Comments on the draft Electricity (Amendment) Bill, 2020

by People's Monitoring Group on Electricity Regulation, Hyderabad, Telangana

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1. Introduction:

The following comments on the draft Electricity (Amendment) Bill, 2020 are being submitted in response to the Ministry of Power, Government of India's letter dated 17th of April 2020.

In "the Statement of Objects and Reasons" to the Electricity (Amendment) Bill 2020 it is stated, "Electricity is one of the most critical components of infrastructure which is essential for sustained growth of the Indian economy and welfare of nations. The 2003 Act have brought in huge direct investments, public private partnerships, market development, transparent tariff mechanism etc.; which have enabled several reforms, laws and regulations, multifarious contracts and complex disputes. But the electricity sector is seized with few critical issues which have weakened the commercial and investment activities in the electricity sector that needs to be addressed immediately to ensure sustainable growth of the country. It has been felt that the few provisions of the Act are unable to cope with the rapid development of the electricity." (para 2) It has to be examined how far the proposed amendments to the Electricity Act, 2003 help to address impediments to commercial and investment activities in the electricity sector and enable to cope with the rapid development of the electricity.

2 Distribution Sub-Licensee and Franchisee

Through Amendment 3 (iii) it is proposed to introduce a new Clause 17a in Section 2 of the Act to allow a 'Distribution Sub-Licensee' to distribute electricity in a particular area on behalf of a Distribution Licensee. Already the existing Clause 27 of Section 2 of the Act provided for a Franchisee to supply electricity in a particular area on behalf of the Distribution Licensee. As the existing provisions related to Franchisee already provided for similar activity there is no need to create a separate Distribution Sub-Licensee. The "Statement of Objects and Reasons" to the Amendment Bill does not throw any light on the need for this separate body. **As it only leads to duplication the same proposed Amendment shall be set aside.**

If Distribution Sub-Licensee envisaged in the proposed amendment is different from and some thing more than a Franchisee the same need to be made clear. The roles and functions of Distribution Sub-Licensee should be clearly defined. The "Statement of Objects and Reasons" to the Amendment Bill should have clearly explained the need for Distribution Sub-Licensee even when there is a provision for Franchisee already in the existing Act. There is an apprehension that the sub-category 'Distribution Sub-Licensee' is being introduced to privatise DISCOMs through the back door.

In the existing Act the Franchisee is created (Section 2 Clause 27) for meter reading, billing and bill collection by a separate body as allowed by the Distribution Licensee. Under most of the DISCOMs at present meter reading and billing is done by outsourced employees and bill collection to a large extent done by E-Seva and Mee Seva centres (for example in Andhra Pradesh and Telangana) where bills of different utilities are being collected and other services of the state governments are being delivered. Over the last 17 years many changes have taken place in bill collection by electricity utilities. On line payments and e-wallets are an important development. In the background of these developments even the provision related to franchisees can be removed.

Besides this, hitherto experience with functioning of franchisees in different parts of the country is not encouraging. Since the initiation of franchisee model in 2006 about 25 franchisees have come in to operation. But out of them 12 franchisees have been terminated. Franchisees functioning in the cities of Gaya, Muzaffarpur and Bhagalpur in Bihar, Kanpur in Uttar Pradesh, Gwalior, Sagar and Ujjain in Madhya Pradesh, Aurangabad, Nagpur and Jalgaon In Maharashtra, Ranchi and Jamshedpur in Jharkhand, to name a few, were closed down because of their failure. While franchisee model is brought in to vogue to streamline revenue flows some of the franchisees were terminated as they failed to pay dues to the DISCOMs. As most of the franchisees served urban divisions the allegation that the model gives rise to cherry picking seems to be true.

Based on these we propose to remove the existing Clause 27 of Section 2 related to franchisee and also set aside the proposed amendment to Section 14 through the present Amendment 5. If franchisees are allowed to operate, they have to function under regulatory scrutiny.

3 Renewable Energy

Through the Amendment 4 the following new Section 3A is proposed to be introduced, "National Renewable Energy Policy - The Central Government may, from time to time, after such consultation with the State Governments, as may be considered necessary, prepare and notify a National Renewable Energy Policy for the promotion of generation of electricity from renewable sources of energy and prescribe a minimum percentage of purchase of electricity from renewable and hydro sources of energy.".

While the existing sub-section (1) of Section 3 of the Act mentions that the Central Government shall prepare the national polices including those meant for promotion of renewable sources of energy 'in consultation with the State Governments' the proposed amendment mentions that the Central Government may prepare and notify a National Renewable Energy Policy 'after such consultation with the State Governments, as may be considered necessary.' While in the existing provision consultation with the State Governments is mandatory in the proposed amendment consultation with the State Governments is optional. **To that extent the proposed amendment limits or compromises the powers/privileges of the State Governments. To that extent this provision shall be opposed.**

The existing provision in Sub-section (1) (e) of Section 86 of the Act empowers the State Electricity Regulatory Commission (SERC) to specify purchase of electricity from renewable sources of energy as a percentage of the total consumption of electricity in the area of a distribution licensee. But the proposed amendment intends keep this power in the hands of the Central Government. Renewable Power Purchase Obligation (RPPO) tends to impact overall power purchase cost and as a result influence electricity tariff. Also, renewable energy potential of each state is different and as a result RPPO of each state shall be different. Uniform RPPO at the national level is not advisable. **Prescription of RPPO at the state level shall be left to the respective SERC and the Central Government may lay down overall guidelines for promotion of renewable energy through the above Policy.** Following this, a part of the proposed Amendment No. 25 (ii) which lays down that, "as may be prescribed by the Central Government from time to time" shall be set aside.

