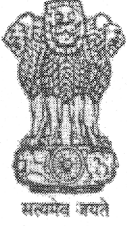


REPORT OF THE EXPERT GROUP

SETTLEMENT OF SEB DUES

MAY, 2001



Montek S. Ahluwalia
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Planning Commission

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Friday, May 11, 2001

Dear Shri Prabhu,

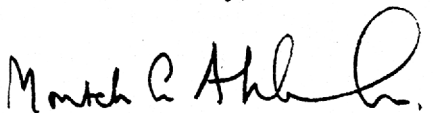
I have great pleasure in submitting the Report of the Expert Group on the settlement of SEB dues.

This Report proposes a one-time settlement linked with an arrangement that would ensure payment of current dues in future. It also entails a commitment to initiate the process of reforms.

A report on the second item of the Terms of Reference i.e., capital restructuring and reforms, will be submitted separately.

With warm regards,

Yours sincerely,


(Montek Singh Ahluwalia)

Hon'ble Shri Suresh Prabhu
Union Minister for Power
New Delhi.

Executive Summary

The Chief Ministers' Conference held in March 2001 discussed the state of the power sector and emphasised the urgency of power sector reform as a necessary requirement for ensuring rapid growth of the economy and for preserving the health of State finances.

2. The Conference noted that the large amount of dues owed by the SEBs to the CPSUs was a major impediment to reforms and resolved to constitute an Expert Group to (a) recommend a one-time settlement of outstanding dues, and (b) recommend a programme for medium-term capital restructuring and reform of the SEBs. The present Expert Group was constituted in pursuance thereof.

3. This report of the Expert Group deals with item (a) above. The Group was informed that the dues of the SEBs have accumulated to Rs.41,473 crore consisting of Rs.25,727 crore of principal and Rs.15,746 crore of interest/surcharge. The Group noted that these dues have arisen not because of some exceptional event, or because of problems that arose in the past and are no longer operative, but because of the continuing non-viability of the current operations of the SEBs. A settlement of past dues alone would not solve the basic problem facing the SEBs; and unless the problem of current unviability is speedily addressed, overdues would mount again.

4. The Group has, therefore, sought to present a scheme for settlement of outstanding dues, linked to a mechanism that would ensure payment of current dues in future. The Group's recommendations include a package of incentives and disincentives linked to commercial discipline and initiation of a process of reforms. The Group recognises that the proposals presented in this Report do not amount to a full-fledged programme of reform and restructuring. This is a complex matter and will be addressed in a report that is being submitted separately. However, the proposals in this Report do establish some linkage between the settlement of dues and the start of a reform process.

5. The main features of the scheme recommended by the Group are as follows:

- For the States participating in the scheme, the Group recommends that 50 per cent of the surcharge/interest on delayed payments be waived. The rest of the dues amounting to the full principal amount as well as the remaining 50 per cent of the interest/surcharge, aggregating

Rs.33,600 crore should be securitised through bonds issued by the respective State Governments. Taking into account additions arising out of conversion of old bonds, as well as incentives for better managed SEBs, to be partly offset by reductions resulting from settlement of disputes, the Group estimates that the total securitisation under this scheme may be about Rs. 35,000 crore.

- The bonds should be issued through the RBI at a tax-free interest rate of 8.5 per cent per annum. The term of the bonds should be structured to achieve a moratorium of 5 years on repayment of principal with the entire principal being repaid between the 6th and 15th year. These bonds should be identical to bonds issued in connection with the market borrowings of State Governments, with the attendant discipline in repayments. The bonds will be subject to lock-in restrictions that will allow release of only 10 per cent of the bonds in the secondary market each year.
- For ensuring timely payment of current dues in future, defaults in current payments for power/fuel should attract a graded reduction in the supply of power from central power stations and in coal supplies. Where such defaults exceed 90 days from the date of billing, the Ministry of Finance should recover these dues through adjustment against releases due to them from the Centre. The Group recognises that such adjustments from the State Governments' accounts are an exceptional measure which should not normally be resorted to, but given the circumstances prevailing in the power sector, such a measure is needed in the interim before longer term efforts to reform bear fruit.
- In order to initiate steps towards reform of the sector, the Group recommends that as part of the scheme, SEBs should accept reform-based performance milestones such as setting up of SERCs, metering of distribution feeders and improvement in revenue realisation. The milestones should be specified in the MOUs to be signed with the Ministry of Power.
- The States should be offered incentives for complying with the scheme. If SEBs do not default on their current dues and adhere to the performance milestones, CPSUs should pay them, during the first four years commencing from 1.4.2001, bi-annual cash incentives equal to 2 per cent of the value of bonds. Further, if SEBs open and maintain LCs till the end of December 2001, CPSUs should pay them a one-time cash

incentive equal to 2 per cent of the value of bonds. These incentives could add upto Rs. 6,300 crore. In addition, States undertaking reforms should also be assisted through APDP grants and discretionary allocation of power.

6. This scheme should enter into force only after one-half of the States that have an annual billing of over Rs.500 crore per annum from CPSUs give their consent, and should be effective in respect of the States that give such consent.

7. The States that withhold their consent beyond 60 days after this scheme enters into force should be denied any share in the discretionary allocation of 15 per cent from the power stations of CPSUs as well as any assistance under APDP. If the overdues of such States exceed Rs.50 crore in respect of any CPSU, they should also attract reduction in power and coal supplies, as applicable to the States participating in this scheme.

8. The scheme seeks to balance the benefits and burdens relating to different stakeholders, and modifications aimed at reducing the burden on one of the stakeholders will only increase the burden on others. The Group wishes to stress that there should be no relaxation in the various disciplines prescribed in the scheme as this would seriously compromise the integrity of the scheme.

9. The Group wishes to emphasise that these actions are the basic minimum required for moving towards a commercially viable power sector. There are other substantive issues related to reform and capital restructuring that need to be resolved for ensuring the sustainability of the sector. The Group proposes to address these issues in a separate Report.

Introduction

The Chief Ministers' Conference, held on March 3, 2001 under the chairmanship of the Prime Minister, reviewed the situation in the power sector and expressed grave concern about the crisis engulfing this sector. The Prime Minister emphasised the urgency of undertaking reforms in the power sector as the prevailing conditions would not only precipitate a collapse in the power situation but also cripple the finances of the State Governments and jeopardise economic growth of the country. These concerns are reflected in the resolutions adopted at the conclusion of the meeting, which may be seen at Annex-1.

2. Pursuant to one of the resolutions adopted, the Union Ministry of Power constituted an Expert Group vide its reference no. 32012/5/2001- Fin. dated March 5, 2001 with the following terms of reference:

- (a) Recommend measures for one-time settlement of outstanding dues of the State Electricity Boards towards the Central Public Sector Undertakings as also the dues from the CPSUs to State Power Utilities.
- (b) Suggest a strategy for capital restructuring of the State Electricity Boards including the provision of Structural Adjustment Loans so as to enable them to tide over the present financial crisis, make them operationally viable and improve their credit rating.

3. The Expert Group was asked to make its recommendations within a period of 3 weeks on the first term of reference stated above, to be followed by its recommendations on the second term of reference within the subsequent three weeks. As the issues involved in-depth deliberations, the Group sought an extension of time upto May 31, 2001.

4. The Expert Group as originally constituted was supplemented by additional nominations and co-option. The following is the constitution of the Group:

1. Shri M.S. Ahluwalia, Member, Planning Commission - Chairman
2. Shri Jairam Ramesh, Deputy Chairman, Karnataka Planning Board
3. Shri Harish Salve, Solicitor General of India
4. Shri Rakesh Mohan, Advisor to the Finance Minister
5. Shri V.M. Lal, Principal Secretary (Energy), Govt. of Maharashtra
6. Shri Deepak Parekh, Chairman, IDFC

7. Shri K.V. Kamath, MD & CEO, ICICI
8. Shri Birendra Kumar, MD & CEO, SBI Caps
9. Shri Ajay Shankar, JS, Ministry of Power
10. Shri Ranjit Bannerjee, JS (PF-I), Ministry of Finance
11. Shri Gajendra Haldea, Chief Advisor and Head of the Centre for Infrastructure and Regulation, NCAER
12. Shri K.K. Maheshwari, Group Executive President (Chemicals), Aditya Birla Group
13. Shri R. Ramanujam, JS & FA, MOP - Member-Secretary

5. The Group held its first meeting on March 16, 2001 when it discussed the issues and the broad approach to be adopted. CMD, NTPC made a presentation to the Group reflecting the perspective of NTPC on the outstanding dues of SEBs. Shri Gajendra Haldea circulated a copy of the draft scheme on settlement of SEB dues that he had earlier submitted to the Finance Minister.

6. The Group decided to submit a report on the settlement of SEB dues, as suggested in its Terms of Reference, to be followed by another report on capital restructuring and reform of the State Electricity Boards.

7. The second meeting of the Group was held on March 23, 2001 when a joint presentation was made by ICICI, IDFC and SBICAPS, followed by discussions.

8. The third meeting was held on April 4, 2001, when a presentation was made by Shri Gajendra Haldea. A draft scheme prepared jointly by ICICI, IDFC and SBICAPS was circulated to the members. A draft scheme prepared by IDFC was also circulated to the members.

9. The fourth meeting of the Group was held on April 9, 2001, when presentations were made by the World Bank and IDFC.

10. The fifth meeting of the Group was held on April 16, 2001 when some of the important issues relating to the settlement of SEB dues, as identified by a drafting sub-committee, were discussed.

11. The sixth meeting of the Group was held on April 26, 2001 when the views of the Ministry of Power on the scope of APDP were presented. The Government of Madhya Pradesh and MPSEB also made a joint presentation before the Group. The Group met again on May 5, 2001 for finalising this Report.

2. Settlement of SEB dues: Issues and Approach

11. As on 28.2.2001, the SEBs owed about Rs.41,473 crore to various CPSUs and the Railways. This amount consists of Rs.25,727 crore of principal amount and Rs.15,746 crore by way of surcharge/interest on delayed payments. An analysis of these dues and the past initiatives to settle them may be seen at Annex-2.

12. Such large outstanding dues are severely constraining the development of the power sector at the State as well as the Central level. They render the SEBs financially unviable, making it difficult for them to borrow for investment or provide credible power purchase agreements for private power producers. They also constrain the ability of the CPSUs to carry out expansion of capacity, and even threaten their financial health.

