgement are available for public at a reasonable cost, and all records of the "Proceedings" are open for public inspection. The whole process is complete within 90 days from submission of all information by the utility.

**Advantages of this process :**

Such an elaborate decision making process has certain advantages over the existing process. First, the process is t**ransparent.** The process allows public access to all the records of the case including financial calculations provided by the utility, consultants reports etc. Secondly, the process allows **public intervention.** In this process, public can ask questions to utility as well RC, and they will have to answer these questions. Public can point out discrepancies in the calculation or positions by different factors. They can provide alternatives, in order to say minimise the impact of tariff hike or to reduce costs etc.

Such a process can avoid gross misuse of powers, witnessed over the last few years by authorities in the present structure. For example, it will be nearly impossible, to arbitrarily inflate the demand forecasts to accommodate some favoured project such as Enron, or the utilities will be forced to predict impacts of Power Purchase Agreements on tariff and consumers, and in doing so utilities can not undertake misleading calculation, such as allowing increase in O & M expenses by 10 % p.a. in dollars, implying that by 10th year O & M expenses would be 10 -14 % of the capital costs !

**Discretionary power of RC : Limiting the Transparency and Accountability**
Though the above mentioned decision making process is quite elaborate and eliminates many shortcomings in the present structure, the new structure in not robust and is highly "sabotage-prone". The RC has wide discretionary powers in following the above mentioned decision making process, and many of the critical provisions are not mandatory for the RC to follow. RC has discretionary powers at following levels :

a) Discretion of applying provisions of "Proceedings"
b) Discretion of deciding matters "Administratively" and not through "Proceedings"
c) Discretion of not following the "Conduct of business regulations"

For example, as per the "CBR Proceedings", RC may decide that the public can not have access to tariff application or the allied information submitted by the utility or RC may ask public to collect such information from utility itself. RC may also reduce the notice period from 30 days to even 10 days, within which objections can be filed. Moreover, RC may decide not to hold public hearings. Thus, many of the good provisions related to transparency and public intervention can be by-passed even if RC decides to settle issues such as tariff hike through "proceedings" route.

At the second level, RC has the discretion to settle matters "Administratively" and not through "Proceedings". For "Administratively" settled matters, even as per "CBR" no public notice or sharing of information is required. Such matters can be decided by internal meeting of RC members. The "CBR" at least mentions, that matters such as "Licence", "Amendment of Licence" and "Tariff" may be settled through "Proceedings" as far as applicable. But the "CBR" does not even mention that other important matters such as Approval of Demand Forecast, Approval of Power Purchase Agreement, Approval of investment schemes, may be settled through "Proceedings" As a result most of these matters will be settled "Administratively", resulting in non-transparent decisions. If such important matters, on which more than 60 % of the cost of power supply depends, and which have the potential to affect financial viability of the whole sector, are decided in non-transparent manner, then the process of tariff adjustment, however elaborate or mandatory it may be, will have little meaning in real terms.

To illustrate the discretionary powers enjoyed by the RC, a quote from first ever tariff judgement of the RC and one clause in "CBR" is reproduced below.

Quote from tariff judgement of March 97
" Hearing was neither a per-requisite nor was it contemplated in the OER Act. The Act at section 10 (5) enabled the commission to consult affected groups "*to the extent the Commission considers appropriate*" ...."

"CBR" Regulation no. 134
134. The Commission shall have the power, for reasons to be recorded in writing and with notice to the affected parties, dispense with the requirements of any of the Regulations in a specific case or cases subject to such terms and conditions as may be specified.

Thus it can be seen that **only** the provisions of OER Act are binding and mandatory on the RC. Hence, it is essential to evaluate the accountability procedures in the Act and how decisions will be taken within the framework of Act. To elaborate on this aspect, we again use an example of tariff amendment case.

Stage I : Filling of Application and Issue of Notice

Under the Act, if a utility desires to amend a tariff, it has to file an application with the RC 90 days before the expected date of tariff hike. The application should be in the format prescribed by the RC and supported by the information requested by RC.

A major lacuna in the Act is that it does not make it mandatory for the RC to issue a notice and invite objections. Provisions similar to Stage II :Information Sharing and filing of objections, and Stage III : Public Hearing and cross questioning are not even included in the Act and the process directly goes to stage IV.

