

MINUTES OF THE GOVERNING BODY MEETING

OF

FORUM OF INDIAN REGULATORS (FOIR)

Venue : Golden Land Mark Resort
No.45/A, KRS Road, Metagalli, Mysore
KARNATAKA

Date : 28th January, 2011

List of Participants : **At Annexure-I (enclosed)**

Shri S.K. Chatterjee, Deputy Chief, Regulatory Affairs, Central Electricity Regulatory Commission (CERC) welcomed all the members present at the Governing Body Meeting. This was followed by a presentation by Shri S.K. Chatterjee on the recommendations and comments received from the members of the Working Group on “**Recommending measures to expedite implementation of the recommendations of the Administrative Reforms Commission-II**”. After discussions, the members evolved the following consensus on the recommendations of the Working Group:

Recommendations of ARC-II: *Setting up of a Regulator should be preceded by a detailed review to decide whether the policy regime in the concerned sector is such that a Regulator would be better placed to deliver the policy objectives of the Department concerned.*

Consensus: It was finalized that the review should not be left to the Department/Ministry concerned alone but it should be undertaken by a broad based group. Such a group should represent diverse interests involved. The review should result in the outline of the proposed Regulatory Body. The line Ministry should then process the implementation of the concept so evolved.

Recommendations of ARC-II: *In addition to the statutory framework which underpins the interface between the Government and the Regulatory Body, each Ministry/Department should evolve a ‘Management Statement’ outlining the objectives and roles of each Regulator and the guidelines governing their interaction with the Government. This would guide both the Government Department and the Regulator.*

Consensus:

- i. The Management Statement should be like a vision statement and should include the roles of the Government as well as the Regulators in the development of the sector. It should chart out the measures to be taken by the Government and the Regulators towards furthering of reforms and promoting investment in the respective sector. A Management Statement should not be drawn on the lines of a MoU between an Administrative Ministry and a Public Sector Undertaking, and should incorporate the stakeholder expectations as well.
- ii. The concerned Regulatory Body should be mandatorily consulted during the process of policy formulation. Such a process has been provided in the Electricity Act.
- iii. A Management Statement should be jointly evolved by the Secretary of the Ministry concerned and the Head of the Regulatory Body. Functional level regular interaction (between Secretary of the Regulatory Body and the Joint Secretary of the Ministry concerned) should be institutionalized to exchange the latest developments and emerging issues.
- iv. Informal interaction between the Regulatory Body and the Minister Incharge would also be desirable.

Recommendations of ARC-II: *There is need for greater uniformity in the terms of appointment, tenure and removal of various Regulatory Authorities considering these have been set up with broadly similar objectives and functions and should enjoy the same degree of autonomy. The initial process of appointment of Chairman and Board Members should be transparent, credible and fair.*

The appointment of the Chairman and Board Members for all such Regulatory Authorities should be done by the Union/State Governments after an initial screening and recommendation of a panel of names by the Selection Committee. The composition of the Selection Committee should be defined in the respective Acts and may broadly follow the pattern laid down in the Electricity Regulatory Commission Act.

Consensus: A broad based Selection Committee as provided for CERC in the Electricity Act, 2003 and also recommended by the Sixth Pay Commission should be adopted in all the cases, including the state level Regulatory Bodies. For the selection of a Member of a Regulatory Authority, Chairperson of that Authority may be consulted on lines of the practice followed by Public Enterprises Selection Board (PESB).

Recommendations of ARC-II: *The tenure of the Chairmen and Board Members could also be made uniform preferably three years or 65 years of age whichever is earlier.*

Consensus:

- i. The length of tenure and the upper age limit for retirement should be same for members with judicial background and other members. A five-year tenure with the age limit of 67 years may be adopted in all cases. There should be no provision of re-appointment in the same Regulatory Body with the objective of ensuring autonomy and independence.
- ii. The restriction on post-retirement job should be according to the provisions of the Competition Commission of India (CCI) Act and this restriction should be for one year only. There should be no discretion of relaxing this restriction with government approval. No government appointment should be permitted within this one year.

Recommendations of ARC-II: *Legal provisions regarding removal of Board Members should be made uniform while at the same time ensuring sufficient safeguards against arbitrary removal. This could be achieved by allowing removal by the Union Government only on fulfillment of certain conditions as laid down in Section 6 of IRDA Act with the additional safeguard that a removal for abuse of power shall be preceded by an enquiry and consultation with Union Public Service Commission (UPSC).*

Consensus: Consultation with UPSC is not relevant. The inquiry in any case should be through an independent authority. For example, Chairperson, Appellate Tribunal is the inquiring authority in complaints against Chairperson/Members of the Electricity Regulatory

Commissions. On lines of the provisions of the Electricity Act, 2003, the procedure for inquiry should be laid down through the rules to be framed by the line Ministry.