13. Although the settlement of outstanding dues of SEBs and their capital restructuring and reforms are treated as two distinct issues in the terms of reference, and separate deadlines have been indicated for submission of recommendations, the Group considers the two issues to be closely inter-linked. This is because the large outstanding dues to CPSUs have arisen not because of any exceptional event, or because of problems that arose in the past and are no longer operative, but because the current operations of SEBs have been and continue to be inherently unviable. Revenue realisation per unit of power produced is much less than the average cost of production and supply, with the result that all SEBs are running large current deficits. Since these deficits are not covered by budgetary subventions from the State Government, they show up in non-payment of CPSU dues as also defaults on other loans.

14. The Group wishes to emphasise that in addition to enforcement of stringent administrative and regulatory measures for improving revenue realisations and reducing T&D losses (including pilferage), it is necessary to bring about rationalisation of the tariff structure with transparent and targeted subsidies. The Group also wishes to highlight the need for holistic reform and restructuring that alone can make this sector viable in the medium and long term. The Group believes that if the required reforms are put in place, capacity addition and efficiency improvements would follow. The Group proposes to address these issues in a separate report.

Should a settlement of dues be attempted independent of a long-term viability plan?

15. It is important to emphasise that no lasting solution to the problems of the power sector is possible without making the current operations of the SEBs financially viable. Measures to achieve current viability will have to be accompanied by measures to take care of the one-time problem of outstanding SEB dues and the latter is, therefore, an essential part of any medium-term solution. However, a solution of the one-time problem alone without any progress on reform and restructuring will be of very limited use. It may provide temporary relief, but with continuing haemorrhage on current operations, the same problem will reappear in a few years. It can even be argued that efforts to solve the problem of outstanding dues without any parallel effort at enforcing discipline and initiating reform will create complacency and actually delay the process of structural reforms.

16. The Group deliberated at length on the justification for devising a one-time solution of the outstanding dues of SEBs, independent of the process of restructuring and reforms which would make the SEBs financially viable. Some members were of the view that the settlement of outstanding dues should only be attempted as part of a comprehensive restructuring program to be agreed by the SEBs and the State Governments, so that the two problems were solved simultaneously. However, other members argued that while this was indeed the ideal solution, it would not be feasible to devise a uniform pattern for reform that would be acceptable across the country. The extent of the problem varied across States and so did the perceptions relating to the reform strategy. The reform related milestones that were appropriate in each case, therefore, can only be worked out in the context of a complex State-specific reform programme which would take time to evolve.

17. Because of the complex nature of the issues that need to be resolved and the time needed to evolve a full scale reform and restructuring programme, the Group concluded that in the interim, there was a case for proposing a uniform scheme for settlement of outstanding dues which could be offered to all the States, provided it also included some elements of reform, and especially acceptance of financial discipline. The nature of the longer term restructuring needed, and the role of the Central Government in assisting the process, could be dealt with separately.

Should SEBs remain liable or should the dues be paid by State Governments?

18. A central issue to be addressed is whether the outstanding dues of SEBs should be settled by the SEBs themselves by conversion into SEB bonds to be repaid over a period of years, or whether the dues should be taken over by the State Governments and converted into Government bonds. The Group recognises that if the SEBs are viewed as purely commercial enterprises, they should be held responsible for settling their dues. However, the Group has also noted that if this approach is followed, the SEBs would have to meet the rescheduled debt service obligations in future, in addition to meeting their current liabilities. The reality is that they will find the task of meeting current obligations very formidable, and it is, therefore, difficult to believe that they will be able to cover past dues also, unless power tariffs in future are not only raised to economic levels as required to ensure viability (after taking account of normative improvements in efficiency which they are expected to achieve) but also consciously set even higher than these levels to provide a margin for repayment. The Group noted that regulatory authorities were unlikely to agree to build in a cushion in future tariffs to allow for payment of past dues. Besides, any such effort could be challenged by consumers in judicial courts, since they could legitimately object to being made to pay for covering past inefficiency of the SEBs.

19. In view of these considerations, the Group felt that it was appropriate for the State Governments to take on the liability of the SEBs and to discharge it in future from general revenues. Even if it is felt that future consumers of electricity should bear the burden of clearing past dues, it would be better for the State Governments to achieve the outcome by levying a duty on electricity. This would not require ratification by the regulator and would be immune to legal challenge. However, the Group recommends that the State Governments should not be expected to bear the full burden of settling past dues. Part of the burden should be borne by the CPSUs as is normal for creditors dealing with bankrupt debtors. The Group, therefore, adopted the approach of mitigating the financial burden of the State Government by the following:

- (a) Part of the dues can be waived.
- (b) The outstanding dues can be converted into bonds repayable over a 15-year period with a moratorium on principal repayments for the first 5 years. These bonds compare favourably against the present bonds being issued by the SEBs for shorter tenures.

- (c) The interest rate on the bonds can be reduced by granting tax exemption.

Advantages to SEBs

20. A solution along these lines would help the SEBs to clean their balance sheets and place them in a position where they can concentrate on solving the current deficit problem, which is itself formidable. The Group recognises that as long as the current deficit of the SEBs remains unattended, the SEBs will not be financially viable even after the one-time settlement. However, it puts them in a position where they can reasonably expect to reach financial viability over a three to four year period if corrective steps are taken. In the absence of a one-time settlement this would not be possible.

Advantage to CPSUs

21. The proposed settlement would also help the CPSUs. Although they have to write off a part of the dues and also accept a considerable reschedulement much longer than in the past, they achieve an important gain by unbotting what are at present highly dubious assets on their balance sheets i.e. recoverables from financially bankrupt SEBs, with better quality assets i.e. State Government bonds. The CPSUs can make use of these bonds for funding their capacity expansion by either selling these bonds in the market if liquidity permits, or borrowing against them.

22. It is important to emphasise that the Group does not believe that the CPSUs can bear the entire burden by writing off all dues. Over 30 per cent of power generation in India comes from CPSUs and their health is, therefore, critical for the power sector as a whole. This is especially so because scarcity of resources in the State sector coupled with the inability to attract private investment has increased the reliance on CPSUs so far as capacity addition in the near future is concerned. It is, therefore, in the medium-term interest of the States themselves to ensure the financial viability of CPSUs as they are an important source of investment in the power sector.

The Moral Hazard and Linkage to Reform

23. In making recommendations for a settlement along the lines described above, the Group has been conscious of the problem of moral hazard inherent in such a scheme. Any scheme for debt write-off involves a degree of moral hazard

since it encourages the debtor to engage in delinquent behaviour in future in expectation of a similar write-off. The Group would, however, emphasise that what is being proposed is not a complete write-off but a reschedulement with partial waiver. Moreover, the Group has confined itself to outstanding payments on current account, leaving the debt and other capital overdues to be addressed by the respective parties. Furthermore, the proposed reschedulement is linked to a commitment to improved performance in the following way:

- (a) The proposed one-time settlement involves, as part of the package, a commitment to maintain current payments to CPSUs in future. The proposed scheme involves acceptance by States that in the event of defaults in future payments, there will be automatic cuts in Central sector power supply by varying percentages depending upon the period of default, followed by automatic debiting of overdue amounts to the States account with the RBI.
- (b) States accepting the scheme must also enter into MOUs with the Ministry of Power outlining agreed milestones of reform over the next three to four years. Failure to meet these milestones will attract penalties in the form of cuts in the discretionary power allocated to the State from the Centre's discretionary quota in regional generating stations as well as suspension of APDP assistance.
- (c) As an incentive for better performance, States that do not default on current dues and achieve the performance milestones over the next four years receive an incentive payment. The Group believes that this package of commitment to financial discipline and incentives for reforms helps to minimise the moral hazard.

3. Scheme for one-time Settlement

24. Based on the approach described in Section 2, the Group recommends a scheme for one-time settlement which consists of securitising the outstanding dues of SEBs to CPSUs and converting them into State Government bonds with a partial waiver. This is linked to commitments by SEBs for maintaining future current dues, with associated penalties for non-compliance, and assured access to State Governments' funds for recovery beyond a point. State Governments are also expected to commit themselves to a programme of reform in the power sector with some defined milestones and associated penalties for non-performance. The scheme also provides incentives for well performing States. The rationale for each of these elements is explained in this section. The scheme itself is summarised in Annex-3.

A. Securitisation of past dues

25. The details of the proposed securitisation of dues are summarised below.

Eligibility for settlement

26. The scheme will apply to outstanding payments relating to electricity and fuels supplied or transmitted to the SEBs by the CPSUs viz. National Thermal Power Corporation (NTPC), National Hydro-electric Power Corporation (NHPC), Nuclear Power Corporation (NPC), Neyveli Lignite Corporation (NLC), North-eastern Electric Power Corporation (NEEPCO), Damodar Valley Corporation (DVC), Power Grid Corporation (PGCIL), Coal India Limited (CIL), Badarpur Thermal Power Station (BTPS) and the Railways.

27. The Rural Electrification Corporation (REC), the Power Finance Corporation (PFC) and Bharat Heavy Electricals Limited (BHEL) have not been included in the scheme because dues to these organisations are on capital account. The Group felt that as a matter of principle, it should not go into the recovery or rescheduling of loans given by financial institutions, including PFC and REC. These must be left to the respective lenders and borrowers. The dues of BHEL were also excluded, as payments due from SEBs to their equipment suppliers were also on capital account that should be dealt with as per their contractual arrangements and bilateral negotiations.

28. The Group felt that having regard to the predominantly social orientation of REC lending, the benefit of one-time settlement could also be extended to the outstanding dues of REC. The Group recommends that the Ministry of Power, which is the administrative Ministry responsible for REC, may consider advising REC to settle its dues on a similar basis as the scheme proposed by the Group. The Ministry of Power may also take a view whether the States owing overdues to REC should be required to settle with REC before the benefit of this scheme is extended to them.

29. It was reported to the Group that the dues owed by the participant States of the Bhakra Beas Management Board (BBMB) are straining the finances of the Central Government as the provision of funds for the O&M and other expenses of the project is through a Provisional Ledger Account which often remains considerably overdrawn. The present outstanding dues are around Rs.95 crore. The Group considered the issue but felt that it would not be appropriate to include BBMB in the proposed scheme as it is not a CPSU. The Central Government could, perhaps, separately consider corporatising the BBMB so that it is able to function strictly on commercial lines, and the participant States pay for the expenses as per the agreement among them.