Stage IV : Judgement and implementation of order

Based on information available with the commission, the commission takes decision by majority. As per the Act, the judgement should be supported by reasons, and should be available to public at a cost.

After RC delivers judgement, it is communicated to the utility and utility abides by the judgement. The process is to be completed within 90 days from submission of all information by the utility.

Thus, it can be seen that, most of the desirable provisions of the procedure elaborated before are not mandatory on the RC and the mandatory provisions are not far different than present provisions in terms of transparency and accountability except that RC has to give decision in 90 days, and the decisions will be available to the public. This is the most glaring shortcoming of the reform model. One of the basic reason for the present sorry state of power sector is the "lack of direct public accountability" of the decision-makers and "lack of transparency". Earlier we had vested all powers and responsibilities with the government and depended on "discretion of Government" for protecting larger pubic interest. Now, are we repeating the same mistake, by vesting the RC with huge powers and responsibilities, and relying on the "discretion of Regulators" to protect larger public interest ? In short, it may be said that the Orissa model, as conceived today, may not offer improvements in the longer term and vested interests may succeed in "sabotaging" the system. In such situation mistakes such as Enron may repeat.

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# Part Three
# Some Thoughts on the Process of the Restructuring and A Proposal

## Need for a Wider Debate

The previous two presentations pointed out dangers in the path taken by the current privatisation efforts. As explained, there are various problems with the restructuring models that are currently proposed. It is also pointed out that structures, procedures and mechanisms in these models, like those in the earlier model, are also sabotage-prone.

It must be understood that apart from the shortcomings pointed out in the previous presentations, there could be many other problems and lacunae in the proposed models. Similarly many more suggestions addressing the problems may come to the fore. For example, there could be suggestions about incorporating techniques such as integrated resource planning, demand side management, renewable energy sources, and distributed utilities. There could be suggestions to further study the international experiences on privatisation in order to identify the possible pitfalls in the privatisation path and the necessary precautions.

It is necessary that these lacunae, pitfalls, and shortcomings are studied and preparations to address them are made before we embark on the path. In order to widen the coverage of this effort, it would be helpful to involve various other groups and sections in the society in this dialogue. These should especially include those sections which carry certain apprehensions about the restructuring process. These may include independent researchers, labour unions, movements of project affected people (PAPs), environmental organisations, consumers' organisations, etc. Their concerns need to be given a patient hearing and their useful suggestions need to be accommodated. This certainly would require a wider debate, a series of discussions, and even public hearings.

Before effecting such a major structural change in its economy there is a need to evolve a political consensus in the country. Evolving political consensus involves education and awareness efforts to dispel the mis-information and myths, convincing the sections who have apprehensions about the distribution of costs and benefits of the process, and motivating some sections to bear the unavoidable costs. There are no short-cuts to this process. Measures such as advertisement campaigns may, at best, show some short-term and superficial results.

**Dangers of Rushing the Reforms Through**

The unavoidable part of such a detailed and elaborate process is the long time period required. And this is the main problematic part of the process. There are some serious and genuine concerns in this regard which must be addressed. But, on the other side, it must also be understood that there are many serious implications of rushing the reform through in a short time.

First, the haste may result in serious weaknesses in the legal provisions, structures and procedures in the new model. As explained earlier, such deficiencies and weaknesses in the previous model have proved disastrous. Similarly, the deficiencies and weaknesses in the new structures and mechanisms will make them susceptible to the efforts of the vested interests to sabotage and high-jack them.

Second, the haste may result in lack of understating of the problems and complications the new model may entail. For example: the businesses may try to create a variety of barriers to effective competition in the sector such as cross holding of companies. These problems and complications may prove very costly in the long-term, at times, wiping out the benefits of the restructuring.

Finally, there may be serious opposition from certain sections of populations such as labour unions, consumers' organisations, organised lobbies of the agricultural customers, movements of affected people, etc. These sections have considerable economic and political powers and organisational strengths. It will not be easy to circumvent the resistance of these organisations and sections of populations. Some of them have proved their "nuisance" capacity in the past.

In absence of systematic efforts to spread awareness and information and in the absence of honest exercises in building consensus, these sections are bound to feel cheated and react, especially after the process starts and the its implications become evident. In case there is sharp rise in tariffs even due to outside factors (such as devaluation of rupee), the situation may turn explosive creating serious threat to the law and order situation. Apart from the political instability, the various other costs of such reactions and the resulting economic losses could be very high. In this circumstances, the governments and the politicians supporting the restructuring process until now may find themselves in very awkward situations. This may prompt them to resort to apparently irrational and drastic, but politically convenient measures.

