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Governing Power, S. L. Rao - book review by R. Holton

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BOOK REVIEW

Reviewed by Raymond Holton

GOVERNING POWER

S. L. Rao

1. Introduction

The title, “*Governing Power*”, a historical and legal analysis of the regulation of India’s power sector, is authored by S. L. Rao, revered as the father of India’s Central Electricity Regulatory Authority (CERC). The book’s title elicits two distinct responses.

To many stakeholders in India’s power sector over the past decade, *Governing Power* is literally associated with a governor, the mechanical brake, which seemingly has been applied to reforms needed to provide the power needed by India’s population of 1.5 billion and its 10% GDP growth. This view, even when limited only to the past decade after the Government of India (GoI) first announced to the world power industry the implementation of unprecedented policy reforms, is seen as a period characterized by missed opportunities, false starts, retrenchments and delays in the development of India’s power sector, all politically driven.

To these stakeholders that make up the commercial players in the power industry, consisting primarily of investors and developers, including Indian industrial companies that have supplanted failed international joint ventures, a governor – the mechanical attachment used for automatic control of speed - is exactly the image conjured up by the failures of GoI to make good its promise to overhaul the power sector in order to provide the people and industry of India with adequate access to electricity.

To commercially motivated stakeholders, the brake on progress is evidenced by the Dabhol debacle, initiated by a PPA signed in one day between a non-creditworthy State Electricity Board (SEB) and a company that is now notoriously bankrupt, or the 250 Letters of Intent supporting ill-conceived IPPs that were terminated overnight in 1995, much less the continuing load shedding and shortfalls in meeting power demand.¹

More established stakeholders, within GoI or the public sector undertakings (PSUs), compare today’s power sector to its meager beginnings of the original installed capacity system inherited by the British in 1947, and view the past ten years as a decade marked by huge progress, especially compared to other countries. In a relatively short time, these stakeholders point out that India has successfully gone through industry shakeouts that have been experienced world wide and today there is an unprecedented public confidence

¹ Despite power additions, estimates of real market demand is constrained and underestimated demand remains unmet, as shown by daily news stories that continue to dominate the headlines: (“*Power Transmission Hits Power-Starved Northern States*” (The Economic Times, September 1, 2004), “*Power Shortfall Upsets Industry*” (Business Standard, September 13, 2004) and “*Bihar Power Crisis to Blow Over Soon, Says Minister*” (Financial Express, September 27, 2004). Also see the website of the Central Electricity Authority (<http://CEA.nic.in>), which provides power sector data showing, for example, that for all India (April-June 2004) the peak demand was 85,911 MW and peak met was 76,246 MW, or a deficit of 9,665 MW.

in power sector investments, as evidenced by the aggressive expansion plans of India's largest industrial groups (Reliance Energy, Tata Power) in all aspects of power and the oversubscribed public investments through IPOs in the PSUs, such as National Thermal Power Corporation (NTPC), the Indian Oil Corporation (IOC), the Power Trading Corporation (PTC) and, soon, Power Grid Corporation of India (PGCIL). These more optimistic stakeholders insist that GoI is well on its way to achieving the target of India's 10th five year plan (2000 – 2005) of 41,000 MW, citing the installation of 8,000 MW and 21,000 MW in projects under execution, with the 11th Plan promise of 60,000 MW in generation additions.

Whether being a cynic or optimist, with “*Governing Power*” there is now support for assessing the power sector using the true meaning of governance – to rationally direct the making and regulation of policy. This is largely because stakeholders, regardless of their political and economic persuasions, have a new statutory framework that has replaced the electricity laws that have regulated India's power sector, before and since India's Independence²: India's Electricity Act, 2003 (“EA, 2003”).³

While the EA, 2003 has been implemented over the past eighteen months through a considerable number of threshold Decisions, Orders, Discussion & Concept Papers by CERC and several State Electricity Regulatory Commissions (SERCs), EA, 2003 is presently in the throes of considerable public debate. The debate is joined by progressive private interests such as private developers of generation, distribution and transmission facilities that argue CERC hasn't adequately implemented the EA, 2003 to dismantle the monopolies of SEBs and PSUs. Opposition in this debate are the conservative, vested interests, dominated by trade unions and public servants, arguing the EA, 2003 is an unnecessary and radical rejection of a proven, conventional regulatory approach that has achieved significant gains in generation additions and reducing losses of transmission and distribution systems. In the end, the real question is whether not the India's power sector will continue to be driven by politics and secretive decisions made at the Central and State levels, regardless of statutory reforms.

With the regulatory overhaul mandated by EA, 2003, it is asset for Prof. Rao to recount through “*Governing Power*” for everyone interested and affected by the power sector of India the history of electricity regulation and his perspective on the likelihood that future

² Prior to the Electricity Act, 2003 (36 of 2003, effective June 10, 2003), the power sector of India was regulated by three statutes, much amended over the years: *The Indian Electricity Act, 1910*, which provided the basic framework for electric supply industry in India (e.g. , growth through private licensees with license provided by state government; provision for license for supply of electricity in a specified area; legal framework for laying down of wires, and other works; and provision for laying down relationship between licensee and consumer. This was supplemented by *The Electricity (Supply) Act, 1948*, which mandated creation of SEBs (e.g. established the need for the state to step in (through SEBs) to extend electrification (so far limited to cities) all across India and *The Electricity Regulatory Commission Act, 1998*, which set up CERC/SERC with powers to determine tariffs, constituted SERC option for states and distanced government from tariff setting process.

