

## **Comments on Draft Electricity (Amendment) Bill, 2020**

**The Ministry of Power published the draft Electricity (Amendment) Bill, 2020 for public comments on April 17, 2020. In an effort to collate inputs from different stakeholders, an e-roundtable was organized by Bask Research Foundation, Esya Centre and Indicc Associates on May 15, 2020. This submission is a result of collective inputs of the participants. (Please refer to Annexure I for list of participants).**

The larger sense that evolved in the roundtable discussion is captured under the following five heads:

### **I. Regulatory Regime**

The need for regulators to operate in an independent and disciplined manner was unanimously reiterated. Regulatory capture by State Governments has been a cause of concern, and it is counterproductive for investors, consumers and growth of the sector. However, the participants are of the opinion that regulatory discipline and independence may be facilitated without encroaching on the jurisdiction of States.

The participants highlighted that the functioning of regulatory commissions is directly dependent on the competency of regulators and their nature as human being. While competency shall be ensured via comprehensive non-partisan selection process, there is an imminent need for institutionalizing discipline in functioning of regulatory practices. Towards this end, there is a need to streamline structure and operations of regulatory commissions across the country and limit the scope for ambiguities that may arise from different interpretations of the Electricity Act.

Further, cost reflective determination of tariffs is bound to ease cash flows for DISCOMS and reduce carryings costs, ultimately benefitting all stakeholders in the

long run. However, elimination of regulatory assets shall render regulatory commissions without any tools to smoothen impact of fluctuations in fuel prices. Although such a situation may be unlikely in near future with India's current fuel mix and its dependence on external markets, prudent use of regulatory assets may be allowed. A suitable framework may be devised for same.

## **II. Enabling Market Efficiencies**

The proposed amendments are clearly designed to address growing concerns of power sector investors for accruing debt towards generators and precedence of attempt by few State Governments to violate sanctity of contracts. Hence, the participants observe that while the intent for quicker resolution of disputes and enforcing discipline in payments is welcome, the proposed amendments are insufficient to unleash market efficiencies and facilitate conducive growth of all stakeholders.

In the current environment, DISCOMS carry most of the blame for power sector woes even though DISCOM themselves have been rarely been allowed to operate in a commercial manner. Hence, it is suggested that reforms should address inefficiencies across generation and transmission verticals as well. The practice of cost-plus tariff determination shall be discontinued across generation and transmission verticals without any exception, and competitive bidding should be the natural course for projects. Even in cases where projects are designed to provide capacity services or ancillary services, suitable mechanisms for competitive bidding shall be devised.

Political interference in decision making regarding contracts and functioning of DISCOMS continue to handicap them. In the absence of autonomy and strict performance metric, DISCOMS continue to falter. Hence, the Electricity Act shall seek to facilitate autonomy of DISCOMS, along with autonomy of regulatory commissions. Towards this end, provisions may be made to reduce government ownership in DISCOMS and push them to operate like discipline autonomous corporate entities. An environment for commercial decision making shall be facilitated wherein project allocations and resulting contracts are thoroughly

reviewed and legitimized by concerned parties. Market risks shall be taken into account and clauses for exit, surrender of power and transfer of contracts should be built into power purchase agreements.

The proposed amendments do not deal with adverse situations wherein DISCOMS are near bankruptcy and unable to service their dues. Since, as essential service providers, it is not possible to liquidate public distribution companies, it is imminent that that the electricity act provides a framework to address such adverse situations and safeguard investments.

### **III. Energy Transition**

The intent of the Ministry of Power to promote clean energy in India is laudable but concerns remain with the top-down approach of setting targets. In this context, following recommendations are advocated.

To begin with, the participants advocate the amendment of the objective of the act to reflect aggressive commitment towards reduction of emissions and climate action. Further, it appeals for formulation of 'Integrated Energy Transition' policy to provide framework for planning, research, development and market signaling to foster energy transition. Here within, provisions may be made for creation of markets for ancillary services, emission trading, etc.

Secondly, it is proposed that energy transition process needs to be decentralized with centralized institution playing the key role of research, regulation, capacity building and monitoring to address market barriers (including financing). Deeper coordination at sub-national levels is desired to meet energy transition goals and hence local planning and execution capacities need to be inculcated to build legitimacy for same.

Third, energy transition needs to take a sectoral approach to determine goals, tailored solutions and support needed. Hence, renewable energy growth needs to be intricately linked to needs of key sectors (and sub-sectors) such as agriculture,

health, manufacturing, water, etc. Institutional structure and roles need to be reassessed towards this end.

#### **IV. Strengthening investor confidence**

The participants observe the need to strengthen the confidence of private investors in the sector, especially after the negative precedence set by few States. As mentioned in section II, the objective for establishing Electricity Contract Enforcement Authority (ECEA) is appreciated, but at the same there are apprehensions towards attainment of the objective, especially given the environment and structure of litigation in India. With multiple commissions and appellate bodies in process, the issue of conflict resolution requires systemic re-thinking.

In other words, merely bringing about a new authority is not likely to make any significant difference. The contract enforcement is not just a judicial or legal issue, it is also equally an issue that requires a broader understanding across economic, commercial and financial disciplines. Today a greater issue is about lack of regulatory harmonisation and protocols. Trying to create a new body in such an environment can only add another layer of procedure to the existing apparatus without solving the real problems.

It must be remembered that when it comes to dispute settlement, the expectation of investors is simple – quick resolution with least cost implications. In the context, it was observed that arbitration process should be preferred option in light of it being streamlined, time bound and less procedural. The same may be institutionalized for resolution of disputes related to electricity contracts. Furthermore, a non-partisan online dispute resolution platform is likely to be received well by both private sector investors and other stakeholders.