30. The Group considered the problem, raised by some State Governments, of including the dues of CPSUs to the SEBs in the proposed one-time settlement. The Group recommends that where the dues owed by a CPSU can be adjusted against dues owed to it by an SEB, the two should be netted before any settlement is undertaken. Where the CPSU dues are in excess, SEBs and CPSUs concerned should adopt similar principles, as contained in this report, for settling the dues owed to the SEBs, This may, for example, imply issuing of bonds by the CPSUs in favour of the SEBs, or such other bilateral arrangement as may be mutually acceptable.

Date of reckoning

31. The announcement for a one-time settlement was made by the Finance Minister in his address to the CMs' Conference on March 3, 2001. It is, therefore, proposed to reckon outstanding amounts payable by the SEBs to the CPSUs in respect of electricity and coal supplied or transmitted until 28.2.2001 to be eligible for the purposes hereof. Any dues accruing in respect of supplies made or electricity and fuel transmitted after 28.2.2001 will not qualify for one-time settlement under this scheme. An indicative list of dues as on 28.2.2001 is contained in Annex-2.

Issue of bonds

32. The outstanding dues as on 28.2.2001 may be converted into bonds to be issued by the respective State Governments. To facilitate marketability and servicing of these bonds, the total amount to be settled may be divided into 20 equal parts and bonds for each part may be issued as a separate tranche. The first tranche may be redeemable after 5 years and each subsequent tranche may be redeemable after every six months thereafter, until all the 20 tranches are redeemed in a period of 15 years.

33. Based on the recommendations contained in this Report, the Group estimates that the amount to be securitised under this scheme would be about Rs. 35,000 crore. The proposed bonds may be issued in favour of the respective CPSUs on the same terms and conditions as applicable to the SLR borrowings of the State Governments. These bonds would be in addition to the normal allocation of SLR borrowings. The bonds issued under this scheme will be purchased by CPSUs and the proceeds will be adjusted in their books of account against the outstanding dues of SEBs.

34. The Group noted that since gross market borrowings by the Central and State Governments were in the region of about Rs.150,000 crore in 2000-01, an addition of Rs.35,000 crore in a single year would create serious imbalances in the debt market. The Group, therefore, recommends lock-in restrictions that would allow release of 10 per cent of the bonds every year for trading in the secondary market. Following the progressive removal of lock-in restrictions as aforesaid, all the bonds will be eligible for trading in a period of 10 years.

Conversion of old bonds

35. The Group noted that following a budget announcement by the Finance Minister in 1998, some of the SEBs have securitised their dues by issuing bonds in favour of the respective CPSUs. Most of these bonds have a tenor of 7-10 years with an interest rate of 11-15 per cent per annum. Reportedly, the servicing of some of these bonds is already in default. At any rate, it would be difficult for the respective SEBs to discharge these liabilities owing to the same reasons that are applicable to their outstanding dues.

36. Some of the recent bonds issued by SEBs contain a stipulation for conversion on the same terms as approved for any subsequent scheme of securitisation. Some of the earlier bonds, however, do not contain such a convertibility clause. The Group felt that it would create an anomalous situation

if some of the bonds got converted while the others did not, only because the latter did not contain a convertibility clause. The Group, therefore, favours a uniform treatment for all the bonds issued after 1.3.1998 and recommends their conversion into Government bonds at the option of the respective State Governments. It is understood that this would add about Rs.3,500 crore to the amount proposed to be converted on the basis of indicative projections at Annex 2.1, but this is likely to be partly offset through reductions arising out of settlement of disputes and netting of amounts payable by CPSUs to SEBs.

37. It was argued on behalf of the CPSUs that old bonds should not be converted. Their real concern was that the SEBs could try and re-negotiate the settlements that had led to the issue of these bonds, and that such a situation would not be acceptable. The Group recognises the merit in the suggestion that valid agreements should not be reopened and does not, therefore, favour reopening of any past settlements except to the extent of conversion of bonds as aforesaid.

Interest rate

38. The Group recommends that the Ministry of Finance grant tax free status to the bonds. It is understood that the prevailing market conditions as on 1.3.2001 would justify a tax-free interest rate of 8.5 per cent per annum, payable every six months, and recommends the same. Recognising that the markets would not be able to absorb a large volume of tax-free bonds, the Group has already recommended a lock-in arrangement that would provide for release of only 10 per cent of these bonds in the secondary market each year.

Waiver of surcharge/interest

39. Accumulated liabilities normally lead to demands for waivers from the debtors, but any waiver can be said to affect creditors, in this case the CPSUs, adversely. These two conflicting interests have to be carefully balanced. If the CPSUs do not recover the outstanding dues i.e. offer a complete write-off, their balance sheets as well as the debt to equity ratio will be adversely affected, though to differing extents. A complete waiver would also seriously impair the ability of CPSUs to raise funds for their respective investment plans. For example, if NTPC fails to recover the entire principal amount of dues – that is, Rs.10,987 crore – the internal resources available for capacity expansion would decrease correspondingly, curtailing its expansion plans by about 40 per cent.

40. Having regard to all relevant factors, the Group felt that the principal dues should be paid in full. The Group noted that interest and surcharge are not shown as receivables in the balance sheets of the CPSUs and there is scope for waiver of part of this amount without affecting the balance sheets of the CPSUs. The Group, therefore, recommends that surcharge/ interest on delayed payments may be waived to the extent of 50 per cent. This would give an immediate relief of Rs.7,873 crore to the States. It may be noted that other recommendations of the Group discussed below, which provide additional incentives, effectively increase concessionality even further.

Disputed amounts

41. The Group recognised that there are disputes relating to payments due, and that such disputes would have to be resolved in accordance with the due process of law, including arbitration. However, with a view to discouraging frivolous disputes, the Group recommends that the amounts awarded upon settlement of the disputes would attract interest @ 12% p.a. between 1.3.2001 and the date of actual settlement. In effect, the States would be required to pay interest @ 12%, and forgo the benefit of a lower rate of 8.5% during the pendency of disputes. The other terms of the bonds, such as the schedule of repayment, would remain unchanged, as if the bonds had been issued as on 1.3.2001. Similarly, amounts required to be refunded by the CPSUs should be adjusted through cancellation of equivalent bonds with retrospective effect as from 1.3.2001, along with refund of interest calculated @ 12% per annum.

42. The Group further recommends that while determining the dues to be settled under this scheme, no dispute arising from fixation of power tariffs or coal prices should be reckoned. In the event that such a dispute is settled subsequently through the due process of law, and any amount is due to be refunded to the SEB, it should be refunded in the manner specified in preceding paragraph.

43. It was represented to the Group that NTPC tariffs were “arbitrarily” raised by switching from the earlier 12% return on equity to a higher 16% return which was allowed for private producers. In their view, such an increase in power tariffs from existing plants was not justified. Questions have also been raised about the sharp increase in the price of coal in recent years which has been implemented unilaterally by public sector entities operating effectively as monopoly suppliers, especially for land locked States which cannot reset to imports. The Group was of

the view that disputes relating to power tariffs or coal prices were beyond its terms of reference. The Group felt that these disputes should be resolved through due process of law, unless otherwise directed by the competent authority.

44. It was represented on behalf of the Coal companies that they had a vast number of disputes with the SEBs, and that these disputes should be summarily settled in a spirit of mutual understanding rather than pursuing them through the numerous arbitration cases. The Group was, therefore, requested to recommend some broad principles that should govern dispute resolution in these cases. The Group recognises the merit of this approach and supports it in principle. However, for want of time and information, it is unable to make specific recommendations in this regard. The Group therefore, recommends that for determining the aforesaid principles, the Ministry of Coal should set up a committee where different stakeholders are represented; and based on the recommendations of the committee, summary settlements could be carried out.

Interim relief

45. The Group recognised the need for providing some breathing space to the States for reordering their priorities and improving the operations of their respective SEBs. By allowing States to convert their respective dues upto 28.2.2001 into long-term bonds, the current dues for the month of February 2001, which were otherwise payable in March or April, are proposed to be funded under the scheme. The funds thus released would provide support for meeting the current dues of 2001-2002 as also for investments in network upgradation. In addition, the ongoing deduction of CPA under earlier adjustment schemes would cease upon conversion of dues into bonds with the benefit of a 5-year moratorium. Compliance of this scheme would also enable the States to receive an annual cash incentive equal to 4 per cent of the nominal value of bonds, for four years commencing from 1.4.2001. As a further measure of assistance, it is proposed that SEBs opening the requisite LCs before 31.7.2001 and operating them without default until 31.12.2001 should be eligible for a one-time cash incentive equal to 2 per cent of the nominal value of bonds.

Impact on weaker States

46. The proposed scheme implies a greater relief for the weaker States who have larger overdues as these States will benefit from comparatively larger waivers, lower interest rates and long tenure for repayment of their large

overdues. The Group, however, felt that in addition to these measures, the Central Government should formulate schemes that would help such States in pursuing the reform and restructuring of their respective power sectors. The Group would make appropriate recommendations to this effect in its Report on the second term of reference.

Impact on other States

47. The Group noted that the better managed SEBs also deserve to be recognised and supported. Though these SEBs have already gained substantially by availing of rebates offered by some CPSUs for prompt payments, it was felt that upon fulfilment of certain conditions, some of their current dues aggregating upto 30 days of billing could be converted into bonds, at the option of the respective State Governments. The funds thus released could be used by these SEBs for upgrading their T & D network.

B. Payment of current dues

48. The scheme for one-time settlement of outstanding dues must be viewed as an integral part of an arrangement that prevents recurrence of similar defaults in future. The Group recommends that as a pre-requisite for one time settlement of outstanding dues, the respective State Governments must enter into binding commitments that would ensure timely payment of current dues by the respective SEBs and State Governments as long as the SEBs or their successor entities are controlled by these Governments.

Time limit for payment

49. The Group felt that the billing cycle and other arrangements for payment of current dues might continue as before, unless mutually modified by the respective entities. SEBs should make payments against such bills within 60 days of billing or 45 days of the receipt of bills, whichever is later.