To sum up, if the effort is made to rush the reforms through, we think, any of these problems may put the sector back into the deep troubles. Nothing can be done at that stage but to repent over the lost opportunity.

**Dealing with the Urgent Problems**

Coming back to the problems involved in the long-term process addressing the fundamental issues, there could be two major concerns in this regard. First, the Indian power sector is beset with so many and so urgent and critical problems that it cannot wait for the long-duration process to complete, however justified it may be. This is a genuine concern and merits a solution. The solution of this dilemma could be found in the separation of the urgent issues from the fundamental issues. It will also involve efforts to find out urgent solutions for the urgent problems while the long-term process to resolve the fundamental issues continues simultaneously.

To elaborate on this solution, point the urgent problems to be handled are: near-bankruptcy situation of SEBs, the growing power shortages, interference of partisan and vested interests, etc. The urgent measures to address these problems have been discussed by many committees and experts in detail. They could be summarised as: tariff rationalisation, compulsory metering, complete autonomy to SEBs, incentive and disincentive schemes for SEB employees, transparency and accountability measures, etc.

**The Political Dimension**

The second concern in this regard is over losing the golden opportunity presented by the peculiar political situation. It is being looked as a political window which has opened due to the concurrence of many political and economic factors at the national as well as international level. It is feared that with the change in

economic and political situations, both of which are precarious and volatile, the window may be closed any time. This is again a genuine concern.

In this regard, we suggest that strategic use of the historic opportunity provided by this window could be made to consolidate the long-term process without sacrificing on the urgent issues. While as suggested earlier, the actions to deal with the urgent issues are taken immediately, a rigorous, thorough, and sound process of addressing fundamental issues may be unleashed in such a manner that it will be politically difficult to roll it back. The most important action in this regard is creating a wider coalition of political interest who are convinced about the merits of the restructuring and who will continue to support it even against the odds described earlier. The key is turning the foes into friends. The only route available for this is to involve all the sections of the civil society in the restructuring process and especially those which are apprehensive. This could done by instituting the measures for transparency and direct public accountability and by opening the doors for their participation. This should be done at all levels and at every stage of the process. And, above all, it should be guanine and honest.

**A Proposal for the Process**

Following is the outline of the proposal for such a process:

As the first step, the state government appoints an independent selection committee to initiate the restructuring process. The composition of the selection committee should be such that it will have a wider acceptance.

The selection committee is entrusted with three critical tasks:

- appointing an Interim Tariff Commission (ITC) which will along with tariff rationalisation, be also entrusted with the task of carrying out the other urgent measures;
- reconstituting the governing boards of the SEBs with adequate protection to ensure complete autonomy; and
- constituting a Power Sector Restructuring Commission (PSRC) that will oversee the long-term process of dealing with the fundamental issues.

The selection committee will publish the list of chosen candidates and invite suggestions, recommendations, and objections from the public and civil society groups. Considering the suggestions, the Selection Committee will finalise a panel for appointments on each body. From these panels, the state government will make the final choice.

The Interim Tariff Commission and the restructured SEB will start working on resolving the urgent issues by instituting the desired urgent structural changes and implementing the necessary urgent decisions. These may include: creating incentive and disincentive schemes for employees, instituting profit centres, etc. This will give us the badly-needed breathing space for providing careful attention to the long-term process for addressing fundamental issues.

On the other track, the Power Sector Restructuring Commission will initiate the process of addressing the fundamental issues. As the first step, it will initiate the process of constituting the office of the public advocate. The public advocate will work to protect the interests of the disadvantaged sections of the population and to protect the public interest in general. Then, at the second stage, the PSRC will work on evolving a comprehensive and detailed policy document which deals with all the issues involved in the restructuring. The third stage will be creating the State Electricity Regulatory Commission (SERC) and restructuring the SEB according to the norms established in the policy document. The SERC will oversee the process of the planning of the future path of the state electricity sector.

The PSRC will complete these three stages by interacting with the public advocate and other civil society actors to ensure transparency, accountability and participation at every stage. This will be done through elaborate exercises such as inviting suggestions and conducting public hearings. The PSRC will also formulate the Civil Society Capability Building Programme (CSCBP) in the last phase.