It is also advised that dispute resolution should be done at a regional level, if not at the level of every state for speedy disposal of the matter.

## **V. Consumer Rights and Interests**

Contrary to experiences and learnings, the proposed amendments fail to address issues concerning rights and interests of electricity consumers. The participants urge Ministry of Power to take cognizance of the issues concerning consumers and through the amendments in the Electricity Act, enforce appropriate provisions to safeguard their interests.

In the line with the commitment of the National Government, it is proposed that right to 24x7 reliable, quality and affordable power is enshrined within the Electricity Act, with suitable exceptions. In conjunction with this, mandate to establish stricter and uniform Standards of Performance across for distribution utilities should be made. While appropriate deviations may be allowed across consumer categories and between urban and rural feeders, the practice of weighted reporting shall be discontinued since it allows for unfair disparity, especially amongst urban and rural supply of electricity and related services. Further to this, in case wherein DISCOMS fail to adhere to Standards of Performance, provision for automatic and fair compensation to consumers shall be made. Provision for fair compensation shall also be extended to cases of electricity related accidents and damage to life or property, wherein current regulatory practices often fail to address issue of fair compensation and compensation amounts remain stagnant for year without being linked to any index such as inflation.

The participants also observe that regulations and infrastructure dedicated for grievance redressal of consumers is inconsistent and generally insufficient. We submit that MoP shall take cognizance of issues on the ground and formulate suitable policy to safeguard their interests and protect them from harassment. Special provisions especially need to be drafted for marginalised communities and populations. To this end, it is requested that provisions should be made for independent consumer representatives and advocates to be included in grievance redressal forums and institutions across different tiers.

We submit that there has been frequent misuse of ambiguity between Section 126 and Section 135 of the Electricity Act which deal with unauthorised use of power and theft of electricity to harass unaware consumers, especially from marginal backgrounds. It is requested that such ambiguities are addressed immediately, and revision be introduced for clear distinction and resulting course of action between the two.

Recent judgement by Supreme Court has allowed recovery of such arrears resulting on account of inefficiency of DISCOMS, which results in undue burden on consumers. We also submit that the issue of recovery of arrears which are more than 2 years old shall be addressed in the act. Recent judgement by Supreme Court has allowed recovery of such arrears resulting on account of inefficiency of DISCOMS, which results in undue burden on consumers.

With regards to the proposal of DBT, it should be noted that DBT implementation can have a significant impact on electricity consumer from economically weaker sections. Many challenges with implementation of DBT for electricity subsidies such as ensuring subsidies reach user of electricity rather than owner of electricity connection still need to be addressed. Millions of farmers and marginal tenants are likely to be directly impacted by such gaps in implementation of DBT. Further, given that collection efficiencies amongst economically poorer sections are lower, DBT of subsidies may further increase losses of DISCOMS since they are not in a position to collect their dues to begin with. Therefore, provisions may be made to introduce better targeted subsidies and it is suggested the intensive consultations and pilots need to be undertaken before mandating DBT to transfer electricity subsidies.

It is also submitted that issue of DBT and cross-subsidy needs to be relooked in a cohesive manner. Challenges with smooth implementation in DBT remain. If this persists it can have a significant impact on electricity consumer from economically weaker sections. Further, provisions may be made to introduce better targeted subsidies. It is suggested the intensive consultations and pilots need to be undertaken before mandating DBT to transfer electricity subsidies.

For Sub distribution license there is need to take permission from state Regulator and for Franchise only intimation whereas scope of both categories is same and no requirement of separate license. This is an ambiguity. Further, there is no mandatory provision to assess performance of Sub distribution license/ Franchise by the commission. The entire liability rests with licensee. Consumers are not aware where to approach in case there is default of such agencies and dispute remains unresolved.

There is also no dispute settlement mechanism for cases under section 135 & 138. This causes unnecessary harassment to consumer/non consumer and they are on mercy of authorised officer. Further, there is great confusion with regards to the application of these sections as whenever there is a case of theft by direct hooking/ meter by pass/meter tamper/ etc both sections are applied leaving discretion with the authorities. Thus, there is need to clearly spell out the mandate of these sections.

Lastly, to protect Consumer services a uniform national standard of performance regulation should be formed.

## VI. List of Participants

1	A K Bohra	Former MD	JVVNL
2	Aditya Ramji	Economist	Mahindra & Mahindra
3	Abhishek Kumar	Partner	Indicc Associates
4	Amjad Ali Khan	Director	Esya Centre
5	Anshuman Gothwal	Ex Director	Bask Research Foundation
6	Ashok Pendse	Consumer Avocate	Independent
7	Disha Aggarwal	Program Manager (Renewables)	CEEW
8	Gopal Jain	Sr. Advocate	Supreme Court of India

9	Himanshu Khurana	Additional Secretary	Rajasthan ERC
10	Kanika Chawla	Sr. Program Lead	CEEW CEF
11	Kartikeya Singh	Dy. Program Director	SED Fund
12	Kushagra Nandan	President	Sunsource Energy
13	Navin Arora	Former Director (Technical)	JVVNL & JdVVNL
14	Neha Kumar	India Program Manager	Climate Bonds Initiative
15	Rahul Tongia	Fellow	Brookings India
16	Rohit Bhakar	Head	Centre for Energy and Environment, MNIT
17	Simran Grover	CEO	Bask Research Foundation
18	Tabrez Malawat	Partner	The Guild Associates
19	V P Raja	Former Chairman	Maharashtra ERC
20	Vishnu Mohan Rao	Coordinator	CAG
21	Vivan Sharan	Partner	Koan Advisory Group