Letter of Credit (LC)

50. The Group recommends that it should be mandatory for the SEBs or their successor entities to open and maintain irrevocable LCs that are equal to 105 per cent of their average monthly billing for the preceding 12 months. The amount should be revised once in six months, based on the said average. The LCs should be opened no later than 31.10.2001, and failure to do so should attract reduction

in supplies from the CPSUs equal to 2.5 per cent of the average daily supply for the preceding 90 days, in addition to the suspension of assistance under APDP. These penal provisions should also apply if the LCs are not maintained in future. However, SEBs should be free to establish an alternative security mechanism if that is mutually acceptable to the contracting parties.

51. To provide an incentive for early compliance and to foster the adoption of good commercial practices, SEBs that open the requisite LCs before 31.7.2001 and operate them without any default until 31.12.2001 should be eligible for a cash incentive equal to 2 per cent of the nominal value of bonds held by the respective CPSUs. The incentive should be paid in cash by the CPSUs to the eligible SEBs on or before 7.1. 2002. This would provide an incentive of upto Rs.700 crore to the SEBs.

Interest on delayed payments

52. Payments made after the period stipulated above should attract interest at the rate of 15% p.a. compounded on a quarterly basis.

Reduction in supply

53. In the event that payments are not made within 60 days from the date of billing, the supply of electricity should be reduced forthwith by 5 per cent as compared to the average daily supply for the preceding 90 days. This would be inclusive of the reduction, if any, made for default in maintaining LCs. The reduction in supply should be increased to 10 per cent and 15 per cent after 75 and 90 days of billing respectively. Supplies of coal, lignite etc. should also be reduced in a similar manner.

54. In case supplies are made by a CPSU without making the aforesaid reductions, the payments in respect of the supplies that are equivalent to the specified reduction should be computed separately, and should not qualify for the recovery measures stipulated in this schemes outlined below. Payments for such excess supplies would have to be recovered by the respective CPSUs entirely on their account and no intervention either from the Central Government or from the respective State Governments should be expected or provided for this purpose.

Recovery of overdues from State Governments

55. The Group recommends that payments remaining outstanding after 90 days from the date of billing should be recovered by the Ministry of Finance

through adjustment against releases due to the respective State Governments on account of CPA, States' share of Central taxes and any other grant or loan.

56. The Group recognises that this is an extraordinary measure that should normally never be resorted to, particularly when it relates to commercial transactions between State-owned enterprises. However, the situation that the Group has been asked to address is clearly extraordinary as it relates to settlement of outstanding dues aggregating about Rs.35,000 crore coupled with a situation of continuing current deficits which are bound to cause recurrence of the same phenomenon unless extraordinary steps are taken. The Group is, therefore, of the view that State Governments, as owners of the SEBs, must come forward and guarantee the latter's financial conduct, and foot the bill in the event of their failure. Unless this is done, there would be little assurance that SEBs would reform their financial conduct and allow the power sector to develop in an orderly manner.

57. The Group recommends that as a condition for issuance of bonds under this scheme, the State Governments should enter into binding commitments that would ensure payment of current dues in arrears by means of deductions at source from the releases made by the Ministry of Finance on account of CPA, States' share in taxes and all other loans and grants.

Suspension of APDP

58. The Group felt that defaults in making current payments should attract suspension of APDP. As such, any CPSU facing a payment default beyond 90 days from the date of billing should request the Ministry of Power to suspend APDP disbursements to the defaulting State, whereupon the Central Government should withhold any further releases until the default is cured.

Disputed amounts

59. All disputed current dues may be settled as per due process of law. In the event that an SEB or its successor entity disputes any bill or part thereof, it should pay 95 per cent of the disputed amount forthwith and refer the dispute to CERC for arbitration. The amount exceeding/beneath the said 95 per cent that is finally awarded should be paid/adjusted with interest at the rate of 15 percent per annum, to be calculated from the date on which the amount in dispute was payable/refundable.

C. Reform-based Performance Milestones

60. As pointed out earlier, the Group attaches the highest importance to reform and restructuring of the SEBs for ensuring viability in the power sector. Although, a comprehensive programme of reform, which would ensure viability, is not being made a condition for extending the one-time settlement, the Group feels that the settlement should be accompanied by some steps towards reforms. The Group recommends the following reform milestones in this context.

Memoranda of Understanding (MOU)

61. At the initiative of the Ministry of Power, several State Governments have signed MOUs committing themselves to an agreed reform agenda. The Group recommends that all States who have not signed such MOUs with the Ministry of Power, and wish to benefit from the one-time settlement, should be required to do so as a condition precedent. For purposes of this scheme, the provisions contained in the MOUs signed by the Ministry of Finance with the respective State Governments, insofar as they relate to the power sector, should be deemed to be part of the MOUs hereunder.

Tariff setting by SERCs

62. The Electricity Regulatory Commissions Act was enacted in 1998 for enabling the State Governments to set up State Electricity Regulatory Commissions (SERCs) which would achieve the very important objective of depoliticising tariff setting. So far, SERCs have been set up in 15 States but until recently, only 6 of them had issued their first tariff order. The Group recommends that the following stipulation should apply to all the States:

- (a) In States where an SERC has been set in place but a tariff petition is yet to be filed, the SEB should file a petition no later than August 31, 2001;
- (b) In States where an SERC has not been constituted, it should be set in place no later than 1.9.2001 and a tariff petition should be filed no later October 31, 2001; and
- (c) The State Governments and SEBs should abide by the tariff orders of the respective SERCs and implement them within a period of 60 days from the date of order. This would, however, not detract from any legal remedies that may be available to the affected parties.

63. The above provisions should apply to the north-eastern States, other than Assam, only after six months from the date on which the amendments to the ERC Act, 1998 become effective in respect of joint SERCs for smaller States.

Energy audit and metering

64. The Group recommends that all the SEBs should comply with the following:
- (a) Energy audit at all 11 KV feeders should be made effective by 31.12.2002; and
 - (b) Metering of all distribution feeders should be completed by 31.12.2002.

Improvement in cash collection

65. The Group recommends that all the SEBs should, over a period of five years commencing from 1.4.2001, eliminate the gap between average cost of power and average realisation, in accordance with the annual milestones specified in the MOUs.

Monitoring of Reform-based Performance Milestones

66. The Group further recommends that the MOP should set up a panel that would review the progress of MOUs and the aforesaid conditionalities jointly with the respective State Governments and SEBs once every six months. The Panel should make out a report for submission to the Union Minister of Power, and in particular, highlight the items that have a direct bearing on the revenues and losses of the respective SEBs. If the Panel is of the view that the measures taken by the respective State Government/SEBs are inadequate, it should recommend suitable reductions in the discretionary allocations of power from the regional stations of CPSUs as well as cuts in the central assistance under APDP. Based on the recommendations of the Panel, the MOP should make suitable deductions in power supply as well as in APDP allocations.

Incentive for compliance

67. States that comply with the aforesaid scheme, without committing any default during a block of six months, in the years 2001-02, 2002-03, 2003-04 and 2004-05 should be eligible for a cash incentive to be paid by CPSUs from out of their interest income on bonds. For purposes of incentive payments, default would mean an event that attracts reduction in supplies or appropriation by the

Ministry of Finance. The bi-annual incentive may be equal to 2 per cent of the nominal value of bonds held by the respective CPSUs, and should be paid in cash by the CPSUs to the concerned SEBs on September 30 and March 31 in respect of the immediately preceding six months. This would provide an assistance of upto Rs. 5,600 crore to the SEBs over a period of 4 years, and should act as a sufficiently strong incentive to attract their compliance.

D. Other Provisions

Incentives for better-managed SEBs

68. While providing relief to the defaulting SEBs, there is a case for extending some financial support by way of incentive to the better-managed SEBs lest this scheme is perceived as one that places an undue premium on default and indiscipline. Moreover, the better-managed SEBs should also perceive some advantage in joining this scheme. The Group felt that all SEBs having outstanding payables of less than thrice the average monthly billing of CPSUs should qualify for this purpose, and their respective State Governments may issue bonds for an amount equal to the difference between their outstanding dues as on 1.3.2001 and three months' average billing, but subject to a maximum amount not exceeding one months' average billing. To the extent of these bonds, the SEBs should be entitled to draw power, coal etc. and use the revenues thereof for upgradation of their network.

69. It is expected that as a result of this scheme, most of the States would benefit from long-term bonds that are equal to at least three months of their average monthly billing. The Group believes that the incentive suggested here would not add substantially to the total amount reflected at Annex 2.1, which would undergo some reductions arising out of settlement of disputes and netting of amounts payable by CPSUs to SEBs.

Non-conforming States

70. A scheme of this nature can only be made effective in respect of States that give their express consent to abide by it. However, it would not be possible to introduce a scheme of discipline for some States while leaving other States, which do not conform, entirely outside the scope of any discipline. It is, therefore, logical that States which do not conform to the scheme, and have dues outstanding, should be subjected to some disincentives. The Group, therefore, recommends that any State that does not give its consent to this scheme within 60 days of its entry into force should be denied any share in the discretionary

allocation of 15 per cent from the power stations of CPSUs as also any assistance under APDP. If the overdues of such State exceed Rs.50 crore in respect of any CPSU, it should also attract reduction in supplies as specified above.

71. A non-conforming State Government may subsequently convey its consent to abide by this scheme and in that event, this scheme would be deemed to apply to such State with effect from 1.3.2001. The schedule of repayment of loan would remain unchanged, but the interest for the period between 1.3.2001 and the date of consent should be payable upfront at the rate of 12 per cent per annum.

Entry into force

72. It must be borne in mind that although the scheme provides for a number of stringent measures that would visit an errant State in the event of default, implementing these measures would not be free from its political consequences. These measures would be capable of practical implementation only if a substantial number of States join the scheme, for in that situation, waiving the defaults of one State would be an invitation to the others to commit similar defaults, thereby compelling all participants to refrain from violating the agreed set of rules.

73. In view of the foregoing, the Group recommends that this scheme should become effective only after there is a wide degree of consensus in its favour. This is of particular importance as the evolution of this scheme is in response to the consensus that emerged in its favour during the Chief Ministers' Conference held on March 3, 2001. In any case, the purpose of this scheme would not be achieved if a majority of States stayed out of it. As such, this scheme should come into force only after consent is received from one-half of the States that had an annual billing of over Rs.500 crore from CPSUs during 2000-01.

