

Presentation to the “Peoples Commission”

Impact of the Proposed Electricity (Amendment) Bill 2022

Date: 13/07/2022

Electricity (Amendment) Bill 2022

- Electricity Act 2003: enacted: June 2003.
- First Amendment: effective from 15 June 2007

Five Versions of Electricity (Amendment) Bill :

- First Version: introduced in LS 19 Dec 2014
- Modifications : dated 18 Sept 2018/ 17 April 2020 / 5th Feb 2021/ 1st Week July 2022: MOP's PPT on Electricity (Amendment) Bill, 2022
 - News: E (A) Bill 2022, may be introduced in the Parliament during Monsoon Session

Salient Modifications in Draft Amendments

- Giving Choice to consumer : Multiple Dist Licensees: **Major change**
- Mandatory appointment of Member with LAW background in ERCs (Hon. SC's order dated 12th APR 2018)
- Strengthening APTEL by increasing number of Members
- Additional Functions for SERC: Financial sustenance of all licensees/ Resource Adequacy/ Time limit for issuing Orders
- FOR: To issue new "Model Regulations" & Guidelines
- Functions Of SLDC/RLDC/NLDC: **Check PSM before scheduling. NLDC to procure Power during emergency**
- Penalty for non-compliance of RPO

1. Major modifications suggested
Multiple Dist Licensees : Choice to consumers

- Proposal for Delicensing of Distribution business, as envisaged in Feb 21 version, has been dropped. But proposal for multiple DLs is included
- ERC may grant a licence to two or more persons for Dist of electricity (~~thro' their own Dist system~~) within the same area:
 - Subject to conditions that the applicant complies with additional requirements relating to Capital Adequacy, Credit-Worthiness, or Code of Conduct; as may be prescribed by GOI (Sec 14(6))
 - Phrase “thro' their own Dist system” to be omitted: to facilitate operation of multiple DLs in the same area.
- No applicant, who complies with all requirements for grant of licence, shall be refused for grant of licence
 - If ERC fails to grant license or reject the application, the applicant shall be deemed to have been granted the license. (??) (Sec 15(6(B)))

Objectives of Multiple DLs:

- Separation of Carriage & Content, multiple DLs in same geographic area, retail OA: for giving choice to consumers
(It is infact, choice to new DLs to cherry-pick Hi revenue conumers??)
 - It shall be the duty of all DLs to give non-discriminatory OA to other Discoms on payment of WH charges.

Retail Sale of Electricity:

- SERC shall fix only the Ceiling & Floor tariff for retail sale of electricity, in accordance with provisions of the Act & Rules made thereunder by GOI & Model FOR Regulations;
 - Cross subsidy, wheeling charges & adjustment in tariff pertaining to the period prior to introduction of Ceiling tariff, shall be indicated separately by SERC
 - On issuing licenses to more than one DL, in an area of supply, State Govt shall set up a “Cross Subsidy Balancing Fund” which shall be managed by a Govt Co. or any other entity,

- Any surplus with a DL on account of Cross Subsidy or Cross Subsidy Surcharge or Additional Surcharge shall be deposited into “CS Balancing fund” & it shall be utilised for bridging any deficits in cross subsidy in the same or any other area of supply (???): (not clear)
- On issuing multiple DLs in an area of supply, Power & associated costs from PPAs, shall be shared among all DLs in the area of supply **as per the arrangements specified by SERC.**
 - Any DL may enter into additional PPA, after meeting the commitments of existing PPAs, **to meet additional requirement of power, without sharing with other DLs.**

- Grant of license for Dist in multiple States: *CERC to make Regulations for the* form, manner of application, conditions of license & the fees for supplying power in more than one States; (for Railways??)