³ See *India's Electricity Act 2003 – Implications for Regional Electricity Trade*, a report prepared by Nexant Inc. for USAID under the South Asia Regional Initiative program, downloadable at www.sari-energy.org.

reforms will be implemented more effectively through a regulatory process that truly provides public participation.⁴

II. *Governing Power*

The 390 pages of main text and 85 pages of the 7 appendices of *Governing Power* provide the first full overview and analysis of India's power sector.⁵ Each Chapter includes an abstract and ends with a comprehensive but selective and up-to-date bibliography for gaining a more intensive understanding.

This scholarly approach is much needed. Despite the importance and constant debate over the power sector, most information is communicated in India through political statements carried daily in newspaper stories (many of which are planted) and power point presentations given at the many conferences (which number up to six a month, throughout the year).

Indeed, this is the basis of the introductory theme held out by Prof. Rao's book, when he characterizes the differences between the old and new styles of regulation, the old style being

“decision-making by bureaucrats and ministers in a closed environment (with) documents and information used in the process are kept secret”, and the hope of the emergence of a new style that is “expected to be open, fully consultative, transparent ... with reasons given for all decisions including responses to any opposition or alternative suggestions” (at 2).

In support of promoting the “new-style” of regulation, Prof. Rao sets out in ten chapters the underpinnings of independent electricity regulation as the proper basis for policy development and implementation. Chapter 2 examines the definitions, roles and limits of regulation, including providing reference to the legislative experience of Chile. By addressing these basics, Prof. Rao provides the basic understanding of terms that are otherwise misused and commonly tossed around as buzz words to demonstrate political correctness. The meaning of independent regulation is carried forward in Chapter 3 by reviewing its components --- equal treatment, accountability, participation, efficiency, predictability, judicial control and transparency. This is underscored by Prof. Rao drawing upon precedents and applicable examples from the United States, the United

⁴ With the enactment of the EA, 2003, GoI established a Task Force on Power Sector Investments and Reforms, chaired by a member of the Planning Commission and consisting of the Secretary (Power), the Economic Advisor to the Prime Minister, the Revenue Secretary, and Chairman of CEA (four other members were subsequently added). The Task Force was formed to recommend additional measures to promote private investment in the power industry to provide “Power for all by 2012” through reform initiatives such as the Accelerated Power Development Reform Program (APDRP), the Accelerated Generation and Supply Program, the Accelerated Rural Electrification Program, the 50,000 MW Hydroelectric Initiative, and the creation of a national grid. In the context of EA, 2003, the Task Force was further charged with reducing the cost of delivered power by recommending measures for the more effective functioning of SEBs as well as recommending a National Electricity Policy and Electricity Tariff Policy to guide the implementation of the EA, 2003, including proposing various amendments to promote investment in the power sector.

⁵ The same publisher has produced a two-volume book, *Environmental and Energy Laws*, but the section on power was primarily limited to the National Energy Conservation Act.

Kingdom and other countries and relating them to India's regulatory models, including the EA, 2003. By doing so in this Chapter and in Chapter 5, Prof. Rao provides a service that is too often taken for granted. Because of its colonial past, India has retained English as its national and commercial language and was adopted as the basis for many areas of law (unlike, for example Indonesia, where translation places severe limits on expressing many applicable concepts). The lessons learned in industrialized countries, especially the U.S. and EU, are directly applicable and, if not, easily adapted to India's energy policy and regulatory bodies. By drawing upon the successes and failures of international experience, India can take full benefit of all conceivable approaches that have been used to address matters of electricity regulation.

Chapter 4, an abbreviated history of electricity in India, is essential reading, even for practitioners who have spent the past decade or more working in the power sector. Prof. Rao fills in gaps of general knowledge regarding the players and sets up the increased role of CERC and SERCs under the EA, 2003, which is thoroughly examined in Chapter 6. This is followed up by a detailed review of issues confronted by India's electricity regulatory commissions (ERCs) in Chapters 7 and 8. Chapter 9 extends this discussion further by addressing the most confrontational issues --- such as the recently created business of licensed power trading ---facing implementation of EA, 2003, namely, its impact on limiting the diversity of decisions which have been made in the past by individual states, through their ERCs. Prof. Rao's book concludes by addressing issues of accountability, another argument that has been recently manipulated and used as a rationale for backing off from the reforms of the EA, 2003. The last chapter provides a thoughtful review of the previously addressed issues and sets out as "Future Directions" the need for political debate to be guided by the established principles of independent regulation.

III. *Final Comments and Criticisms*

At a recent conference sponsored by USAID regarding "Legislative & Regulatory Change As Basis for Regional Energy Cooperation - India's Electricity Act 2003 and SAPTA", I held up a copy of Prof. Rao's book and encouraged everyone in the room to buy a copy because of its bargain price (Rs. 580, or \$35) and its thoughtful analysis that others have passed over or simply didn't make the effort to write. A couple of conference attendees told me that I was overselling the book. My only response was for them to read it first, and then tell me whether it fulfilled its ambitions.

At the same time, there were several issues that needed more attention, if only because they haven't been adequately addressed by others (e.g., the role of Indian commercial and administrative law as they affect energy regulation). But this is not really a criticism as much as a comment on the paucity of thoughtful debate over the EA, 2003 as politicians and bureaucrats continue to resist making the hard decisions (such as accounting and eventual removal of subsidies and leaving regulation to independent commissions). In response, in May 2004 the newly elected coalition government (the United Progressive Alliance, or UPA) outlined a new policy blueprint, the "National Common Minimum Programme of the Government of India".

With regard to power infrastructure, the policy states:

“The review of the Electricity Act, 2003 will be undertaken in view of the concern expressed by a number of states. (emphasis added) The mandatory date of June 10, 2004 for unbundling and replacing the state electricity boards will be extended. The UPA government also reiterates its commitment to an increased role for private generation of power and more importantly power distribution”.

It's time for Prof. Rao to write another book.