Duration of the Scheme

74. The Group felt that this Scheme should remain in force until 31.3. 2016. It should, however, cease to operate in relation to purchase of power, fuel etc. by a successor entity of the SEB that is not owned or controlled by the State Government; provided that the expiry of this scheme, upon divestment of state ownership or control, shall not affect the incentives payable to a State for compliance of this scheme. In other words, purchases by a private entity will not qualify for the coercive measures under this scheme, though the CPSUs will be

free to take such coercive measures against the private entity as may be permissible under law.

Tripartite Agreement

75. Prior to extension of this scheme to any State, it would be necessary for the State Government to enter into a formal agreement that would authorise the Central Government and the Reserve Bank of India to make appropriations as and when due under the provisions of this scheme. The suggested format of the Tripartite Agreement, to be entered into among the Central Government, the Reserve Bank of India and the State Government, is at Annex-4.

Transparent and fair application

76. A scheme that lays down a fair and uniform set of rules will have a much greater probability of success if it is implemented in an open and transparent manner without any unfair use of discretion in favour of any participant. This is particularly relevant in a federal polity where constituents may have divergent interests and perceptions.

77. The Group recommends that the Ministry of Power should review the implementation of this scheme at the end of each quarter and circulate its report to all the State Governments and SEBs no later than 30 days after the close of each quarter. The report should also be placed on the website of the Ministry for general information.

4. Conclusion

78. A detailed scheme reflecting the above recommendations of the Group has been presented in Annex-3 of this Report for adoption by the Central and State Governments. The Group commends approval of this scheme by the Central Government whereafter it may be posed to all the State Governments for their consideration and acceptance. As noted above, this scheme should be brought into force only if one-half of all the States that have an annual billing of over Rs.500 crore per annum from the CPSUs give their express consent to abide by it.

79. The Group notes that several CPSUs and State Governments may make suggestions or demands in respect of some parts of the scheme while accepting the other parts. The Group wishes to emphasise that the scheme proposed in Annex-3 carefully balances the conflicting interests of several stakeholders, and modifications aimed at reducing the burden on one of the stakeholders will only increase the burden on others. The benefits and burdens relating to different stakeholders are briefly described below. The Group further wishes to emphasise, in particular, that there should be no relaxation in the various disciplines prescribed in the scheme as this would seriously compromise the integrity of the scheme.

Central Government

80. The Central Government would accept the following sacrifices:

- (a) Loss of over Rs.10,000 crore by way of taxes on interest income in respect of bonds for about Rs.35, 000 crore.
- (b) Addition to fiscal deficit and market borrowings.
- (c) As owners of CPSUs, the Central Government would lose by conversion of current receivables of about Rs.35,000 crore into 15-year bonds with a moratorium of 5 years; waiver of 50% on surcharge/interest on delayed payments involving a sacrifice of over Rs.7,873 crore; funding of incentive payments to non-defaulting SEBs, involving a sacrifice of about Rs.6,300 crore; and accept a low return of 8.5% per annum on about Rs.35,000 crore for a period of 15 years.

CPSUs

81. The CPSUs would accept the following sacrifices:
- (a) Conversion of current receivables of about Rs.35,000 crore into 15-year bonds with a moratorium of 5 years on principal repayments.
 - (b) Loss of 50% of surcharge/interest on outstanding dues involving a sacrifice of over Rs.7,873 crore.
 - (c) Funding of incentive payments to non-defaulting SEBs, involving a loss of about Rs.6,300 crore.
 - (d) A low return of 8.5% per annum on about Rs.35,000 crore for a period of 15 years.

State Governments

82. The State Governments would accept the following sacrifices:
- (a) Owning of SEBs' liability of about Rs.35,000 crore by issuing 15-year bonds.
 - (b) Deduction from States' revenues in the event of default by SEBs in the payment of current bills.

SEBs

83. The SEBs would accept the following discipline:
- (a) Payment of current bills in time.
 - (b) Reduction of T & D losses and rationalise tariffs in order to balance their revenues and expenditure.

Consumers

84. The consumers of electricity would support the following:
- (a) Stringent measures for reduction of pilferage and theft.
 - (b) Rationalisation of tariff.
85. The Group is acutely aware of the need for reform and restructuring of the power sector and believes that this sector would be sustainable in the long-term only if the requisite restructuring is undertaken by the respective States. The present scheme would only help in introducing some financial discipline that

would allow generation and supply to operate and develop on a more orderly basis and in the interests of all stakeholders. If on the other hand, the goal of electricity for all is to be pursued along with the objective of attaining 9% GDP growth rate, several measures of reform would be inevitable and the Group proposes to make appropriate recommendations in its next Report that would address the second term of reference.

86. The Group recognises that the States would need assistance for financing their investment needs as well as the costs of structural adjustment. Based on the reform package of each State, assistance from the Central Government, World Bank, ADB, IFC, Indian Financial Institutions etc. may be necessary, and the Group proposes to make appropriate recommendations for this purpose in its second and final report.

87. The Group believes that it will be useful if the scheme for one-time settlement is brought into effect expeditiously for demonstrating the commitment of all stakeholders towards restoring order in the power sector. The Group views these measures as necessary, though not sufficient, pre-requisites for the reform of this sector. Soon after these measures are put in place, the State Governments, with the assistance of Central Government, must address the task of reform and restructuring in right earnest.

Resolutions

(Resolutions adopted in the Conference of Chief Ministers/Power Ministers on Power Sector Reforms held in New Delhi on March 3, 2001)

The Chief Ministers/Power Ministers took note of the challenges confronting the Power Sector. It was agreed that there is urgent need to depoliticise power sector reforms and speed up their implementation. For this purpose, an all-party consensus needs to be created. The Prime Minister is requested to convene all-party meetings including leaders of opposition in State Assemblies.

2. The following Resolutions were adopted:

A. Completing electrification of all villages and households

- (i) Rural Electrification may be treated as a Basic Minimum Service under the Prime Minister's Gramodaya Yojana.
- (ii) Rural Electrification may be completed by the end of the 10th Plan, i.e. by year 2007.
- (iii) Full coverage of all households may be targeted for the end of the 11th Plan i.e. by year 2012.
- (iv) For the attainment of full electrification, States may be given flexibility for using funds under Rural Development Programs with the consent of the Village/Block Panchayats for undertaking the task of electrification where it is required.
- (v) It was agreed that electrification of remote villages in the States would need a special mode of financing including an element of grant.

B. Distribution Reforms

3. The real problem of management and the challenge of reforms lies in the distribution sector.

- (i) Energy audit at all 11 KV feeders must be made effective within the next 6 months and accountability fixed at the local level.

- (ii) An effective Management Information System for this purpose needs to be made operational.
- (iii) On the basis of the above, an effective program needs to be launched for identifying and eliminating power thefts in the next 2 years.
- (iv) Full metering of all consumers had been targeted for completion by December 2001. Special efforts should be made to complete the programme.
- (v) The quality of power supplied especially in rural areas needs to be improved through the APDP and other programmes quickly.
- (vi) Commercial viability has to be achieved in distribution in 2-3 years through any or all of the following:
 - Creating Profit centres with full accountability
 - Handing over of local distribution to Panchayats/Local Bodies/ Franchisees/Users Associations, wherever necessary.
 - Privatisation of distribution
 - Or any other means.
- (vii) Efforts by States, if necessary, at inviting private investment in the power sector need to be focussed towards the distribution sector.
- (viii) Current operations in distribution would need to reach break even in two years and achieve positive returns thereafter.

C. Tariff determination by Regulatory Commissions and subsidies

- (i) State Electricity Regulatory Commissions may be made functional in the next six months and tariff filings made. Tariff orders issued by Central Electricity Regulatory Commission and State Electricity Regulatory Commissions need to be implemented fully unless stayed or set aside by Court order.
- (ii) Subsidies may be given only to the extent of State Government's capacity to pay the subsidies explicitly through budget provisions.

- (iii)* It is necessary to move away from the regime of providing free power. The past decision of CMs of a minimum agricultural tariff of 50 paise may be implemented immediately.

D. Generation

- (i) Special efforts need to be made to increase the PLF of existing plants through Renovation and Modernisation.
- (ii) In the short run, there is no alternative to increase in public sector investment in generation, as large-scale private investment in generation would flow only after reforms succeed in restoring financial viability. The Centre and the States need to take suitable decisions regarding increase in outlays for the 10th Plan. Priority should be given for investments at those locations, which produce the cheapest power. CEA has estimated the requirement for an additional 100,000 MW of generating capacity by 2012. Emphasis may be given for the development of hydro and other renewable sources.

(*) Punjab and Tamil Nadu did not agree.

- (iii) Where the States and Financial Institutions are in agreement about the need for development of IPPs, they need to work together to achieve financial closure at the earliest. The Centre would facilitate the finalisation of reforms based multi-partite agreements.
- (iv) The evolution of a National Grid for inter-regional transfer of power needs to be taken up on priority.
- (v) Some provisions of the Forest Conservation Act may require to be revised for expeditious completion of power and other projects.

E. Energy conservation and demand side management

- 4. An effective programme in the field of demand side management through
 - energy efficient bulbs, tube lights and agricultural pumpsets; and
 - time of the day metering and differential tariff for peak and off peak hours

needs to be implemented with suitable mass awareness and extension efforts.

F. Support from Government of India

- (i) The Government of India would support the States in their reform efforts. This support would be linked to time bound power reform initiatives in the States and achievement of definite milestones towards restoration of financial viability.
- (ii) Interest rates of PFC and REC should be brought down to reflect market conditions.
- (iii) An Expert Group would be set up to recommend one time settlement of all power sector past dues to CPSUs and dues from CPSUs to State Power Utilities. This would be linked to implementation of reforms with time bound milestones. The Group will give its report within three weeks of its constitution.

G. Supply from Central generation stations

5. Continued supply of power from Central Generating Stations would have to be linked to demonstration of capacity to make payments for current purchases and securitisation of past dues.

H. High Level Empowered Group

6. A High Level Empowered Group comprising of Minister of Power and Chief Ministers of some States may be set up to coordinate, monitor and review the implementation of Reforms.

Analysis of SEB dues

As on 28.2.2001, the SEBs owed about Rs.41,473 crore to various CPSUs and the Railways. This amount consists of Rs.25,727 crore of principal amount and Rs.15,746 crore by way of surcharge/interest on delayed payments i.e. over one third of the total dues. A detailed Statement of these dues is given in Annex-2.1

2. These numbers have been provided to the Group by the Ministry of Power. They have been used by the Group to develop the strategy for the settlement of dues but the Group emphasises that the validity of the data needs to be checked through a process of due diligence as part of the implementation of the settlement scheme.