Recommendations of ARC-II: *Parliamentary oversight of Regulators should be ensured through the respective Departmentally Related Standing Parliamentary Committees.*

Consensus:

- i. On regulatory issues, a separate Parliamentary Committee should exercise oversight.
- ii. The interaction between the Parliamentary Committee and the Regulator should be direct and not through the Ministry and neither in the presence of the officers of the Ministry.
- iii. The practice of seeking comments of the Regulators through Ministry needs to be discontinued.
- iv. The Parliamentary Committees should not discuss individual cases.

Recommendations of ARC-II: *A body of reputed outside experts should propose guidelines for periodic evaluation of the independent Regulators. Based on these guidelines, Government in consultation with respective Departmentally Related Standing Committee of the Parliament should fix the principles on which the Regulators should be evaluated. The annual reports of the Regulators should include a report on their performance in the context of these principles. This report should be referred to the respective Parliamentary Committee for discussion.*

Each statute creating a Regulator should include a provision for an impact assessment periodically by an external agency. Once the objective of creating a level playing field is achieved, the intervention of the Regulators could be reduced in a phased manner ultimately leading either to their abolition or to convergence with other Regulators.

Consensus:

- i. The model of NARUC may be used for assessment of the performance of Regulators. Peer review through a body like FOIR may also be explored.
- ii. A presentation on the annual report of the Regulatory Body should be made by the Chairman of the Regulatory Body to the Parliamentary Committee.

Recommendations of ARC-II: *There is need to achieve greater uniformity in the structure of Regulators. The existing coordination mechanisms such as the Committee of Secretaries/Cabinet committees, assisted Secretary (Coordination) could easily ensure that the institutional framework for all Regulators follow, by and large, a uniform pattern.*

Consensus: In order to ensure autonomy to the Regulators, it was decided that uniform guidelines in the following matters may be framed afresh by the Cabinet Secretariat after taking into account the above suggestions of bodies like FOIR.

- i. The pay and other emoluments of the Regulators including the provision of house and transport in major cities.
- ii. On lines of the recommendations of the Sixth Pay Commission, there should be periodic revision of salary of Chairperson and Members and automatic half yearly revision of the consolidated pay should be allowed after factoring in the percentage increase in the Dearness Allowance extended to government employees at the end of every sixth month.
- iii. Pay structure for staff.
- iv. Financial autonomy through Regulatory funds and appropriate power to levy fees.
- v. Procedure for approval of the government to proposals of foreign travel by the Regulators.
- vi. The modalities of interaction with Comptroller and Auditor General (CAG) and Central Vigilance Commission (CVC).

Regarding the interface with CAG, the Working Group agreed that the provision of Section 40 of the PNGRB Act should be adopted. This Section makes a specific exclusion to the effect that CAG would not audit the regulatory decision in individual cases which are appealable or the Regulations which are in nature of subordinate legislation. A similar formulation has been suggested in the model Regulatory Bill circulated by the Planning Commission.

The Meeting ended with a vote of thanks to the Chair.

ANNEXURE – I

**LIST OF PARTICIPANTS ATTENDED THE GOVERNING BODY MEETING
OF FORUM OF INDIAN REGULATORS (FOIR) HELD ON 28TH JANUARY, 2011
AT GOLDEN LAND MARK RESORT
NO. 45/A, KRS ROAD, METAGALLI, MYSORE (KARNATAKA)**

| S. No. | NAME | DESIGNATION & ORG. |
|---------------|------------------------|---|
| 1 | Dr. Pramod Deo | Chairperson, CERC & Hony. Chairman, FOIR. |
| 2 | Shri L. Mansingh | Chairperson, PNGRB & Hony. Vice-Chairman, FOIR. |
| 3 | Shri Jayanta Barkakati | Chairperson, AERC & Hony. Vice-Chairman, FOIR. |
| 4 | Shri S. Jayaraman | Member, CERC & Hony. Secretary, FOIR |
| 5 | Shri K. Venugopal | Member, TNERC & Hony. Member, FOIR. |
| 6 | Shri Satpal Singh Pall | Member, PSERC & Hony. Member, FOIR. |
| 7 | Shri M.P. Vijayakumar | Member & Representative, AERA |
| 8 | Shri S.K. Chatterjee | Deputy Chief (Regulatory Affairs), CERC |
| 9 | Ms. Neerja Verma | Assistant Secretary (FOR) |