The proposed amendment also provides for prescribing a minimum percentage of purchase of electricity from hydro sources of energy apart from other sources of renewable energy. Until recently hydro power plants up to 25 MW capacity were included under renewable sources of energy. As per the 8th March 2019 office Memorandum of Ministry of Power, GoI, large hydro projects (> 25 MW Projects) were also brought under renewable sources of energy. While large hydro power plants may have a role in balancing intermittent nature of solar and wind power it is also important to pay attention to environmental impacts of large hydro power plants, resettlement and rehabilitation issues related to these projects and also higher tariff of these plants. The proposal to bring large hydropower projects under renewable sources of power is fraught with danger. Large hydropower projects irreversibly damage river ecosystems. They alter the geography of the river basin. They uproot the livelihoods of both upstream and downstream communities. This has the added danger of promoting many bigger environmentally harmful hydropower projects in the fragile Himalayas, seen as the "last big source of untapped hydro-power potential", through the mighty rivers. **Hence, given the dangers involved in setting up of large hydropower projects the same shall not be promoted through HPO and the proposal for a separate HPO shall be dropped.**

According to the 8th March 2019 office Memorandum of Ministry of Power, GoI, Hydropower Purchase Obligation (HPO) shall cover all large hydropower projects commissioned after issue of this Office memorandum as well as the untied capacity (i.e.,

without PPA) of the commissioned projects. This implies that all large hydropower projects are not eligible for HPO and that only new projects are eligible for HPO. This appears to be an attempt to push economically and environmentally unsustainable large hydropower projects coming up in northern states like Uttarakhand and in north-eastern states in the private sector on the whole nation. The above mentioned Office Memorandum also offers liberal financial terms for these large hydropower projects like longer debt repayment period of 18 years and increasing the project life to 40 years in order to sweeten the deal. This ulterior motive to favour certain type of large hydropower projects prods one to question the proposed amendment to introduce HPO.

Instead of green field large hydropower projects pumped hydro storage technology/reversible turbines may be promoted at the existing large hydropower projects. This will help to bring down cost of hydropower and also contribute to balancing the grid in a situation where power supply from sources like solar and wind is increasing. Pumped hydro storage systems provide the much needed flexibility to the grid as it can respond quickly to changes in demand and supply of power. These retro fitted pumped hydro storage projects can help to meet the growing need for peaking and balancing power. Power from these hydro power storage units can be considered a part of no-solar RPPO.

Through Amendment No 35 (3) a new Sub-section (2) is proposed to be introduced in Section 142 of the existing Act providing for penalty from Rs. 0.50 per unit to Rs. 2 per unit in case of failure to adhere to RPPOs. These penalties are on higher side. **The level of penalties to be imposed on DISCOMs failing to adhere to the RPPO shall be left to the SERCs.** At present DISCOMs purchase Renewable Energy Certificate (REC) to fill the gap in procuring RE according to RPPO. This Renewable Energy Certificate (REC) mechanism may be revisited and redesigned to meet the current needs.

Amendment No. 37 proposes the following additions to Sub-section (2) of Section 176 of the principal Act dealing with powers of the Central Government to make rules-

"i) after clause (a), the following clauses shall be inserted, namely: -

(aa) the minimum percentage of purchase of electricity from renewable and hydro sources of energy under section 3A;

(ac) laying down the modalities of bundling of renewable energy (including hydro) with thermal energy;

(ad) Renewable Generation Obligation; "

In the place of above proposed clause (aa) the function of prescribing the minimum percentage of purchase of electricity from renewable and hydro sources of energy shall be with the respective SERC as the available RE sources/potential differ from state to state.

The above proposed clause (ac) related to laying down the modalities of bundling of renewable energy (including hydro) with thermal energy was relevant in the past when cost of RE was higher than conventional coal based thermal power and in order to make RE affordable the same needed to be bundled with thermal power. **In the changed situation of cheaper RE sources like solar and wind this proposition is outdated, not relevant and need to be set aside. Given the adverse ecological and economic impacts of large hydropower projects the same shall not be treated as renewable energy and the it shall not be promoted by bundling it with thermal energy.**

The above proposed clause (ad) related to Renewable Generation Obligation is not relevant and outdated as already conventional thermal power generation agencies like NTPC, Tata Power, Adani, etc., have already taken up setting up solar and wind power plants on large scale as they have become cheaper than coal based thermal power plants, and as such the proposed amendment shall be set aside.

4 Load Despatch Centre

According to the proposed new sub-section (6) of Section 26 under Amendment No. 6 “Every Regional Load Despatch Centre, State Load Despatch Centre, licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall comply with the directions issued by the National Load Despatch Centre.”