3. The power utilities of five States – namely, Bihar, Uttar Pradesh, Madhya Pradesh, Delhi and West Bengal – account for about 58 per cent of the total dues to the CPSUs. An additional about 24 percent of the total dues can be traced back to five more States, viz., Haryana, Gujarat, Jammu & Kashmir, Tamil Nadu and Maharashtra. Interestingly, in most of the States, about 75 percent or more of the total dues are payable to two or three CPSUs. For instance, dues payable to NTPC & DVC account for about 88 percent of the dues payable by the Bihar SEB, whereas Madhya Pradesh owes about 98 percent of its dues to NTPC, NPC and CIL.

4. Of the total dues payable to the CPSUs, about 62 percent are payable to NTPC and Coal India Limited. An additional about 24 percent of the total dues are payable to NHPC, NPC and DVC. Each of the remaining CPSUs, i.e., NLC, NEEPCO, PGCIL and the Railways account for less than 4 percent of the total dues. In the case of some of the CPSUs, as much as 90 percent of their dues are from either five or less number of States. NHPC, NLC, NEEPCO and DVC fall under this category. Further, except NTPC, NHPC and NPC, the other power supplying CPSUs are owed dues mainly from States in specific geographic regions.

Past initiatives to settle dues

5. A number of schemes involving deductions out of the Central Plan Assistance (CPA) of the States were initiated by the Government of India (GOI) from time to time for repayment of accumulated dues, but their experience has been unsatisfactory.

6. Currently, CPA-IV is operational, under which the GOI deducts upto 15% of the annual CPA of each of the States, covering the dues outstanding as on December 31, 1996 (together with surcharge thereon as on date). These deductions are channelled to the CPSUs as monthly allocations. At the present rate, deductions under this scheme are expected to continue for 4 to 27 years, depending upon the quantum of the dues and the level of CPA devolutions in case of individual States. In the meantime, dues continue to mount, both on account of current billing as well as the surcharge/interest on overdues. In many cases, the gap between current billings and payments has been increasing, reflecting a further deterioration in operational and financial parameters.

7. In June 2000, GOI had approved a securitisation scheme to cover the principal dues upto December 31, 1999, backed by State Government guarantees with specific budgetary allocations. As a further comfort to the bondholders, GOI was to deduct a further amount, upto 15% of the CPA of each State, for redemption of the bonds. The bonds were to have tax-free status and the CPSUs had the option of selling the bonds in the secondary market. Despite these incentives, the scheme did not receive a good response from the States. CPSUs were also not enthusiastic, as they did not get immediate liquidity under the scheme since they had to hold the bonds, issued by the various SEBs, till such time as they were able to offload them.

8. The market appetite for SEB bonds is low, given the States' lack of credibility in making budgetary allocations for servicing the bonds. Moreover, the inability to offload in an illiquid market makes them unattractive instruments for CPSUs. Some reported defaults in debt service have further reduced their acceptability.

Annex - 2.1

DUES PAYABLE BY SEBs TO CPSUs

(Principal and Interest due, as on February 28,2001)

(Rs.Crore)

S. No.	SEBs/STATES	NTPC	NHPC	NPC	NLC	NEEPCO	DVC	PGCIL	BTPS	CIL	RAILWAYS	TOTAL	%
1	Andhra Pradesh	462		165	480			24		34	12	1178	3
2	Assam	51				712	2	201		-1	4	968	2
3	Bihar	3080	36				1930	202		470	3	5721	14
4	DVB	2939	507	204				170		71	154	4045	10
5	DVB *								1335			1335	3
6	Gujarat	540		389				48		1025	216	2218	5
7	HVPLN(HSEB)	607	974	294				19		187	53	2133	5
8	Jammu & Kashmir	487	830	303				164				1784	4
9	Karnataka	261		92	377			30		22	1	784	2
10	Kerala	478		16	133			16				643	2
11	Madhya Pradesh	1351		1260				65		1236	8	3921	9
12	Maharashtra	646		49				11		1377	30	2112	5
13	Orissa (GRIDCO)	1008	18					29		9		1065	3
14	Punjab	98	295	6				2		537	208	1147	3
15	Rajasthan	389	79					33		170	69	740	2
16	Tamil Nadu	447		44	513			-4		623	25	1648	4
17	Uttar Pradesh	2637	877	466				222		962	7	5170	12
18	WBSEB	1448	18				799	78		449	22	2815	7
19	WBPDCL									1045		1045	3
20	Others	113	116	26	39	300		123		284		1000	2
21	Total	17044	3750	3312	1543	1011	2730	1434	1335	8503	812	41473	100
	Of which, principal	10987	1939	1955	771	765	1264	1132	880	5222	812	25727	

* These dues relate to BTPS and should be paid by DVB to BTPS, CIL and Railways, in the manner determined by MOP. The outstanding dues of CIL and Railways, however, shall have priority.

Source: Ministry of Power

Scheme for Settlement of SEB dues

A. Preamble

Soon after Independence, the electricity industry was nationalised under the Electricity (Supply) Act, 1948 that created the State Electricity Boards (SEBs). Although the amendments of 1991 and 1998 enabled private participation in generation and transmission respectively, this can occur only through long-term contracts with State-owned entities. As such, SEBs continue to be the nerve centres of the electricity industry except in States where unbundling has been carried out.

2. The SEBs can claim credit for expanding the network over the years and extending electric supply to areas unserved earlier. However, the system has been managed in a way which has brought them to the verge of financial collapse owing to mismanagement, high transmission and distribution (T&D) losses, irrational tariffs, degraded plant and machinery, bloated workforce etc. Their financial unviability is reflected in the rising overdues of Central Public Sector Undertakings (CPSUs) that are no longer sustainable.

3. Restoration of financial viability of the SEBs must receive urgent attention and calls for restructuring of the electricity industry on modern lines; extensive reforms in the system of fixing tariffs; reductions in operational inefficiencies in generation, transmission and most of all, distribution; major investments for upgrading the network and equipment; institutional changes for ensuring accountability; and professionalising management. This is necessarily a time consuming process, though absolutely essential.

4. It is difficult to believe that SEBs can undertake reforms and simultaneously clear the overhang of past dues unless very large tariff increases are mandated, beyond levels justified by current costs to cover past dues. In the circumstances, it is appropriate that a one-time settlement of outstanding dues should be attempted by shifting the burden of clearing these dues to State Governments while providing a package of relief in this context and also a set of penalties and incentives favouring discipline and future reforms.

B. Securitisation of past dues

5. In respect of the overdues of CPSUs, the following scheme of securitisation would be deemed to be effective from 1.3.2001:

Reckoning of past dues

6.1 All CPSUs that have receivables relating to electricity and fuels supplied or transmitted by them to the SEBs shall be eligible for a one-time settlement under this scheme. These include National Thermal Power Corporation (NTPC), National Hydro-electric Power Corporation (NHPC), Nuclear Power Corporation (NPC), Neyveli Lignite Corporation (NLC), North-eastern Electric Power Corporation (NEEPCO), Damodar Valley Corporation (DVC), Power Grid Corporation (PGCIL), Coal India Limited (CIL), and the Railways.

6.2 The cut-off date for reckoning of outstanding payments in respect of the aforesaid CPSUs shall be 28.2.2001, and all amounts payable by the SEBs in respect of electricity supplied or transmitted, or coal supplied or transported until that date shall be eligible hereunder. In calculating the amounts payable to a CPSU by an SEB, the receivables, if any, due to the SEB from such CPSU shall be deducted, and only the net amount due shall be reckoned hereunder.

6.3 All bonds issued after 1.3.1998 by any SEB in favour of the aforesaid CPSUs shall be eligible for conversion under this scheme to the extent of amounts outstanding as on 28.2.2001.

6.4 No waiver or rescheduling of SEB dues towards financial institutions such as REC and PFC is envisaged under this scheme nor does it include suppliers of equipment such as BHEL. These CPSUs are owed monies that relate to capital expenditure for creation of assets and have, therefore, been excluded from the purview of this scheme. However, the dues of REC call for a special dispensation as they have a predominantly social orientation. The respective State Governments may, at the option of the Ministry of Power, be required to settle the REC dues bilaterally, either through repayment or through rescheduling/ securitisation, before they can avail of this scheme.

Partial write-off

7. All surcharge and interest payable by the SEBs on the overdues of CPSUs shall be written off to the extent of 50 per cent thereof.

Securitisation of dues

8.1 All amounts payable in accordance with the above shall be converted into long-term loans to be repaid by the State Governments over a period of 15 years

in 20 equal 6-monthly instalments commencing from 1.3.2006 i.e. after a moratorium of 5 years. The State Governments would issue bonds to the respective CPSUs who will be free to trade them in the market in a phased manner i.e. 10 per cent of the bonds will be eligible for trading in the secondary market every year on a cumulative basis, thus releasing all the bonds for trading in a period of 10 years.

8.2 To facilitate trading and redemption of the bonds, the total amount of loan would be divided into 20 equal parts and each part will carry a fixed tenor with bullet redemption. The first set of bonds would thus be redeemed on 1.3.2006 with similar redemption falling due once every six months until all bonds are redeemed.

8.3 These bonds would be treated as SLR eligible securities and managed by RBI in the same manner as the other market borrowings of State Governments.

Interest

9. The bonds issued by the State Governments shall carry a nominal interest of 8.5 per cent per annum. Interest shall be payable once every six months and the first such payment shall be made on 31.8.2001. The interest shall be tax-free.

Disputed amounts

10.1 Disputes relating to payments due shall be resolved in accordance with the due process of law. As and when a dispute is settled, the amount awarded shall be payable in the manner specified in paragraph 8, as if the bonds had been issued as on 1.3.2001, with the exception that the rate of interest for the period between 1.3.2001 and the actual date of securitisation shall be 12 per cent per annum, to be paid upfront. Similarly, any amounts required to be refunded by the CPSUs shall be adjusted through cancellation of equivalent bonds with retrospective effect as from 1.3.2001, along with refund of interest calculated @ 12% per annum.

10.2 While determining the dues to be settled under this scheme, no dispute arising from fixation of power tariffs or coal prices shall be reckoned. In the event that such a dispute is settled subsequently through the due process of law, and any amount is due to be refunded to the SEB, it shall be refunded in the manner specified in paragraph 10.1 above.