Cost reflective Tariff:

- Modified Sec 61(g) to ensure cost reflective tariff by linking with Tariff Policy.
- Tariff to recover all prudent costs of DL
- Tariff to reduce cross-subsidies in the manner specified by SERC: (Roadmap of Cross subsidy Reduction)

Existing level of Cross subsidy in MSEDCL(FY 22):

ACOS: 726 PSPU, ABR HT COM: 1327 PSPU (183%) LT AG (M) : 401 PSPU (55%) .CS Range: (-45% to +83%) as against +/- 20%

Cross subsidizing consumers may shift to New DLs & only subsidized consumers may remain with incumbent DL

Modifications suggested in
CERC/SERC/FOR/LDCs/RPO

Constitution of CERC/SERC

CERC: Chairperson & 4 Members & Chairperson

CEA: Ex- officio Member

Qualifications for appointment of CERC Members & Chairperson (Sec 77):

- CERC Chairperson shall be a person of ability, integrity & standing, who is or has been,-
 - (i) **head of an organisation dealing with G/T/D of electricity;** or
 - (ii) **Secretary to the GOI** or at any equivalent post in GOI or State Govt

- CERC Members shall be having adequate knowledge & experience:
 - Member: Engineering (with specialisation in G/T/D)
 - Member: Finance (with specilization in Finance/ Economics/ Commerce)
 - Member (Law): Person in the practice of Law, having requisite qualifications to be appointed as SC Judge or Chief Justice of HC (Sec 77 (2) C)

Additional Functions & Duties of CERC: (Sec: 79)

- CERC to issue licenses for multi-state DLs

ERC: Powers of Civil court, (Order shall be executable as a “decree” of Civil Court): Sec 94(4/5)

SERC shall consist of a Chairperson & 3 other Members

- SERC Chairperson who is or has been,
 - (i) Head of an organisation dealing with G/T/D of electricity;
 - (ii) at least PS to State Govt or at any equivalent post in GOI or State Govt

SERC Members to have adequate qualifications & experience :

- Member: Engineering (with specialisation in G/T/D)
- Member: Finance, (Public Policy/ **Admin** or Management)
- Member: Law: *who has requisite qualifications to be appointed as a HC Judge or a District Judge (Sec 84 (2) C)*

- If any SERC is unable to perform its functions on account of vacancies of Members, GOI may, in consultation with State Govt concerned, entrust its functions to any other SERC /JERC,
(Sec 86 (6))

Appellate Tribunal strengthened : Sec 112 (1):

- APTEL shall consist of a Chairperson & other Members, **not less than five**, as may be prescribed by GOI (presently, 3 Members)

Additional functions SERC:

- To issue licences to TLs, Multiple DLs & Traders w.r.t. their operations within the State & take necessary steps to facilitate “Financial Sustenance” of these licensees; (Good(?)) (Sec 86 (1)d)
- To adjudicate upon disputes regarding performance of obligations under a contract related to Sale, Purchase or Trans of electricity, & to refer any dispute for arbitration; (Sec 86 (1) (f))
 - Disputes regarding PPA shall be adjudicated along with appropriate compensation to the affected party, within 90 days from the date of submission of Petition to ERC .
- To adjudicate upon disputes involving SLDC

- Creation of mechanism in SERC for monitoring “Compliance of the Act & Rules”. (Sec: 91(1A)) (good)
- Every Licensees to comply & report compliance with Guidelines notified by GOI for robust Corporate Governance (Sec:59). (good)
- Inclusion of “Energy Storage System” in definition of Power System: considering substantial rise in variable RE Gen (good)

- New Provision to enable consumers of more than One MW to get OA directly from ISTS (Sec: 40(c)(ii))
 - CSS/ASC payment formula/methodology needs to be revisited.
- SERC to: **review “Resource Adequacy”, in every 6 months, for each of the DL, in accordance with the guidelines issued by GOI (Sec 86(1) (j))**
 - One Query: When Dist system to be shared between licensees on payment wheeling charges & losses, Existing PPAs along with associated costs to be shared between multiple DLs, sharing of power to be reviewed periodically by SERC, where is question of competition?
- ERC shall, issue tariff orders within ~~120~~/90 days from receipt of application or initiation of proceedings (Sec: 64(3))
 - If tariff order cannot be issued, then “interim tariff” order to be issued within the prescribed time of 90 days.

Additional Functions of FOR Sec 166 (3A) {insertion}

- TO prepare & publish Model Regulations for guidance of SERCs:
 - To give Non-discrematory OA to new DL on incumbent DL's infrastructure
 - Duty to supply on request (USO) for New DLs, (presently it is within one month)
 - To avoid "Abuse of Dominant position": During shortage of Gen, taking into account State-specific distinctive features, in accordance with the Rules made by GOI; (Sec: 62 (1)).
- Monitor the status of compliance of provisions of Section 86 (1) (e) (Promote: RE & Cogen) by DLs on annual basis & submit a report to the GOI
- Any other function, as may be prescribed by GOI (???)