C. Payment of current dues

11. Upon securitisation of past dues as aforesaid, the following shall apply in respect of the current payments due to the CPSUs on or after 1.3.2001 from the SEBs or their successor entities as long as they are controlled by the respective State Governments:

Time limit for making payments

12. All CPSUs will continue to raise and collect their current bills against the SEBs or their successor entities in accordance with the existing practice or such other arrangement as may be mutually determined. Notwithstanding any mutual arrangement, payment of such bills shall be made no later than 60 days from the date of billing, or within 45 days of their receipt, whichever is later.

Letter of Credit (LC)

13.1 SEBs or their successor entities shall open and maintain irrevocable LCs that are equal to 105 per cent of their average monthly billing for the preceding 12 months. The amount shall be revised once in six months, based on the said average.

13.2 The requisite LCs shall be opened no later than 31.10.2001, and failure to do so shall attract reduction in supplies from all CPSUs equal to 2.5 per cent of the average daily supply for the preceding 90 days, in addition to the suspension of APDP as mentioned in paragraph 16 below. These penal provisions shall also apply if the LCs are not maintained in future. However, SEBs shall be free to establish any other security mechanism that is mutually acceptable to the contracting parties.

13.3 SEBs or their successor entities that open the requisite LCs or establish acceptable security mechanisms by 31.7.2001, and operate them without any default until 31.12. 2001 shall be entitled to a cash incentive equal to 2 per cent of the nominal value of bonds issued to the respective CPSUs. The incentive shall be paid in cash by the CPSUs to the eligible SEBs on or before 7.1.2002.

Interest on delayed payments

14. Payments made after the period specified in paragraph 12 above shall attract interest at the rate of 15 per cent per annum, compounded quarterly.

Reduction in supply

15.1 In the event that payments are not made within the period specified in paragraph 13 above, the supply of electricity shall be reduced forthwith by 5 per cent, (inclusive of the reduction, if any, under the provisions of paragraph 13 above) as compared to the average daily supply for the preceding 90 days. The reduction in supply shall be increased to 10 per cent and 15 per cent after 75 and 90 days of billing respectively. Supplies of coal, lignite etc. shall also be reduced in a similar manner.

15.2 In case supplies are made by a CPSU without making the aforesaid reductions, payments in respect of the supplies that are equivalent to the specified reduction shall be computed separately, and shall not qualify for the measures stipulated in this scheme. Such payments would have to be recovered by the respective CPSUs entirely on their account and no intervention either from the Central Government or from the respective State Governments shall be sought for this purpose.

Suspension of APDP

16. Defaults in making current payments shall attract suspension of APDP. As such, any CPSU facing a payment default beyond 90 days from the date of billing shall request the Ministry of Power to suspend APDP disbursements to the defaulting State, whereupon the Central Government shall withhold any further releases until the default is cured.

Recovery of overdues from State Governments

17. Payments that remain outstanding after 90 days from the date of billing shall be recovered, on behalf of the CPSUs, by the Ministry of Finance through adjustment against releases due to the respective State Government on account of plan assistance, States' share of Central taxes and any other grant or loan.

Disputed amounts

18. In the event that an SEB or its successor entity disputes any bill or part thereof, as raised by a CPSU, it shall pay 95 per cent of the disputed amount forthwith and refer the dispute for arbitration in accordance with law. The amount exceeding/beneath the said 95 per cent that is finally awarded shall be

paid/adjusted with interest at the rate of 15 per cent per annum, to be calculated from the date on which the amount in dispute was payable/refundable.

D. Reform-based Performance Milestones

Memoranda of Understanding (MOU)

19. At the initiative of the Ministry of Power (MOP), several State Governments have signed MOUs with the former committing themselves to an agreed reform agenda. As a condition precedent to the extension of this scheme to the remaining States, the respective State Governments would sign similar MOUs with the MOP. For purposes of this scheme, the provisions contained in the MOUs signed by the Ministry of Finance with the respective State Governments, insofar as they relate to the power sector, shall be deemed to be part of the MOUs hereunder. Further, with a view to accelerating the pace of reforms, the State Governments shall, in particular, fulfil the Performance Milestones specified in paragraph 20 below.

Reform-based milestones

20.1 The Electricity Regulatory Commissions Act, 1998 enables the State Governments to set up State Electricity Regulatory Commissions (SERCs). So far, SERCs have been set up in 15 States but only 6 of them have issued their first tariff order until recently. The following stipulation should apply to all the States:

- (a) In States where an SERC has been set in place but a tariff petition is yet to be filed, the SEB shall file a petition no later than August 31, 2001;
- (b) In States where an SERC has not been constituted, it shall be set in place no later than 1.9.2001 and a tariff petition shall be filed no later October 31, 2001; and
- (c) The State Governments and SEBs shall abide by the tariff orders issued by the respective SERCs and implement them within such period as may be stipulated in the tariff orders, but not later than 60 days from the date of an order. This would, however, not detract from any legal remedies that may be available to the affected parties.

20.2 The provisions of paragraph 20.1 above would apply to the north-eastern States, other than Assam, only after six months from the date on which the amendments to ERC Act, 1998 become effective in respect of joint SERCs for smaller States.

20.3 The SEB shall comply with the following:

- (a) Energy audit at all 11 KV feeders shall be made effective by 31.3.2002 or such later date as may be specified in the MOU; and
- (b) Metering of all distribution feeders shall be completed by 31.3.2002 or such later date as may be specified in the MOU.

20.4 The SEB shall, over a period of five years commencing from 1.4.2001, eliminate the gap between average cost of power and average realisation, in accordance with the annual milestones specified in the MOU.

Monitoring of reform-based Performance Milestones

21. MOP would set up a panel (including representatives from the Finance Ministry and the Planning Commission) that would review the progress of MOUs and the aforesaid Performance Milestones jointly with the respective State Governments and SEBs once every six months. The Panel will submit a report to MOP, and in particular, highlight the items that have a direct bearing on the revenues and losses of the respective SEBs. If the Panel is of the view that the measures taken by the respective State Government/SEBs are inadequate, it will recommend suitable reductions in the discretionary allocations of power from the regional stations of CPSUs as well as cuts in the central assistance under APDP. Based on the recommendations of the Panel, MOP would make suitable reductions in power supply as well as in APDP allocations.

Incentive for compliance

22. States that comply with the aforesaid provisions without committing any default during a block of six months in the years 2001-02, 2002-03, 2003-04 and 2004-05 shall be eligible for a financial incentive. For purposes of reckoning incentives hereunder, default would mean an event that attracts reduction in supplies from the CPSUs or recovery of overdues by the Ministry of Finance. The bi-annual incentive shall be equal to 2 per cent of the nominal value of bonds issued to the respective CPSUs, and shall be paid in cash by the CPSUs to the

eligible SEBs on September 30 and March 31 in respect of the immediately preceding six months.

E. Other Provisions

Incentive for better-managed SEBs

23. The better-managed SEBs would be eligible for financial support under this scheme. All SEBs or their successor entities whose aggregate payables to all CPSUs are less than thrice the aggregate average monthly billing for the preceding 12 months shall qualify for this purpose. Their respective State Governments may, at their option, issue bonds for an amount equal to the difference between their outstanding dues as on 28.2.2001 and three months' average billing, but subject to a maximum amount not exceeding one month's average billing. To the extent of these bonds, the SEBs shall be entitled to draw power, coal etc. and use the revenues thereof for capital investment in upgradation of their network.

Non-conforming States

24.1 Any State that does not give its consent to this scheme within 60 days of its entry into force shall be denied any share in the discretionary allocation of 15 per cent from the regional power stations of CPSUs as well as any assistance under APDP. If the overdues of such State exceed Rs. 50 crore in respect of any CPSU, it shall also attract reduction in supplies as stipulated in paragraph 15 above.

24.2 A non-conforming State Government may subsequently convey its consent to abide by this scheme and in that event, this scheme would be deemed to apply to such State with effect from 1.3.2001. The schedule of repayment of bonds and the terms thereof would remain unchanged, but the interest on such bonds for the period between 1.3.2001 and the date of consent shall be paid upfront at the rate of 12 per cent per annum.

Entry into force

25. This scheme shall enter into force after consent is received from one-half of the States that had a total billing of over Rs. 500 crore from CPSUs during 2000-01. The scheme shall be deemed to be effective from 1.3.2001.

Duration of the Agreement

26.1 This Scheme shall remain in force until 31.3.2016. It will, however, cease to operate in relation to purchase of power, fuel, etc. by a successor entity of the SEB that is not owned or controlled by the State Government; provided that the expiry of this scheme, upon divestment of State ownership or control, shall not affect the incentives payable to a State for compliance of this scheme.

26.2 No supplies made by a CPSU to any private entity shall qualify for the coercive measures specified under this scheme. The former shall, however, be free to enforce such other coercive measures as may be permissible under law.

Transparent and fair application

27. The application of this scheme must always remain above suspicion so that the prospects of its compliance are enhanced. For this purpose, the MOP shall review the implementation of this scheme at the end of each quarter and circulate its report to all the State Governments and SEBs no later than 30 days after the close of each quarter. The report shall also be placed on the website of the MOP for general information.

Tripartite Agreement

This TRIPARTITE AGREEMENT (the “**Agreement**”) is made at New Delhi on the *** day of ***, 2001

AMONG

1. **The President of India** acting through ***, Joint Secretary, Ministry of Finance, Government of India (the “**GOI**”);
2. **The Governor of ***** acting through ***, Finance Secretary, Government of *** (the “**State Government**”); and
3. **The Reserve Bank of India** (the “**RBI**”) constituted under the Reserve Bank of India Act, 1934, acting through ***, Executive Director, Reserve Bank of India.

WHEREAS:

- (A) The *** State Electricity Board (the “**SEB**”) has large outstanding dues payable to the CPSUs specified herein, and has requested GOI to permit their conversion into long-term bonds, to be issued by the State Government in favour of the CPSUs (hereinafter referred to as “**Securitisation**”).
- (B) The State Government has agreed to issue the aforesaid bonds and has further agreed to assume the liability to discharge the payment obligations of the SEB (as a principal debtor) in the event of a default arising out of the agreements signed between the CPSUs and the SEB for (a) supply of power, (b) transmission of power, (c) supply of fuel, or (d) transportation of fuel (the “**Agreements**”).
- (C) The State Government and the SEB have requested GOI to enter into this Agreement for securing the aforesaid payments (as a principal debtor) in the event of default by the SEB, and the GOI has acceded to this request.
- (D) The State Government and SEB have agreed to comply with the terms and conditions laid down in the Settlement Scheme a copy of which is annexed hereto and marked as Annex-A to form part of this Tripartite Agreement.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS

1.1 In this Agreement the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“**CPSU**” shall mean any of the following, namely National Thermal Power Corporation (NTPC), National Hydro-electric Power Corporation (NHPC), Nuclear Power Corporation (NPC), Neyveli Lignite Corporation (NLC), North-eastern Electric Power Corporation (NEEPCO), Damodar Valley Corporation (DVC), Power Grid Corporation (PGCIL), Coal India Limited (CIL), and the Railways, and includes their respective successors, assigns and permitted substitutes;

“**GOI**” shall mean the President of India acting through the Joint Secretary, Ministry of Finance;

“**GOI Interest Rate**” shall mean the highest rate of interest charged by GOI for any loan given by it to the State Government in the immediately preceding financial year;

“**RBI**” shall mean the Reserve Bank of India;

“**RBI Agreement**” shall mean the agreement dated *** entered into between the State Government and RBI under sub-section (1) of section 21A of the Reserve Bank of India Act 1934;

“**SEB**” shall mean the *** State Electricity Board and includes its successors, assigns and permitted substitutes so long as they are owned or controlled by the State Government;

“**Settlement Scheme**” shall mean the Scheme for Settlement of SEB Dues as at Annex-A;

“**State Government**” shall mean the Governor of *** acting through the Finance Secretary, Government of ***;

“Supply Agreement” shall mean the agreement entered into between the SEB and the respective CPSU for supply of electricity or its transmission, or supply of fuel or its transportation; and

“Supply Payments” shall have the same meaning as assigned to the payments due to a CPSU from the SEB in terms of their respective Supply Agreements and include any payments due under the Settlement Scheme.

2. UNDERTAKINGS BY THE STATE GOVERNMENT

2.1 In consideration of the GOI agreeing to discharge certain obligations under the Settlement Scheme, the State Government hereby irrevocably undertakes and agrees to abide by the covenants set forth in this Clause 2.1 as follows, in the event of the SEB failing to discharge its the payment obligations to the CPSUs arising out of or in connection with the Supply Agreements.

- (a) The State Government shall, in all events, abide by the terms of the Settlement Scheme.
- (b) The State Government shall ensure that the SEB abides by the terms of the Settlement Scheme and makes the Supply Payments due to the CPSUs within the period specified in the Supply Agreements. In the event of the SEB committing a breach of any of the terms, the State Government shall, independently and as a principal debtor, become liable for the due performance of such term, including the terms relating to Supply Payments.
- (c) In case any amount is paid to a CPSU by the GOI, on behalf of the SEB, on account of any sum under the Supply Agreement remaining due after a period of 90 days from the date of billing, as specified in Settlement Scheme, such amount shall be recoverable by GOI from the State Government together with interest calculated at the GOI Interest Rate. It is clearly accepted by the State Government that any payment made by GOI to any CPSU under this Agreement shall be deemed to be a payment for and on behalf of the SEB, and shall be recoverable from the State Government hereunder as if it were a payment made by the GOI, on behalf of the State Government.

- (d) Subject to the provisions of Sub-clause (e) of this Clause 2.1, the State Government hereby irrevocably and unconditionally authorises GOI to instruct RBI to debit forthwith, (and further directs the RBI to act according to such instruction), from the account of the State Government maintained with RBI, and credit the same to the account of GOI, any amounts paid to any CPSU by the GOI, on behalf of the SEB, pursuant to the provisions of this Agreement and the Settlement Scheme. All amounts payable under this Agreement by the State Government to GOI shall be intimated as such by GOI to RBI for debit from the account of the State Government.
- (e) Notwithstanding the provisions of the RBI Agreement, the State Government hereby irrevocably and unconditionally authorises the GOI to instruct RBI to act promptly on the instructions of GOI as per Sub-clause (d) of this Clause 2.1 and debit the State Government account maintained with RBI by credit to the account of GOI or to such account as GOI may specify, and correspondingly directs the RBI to act as per this instruction. The State Government agrees that if at any time, the balance in the State Government account is inadequate to meet the aforesaid debit, its account may be debited to the extent of availability of funds, and the remaining amount may be debited subsequently as and to the extent funds become available in its account. Until the entire dues of GOI are recovered from the State Government, RBI shall not make any other payment on behalf of the State Government out of the balance in the State Government account.

Explanation:

The balance in the State Government account means the amount held in such account including the minimum balance required to be maintained in the account under the RBI Agreement, and the authorised limit of the normal ways and means advances, the operative limit of the special ways and means advances, or any other authorised advances that may be made by RBI to the State Government but not including any unauthorised overdraft that may have emerged in such account.

- (f) Notwithstanding the provisions of Clause ** of the RBI Agreement, the State Government hereby undertakes not to exercise the option of terminating the RBI Agreement while this Agreement remains in force, and the State Government and the RBI accept that the option of the State Government under the RBI agreement stands modified to this extent.
- (g) Without prejudice to the other provisions of this Tripartite Agreement, GOI shall have the unconditional and irrevocable right to make recovery of amounts due to it from the State Government under the provisions of this Agreement by making necessary deductions from the amounts due or becoming due from GOI to the State Government on account of central plan assistance, share of central taxes, loans and grants, and the State Government shall not make any protest or contest, when such adjustments are made.
- (h) While this Agreement is in force, the State Government will fully indemnify the GOI against any loss or liability caused by any act or omission of the State Government or SEB that may prove harmful or prejudicial to the interest of the GOI. Further, the State Government will fully indemnify GOI against any form or manner of revocation of this Agreement during the entire duration of the Settlement Scheme.
- (i) No failure to exercise and no delay in exercising, on the part of GOI, any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other power or right. The rights and remedies herein provided to GOI are cumulative and not exclusive of any rights or remedies provided by law.
- (j) The liability of the State Government to GOI under this Agreement shall not be impaired or discharged by reason of any time or other indulgence, which may be granted by GOI or by any forbearance whether as to payment, time or performance.

- (k) No obligation of the State Government or RBI herein may in any way be discharged or impaired by reason of any indulgence granted by the CPSUs to the SEB or by any variation in the Supply Agreements or by any act or omission whereby but for the provisions of this sub-clause, the State Government or RBI would be discharged of such obligations.
- (l) Whether by any act, omission or otherwise, the State Government shall not revoke, withdraw or in any manner render this Agreement ineffective either wholly or partially so long as it is in force.
- (m) All the amounts payable under this Agreement and the Settlement Scheme shall be deemed to have been paid at the request of and on behalf of the State Government and shall be deemed as “debt charges” for which the State Government is liable. The payment of such “debt charges” shall be expenditure chargeable to the Consolidated Fund of the State of *** in terms of Article 202 (3) of the Constitution of India.
- (n) As a separate and alternative stipulation, the State Government irrevocably agrees that any sums expressed to be payable by it under this Agreement and the Settlement Scheme, but which for any reason whatsoever whether existing now or in future are not recoverable from the State Government on the basis of this Agreement, shall nevertheless be payable by and recoverable from the State Government, and the State Government shall indemnify GOI and hold harmless accordingly. RBI shall carry out the necessary transfers arising thereof in the same manner as stipulated in Sub-clauses (d) and (e) of this Clause 2.1.

3. REPRESENTATIONS OF THE STATE GOVERNMENT

- 3.1 The State Government represents that it has obtained all requisite approvals for the execution of this Agreement and that this Agreement has been signed by its duly authorised signatory. The State Government further represents that it is fully empowered to make this Agreement and abide by the terms and conditions herein.

4. UNDERTAKINGS BY RBI

- 4.1 Subject to the provisions of Sub-clause (d) and (e) of Clause 2.1 of this Tripartite Agreement, RBI irrevocably and unconditionally undertakes and represents that it shall carry out forthwith the instructions issued from time to time by GOI pursuant to the provisions of this Tripartite Agreement, and that it shall not accept any instructions to the contrary from the State Government at any time. This undertaking and representation by RBI is itself irrevocable.

5. DURATION OF THE AGREEMENT

- 5.1 This Agreement shall come into force immediately and shall remain in force until 31.3.2016 unless terminated earlier in accordance with the provisions of this Clause 5.
- 5.1 This Agreement shall expire upon divestment of the ownership or control of the SEB in favour of any entity not owned or controlled, directly or indirectly, by the State Government.
- 5.2 Notwithstanding the termination or expiry of this Tripartite Agreement, the rights of GOI and the undertakings and obligations of the State Government under this Agreement and the undertakings of RBI under this Agreement shall survive in respect of demands for payments received by the GOI from the CPSUs in terms of this Agreement and the Settlement Scheme.

6. DISPUTE RESOLUTION

- 6.1 Any dispute, difference or claim arising out of or in connection with this Agreement which the parties are unable to resolve amicably shall be decided by reference to arbitration by a sole arbitrator (being a retired judge of the Supreme Court) to be nominated by the Chief Justice of India or any person or institution designated by him. The venue of all arbitration proceedings shall be Delhi. The arbitration shall be conducted in accordance with Indian Laws. The arbitrator shall give reasons for his award and the award shall be final and binding upon the parties.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN, IN FIVE COUNTERPARTS, EACH OF WHICH SHALL CONSTITUTE AN ORIGINAL OF THIS AGREEMENT.

SIGNED, SEALED AND
DELIVERED

For and on behalf of

THE PRESIDENT OF INDIA by:

(Signature)
(Name)
(Designation)

SIGNED, SEALED AND
DELIVERED

For and on behalf of

THE GOVERNOR OF (*****) by:

(Signature)
(Name)
(Designation)

SIGNED, SEALED AND DELIVERED

For and on behalf of

THE RESERVE BANK OF INDIA by:

(Signature)
(Name)
(Designation)

Agreed, Accepted and
Countersigned

For and on behalf of

The Ministry of Power, GOI by:

(Signature)
(Name)
(Designation)

Agreed, Accepted and
Countersigned

For and on behalf of

The * State Electricity Board by:

(Signature)
(Name)
(Designation)

Annex-A

Scheme for Settlement of SEB dues

(The Scheme as contained in Annex-3 of this Report should be reproduced here)