SLDC/RLDC/ NLDC Functions: PSM

SLDC/RLDC/NLDC shall be:

- Responsible for Optimum Scheduling...
 - No electricity shall be scheduled or despatched... under such contract unless adequate “Security of Payment” (PSM), as may be prescribed by Central/State Govt, has been provided (may lead to Grid stability issues??).
 - Payment disputes by Discoms & Gencos should normally be addressed thro’ PPA provisions.

Detailed NLDC functions (Sec: 26(4)-(7)) as AI Grid operator given adequate powers to ensure reliability, quality & stability of AI grid.

NLDC to procure power & dispatch thro’ a scheme notified by GOI for ensuring stability of the grid (Sec 26) (“Ancillary Services”)

Section 142(3): Penalty for Non-compliance of Renewable Power Obligation (RPO):

- If ERC is satisfied that a person (Obligated Entity: DLs, OA consumers, CPP consumers) **has not purchased power from RES, as prescribed by GOI,** ERC shall direct that, such person shall pay, by way of penalty, a sum calculated:
 - At the rate: ~~(25-50)~~ 25-35 PSPU, for shortfall in purchase in the 1st year of default
 - At the rate: ~~(50-100)~~ 35-50 PSPU for shortfall in purchase in 2nd successive year of default

Other issues to be taken up thro' Rules

- Definition of Area of Supply
 - (may be a Road, Ward, IND area, City, Tehsil, Rev Dist)
 - thro' Rules: Why?? (which can be modified in future)
- Monitoring of RE Power by FOR
- Simplification of procedure for HYD power project clearance by CEA uS 8

Summing up

- “Electricity” is a concurrent subject: both Central & State Govts have powers to make laws in this matter.
 - Effort of Centralization powers by Center (??) & not distancing from Govt, as envisaged in Preamble of EA 2003
 - Many issues which should be in ambit of ACT, been taken under the Rules (which can be conveniently modified, as & when required)
- O&M of Dist Infra structure remains with incumbent DL. Ultimate aim seems to make existing Govt DLs to work as a Carrier Licensee & to earn only WC
- CERC issuing licenses for multi-State DLs:
 - Whether “Public Hearing” is required, before any new licence is issued??

- Multiple DLs: to propagate OA at LT consumer level, process will lead to “Cherry Picking” of high Revenue consumers by new DLs, if CSS & ASC are not charged properly.
 - Scheme will certainly be very difficult to be excuted “On Ground”
 - Who will lay the infra stucture for new consumers? **What happens, if is delayed?**
 - Ceiling/Floor tariffs: True Ups will be complex??
 - What happens to Regulatory Assets of Incumbent DL?
 - What happens to incumbant DL’s Commercial agreements with their consumers?
 - Proposal will have an “Adverse financial impact” on incumbent DLs/ State Govts & may **not work as “Reform” for them.**
 - **Litigations are bound to increase.**

- **Stricter RPOs: introduced to give advantage to large Centralised Solar plants (Solar UMPPs)**
- **Imposing PSM by LDCs: Electricity will not be scheduled & supplied to DLs, unless they fully pay upfront. This may create “Grid Stability” issues**
- **Implications on finances of States & their utilities, their likely impact on subsidized consumers of incumbent DL should not be neglected. Implications on employees of incumbent DLs**
 - **Need for “a comprehensive white paper” eliciting the States' views, before proposed Amendments**
- **On 10/07 AIPEF has requested GOI not to move E(A) Bill 2022 in Parliament “in Haste” & also requested all CMs to take effective intervention to stop the passage of Amendment Bill.**

It is clear that proposed Bill will:

- Weaken the finances of State/ incumbent DLs,
- Have adverse impact on utility employees, (area of operation will reduce & existing employees may be retrenched)
- Impose a heavy cost burden on subsidized consumers, as cross-subsidies are bound to be reduced
- Why Definition of “Area of supply” thro’ Rules (why not through ACT?)
- Many provisions may benefit Corporate Business Houses & demolish the existing system , which is running for over 75 years

State Govts cannot afford to ignore the far reaching implications of the Bill.

- Need to go step by step, in a transparent manner, taking into confidence all Stakeholders, inclusive of consumers.

Thank You !!