Here it is relevant to note existing sub-section (3) of Section 29 which says, “All directions issued by the Regional Load Despatch Centres to any transmission licensee of State transmission lines or any other licensee of the State or generating company (other than those connected to inter State transmission system) or sub-station in the State shall be issued through the State Load Despatch Centre and the State Load Despatch Centres shall ensure that such directions are duly complied with the licensee or generating company or sub-station.”

Following this we propose that National Load Despatch Centre shall issue directions through Regional Load Despatch Centres. To meet this we propose introduction of new sub-section (7) of Section 26 which shall read as “ All directions issued by the National Load Despatch Centre to any State Load Despatch Centre, licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall be issued through the Regional Load Despatch Centres and the Regional Load Despatch Centres shall ensure that such directions are duly complied with by the concerned.”

Amendments Nos. 7 and 8 to Sections 28 and 32 respectively propose that Regional Load Despatch Centres and State Load Despatch Centres shall see that "… no electricity shall be

scheduled or despatched under such contract unless adequate security of payment, as agreed upon by the parties to the contract, has been provided." According to these amendments, to improve the payment by DISCOMs to power generators the load dispatch centres have been empowered to ensure that the payment security mechanisms are operational. These mechanisms make it mandatory for DISCOMs to pay for electricity in advance through letters of credit.

These amendments are expected to improve, through ensuring operation of payment security mechanisms by RLDC/SLDC, greater enforcement of contracts and financial management of generators and distributors, help to insulate generating companies from payment risk and also help to instil financial discipline among DISCOMs. **These provisions are expected to resolve the chronic problem of receivables in the power sector and help to bring the power generation sector out of the present financial stress.** However, the issue is whether RLDCs and SLDCs have man power and expertise to deal with payment security management. RLDCs' and SLDCs' expertise lies in technical management of the grid. Ensuring payment security mechanism demands financial and legal experience. Given the contentious nature of work involved in ensuring operation of payment security mechanism there is every danger that RLDCs and SLDCs may be caught in legal tangles. **To overcome this detailed guidelines need to be laid down.**

Given the lack of autonomy of SLDCs they may not be able to ensure payment security mechanism involving state government owned generating companies and state government controlled distribution licensees.

In fact, all power purchase agreements (PPA) have provisions for payment security mechanism in the form of Letter of Credit (LoC) and/or escrow account. These provisions are not being adhered to by DISCOMs due to their poor financial health. **Unless the underlying reasons for this poor financial health of DISCOMs are addressed the proposed amendments will be of little help.**

5. Agreement for supply or purchase or transmission of electricity

Amendment No. 13 proposes to add the following paragraph to the existing Section 49 of the principal Act:

"49. Agreement with respect to supply or purchase or transmission of electricity.-(1)A generating company or a licensee may enter into an agreement with a licensee for supply, purchase or transmission of electricity on such terms and conditions, as may be agreed upon by them, including tariff and adequate security of payment consistent with the provisions of this Act.

This is an open-ended proposal with far reaching consequences. It has to be stipulated that any agreement with respect to supply or purchase or transmission of electricity entered between parties under the newly proposed Sub-section 49 (1) shall be subject to the

scrutiny and approval of the State Commission under Sections 61, 62, 63 and 85 of the principal Act

6 cross subsidies

The existing third proviso of sub-section (2) of Section 42 is as follows: “Provided also that such surcharge and cross subsidies shall be progressively reduced and eliminated in the manner as may be specified by the State Commission.” This is sought to be changed to “Provided also that such surcharge and cross subsidies shall be progressively reduced by the State Commission in the manner as may be provided in the Tariff Policy:” through Amendment No 12. Also, according to Amendment No 15 i) in section 61 of the principal Act- in clause (g), the word “progressively” shall be omitted and for the words “specified by the Appropriate Commission” the words “as provided in the Tariff Policy” shall be substituted;

This shows that the power to decide the level of cross subsidies is being taken away from the SERCs and placing it in the hands of the central government. As conditions differ from state to state there cannot be one solution for all conditions. Given this diversity the power to decide the level of cross subsidy shall be with the State Commission. **The potential consequences of such a policy decided by the Central Government could be problematic as cross subsidy levels suggested by the Central Government might not address state-specific challenges.** Also, as long as there are subsidised consumer categories cross subsidy charge on subsidising consumers cannot be avoided. As specified in the second proviso of sub-section (2) of Section 42 such surcharge shall be utilised to meet the requirement of current level of cross subsidy. Reduction and elimination of cross subsides will adversely impact poor households in the slabs of 0-50 units and 50-100 units per month. They constitute more than 50% of the domestic consumers. Their electricity consumption is to some extent cross subsidised by rich households whose per month electricity consumption is higher. If cross subsidy being availed by the poor households is reduced/eliminated cost of electricity to them will become prohibitive and they may be forced to go without it. In modern life one cannot imagine life without electricity. **In the interest of poor households' access to electricity it is imperative to continue cross subsidy.** To remove cross subsidy surcharge on open access consumers (consumers whose consumption is one MW and above) in the name of developing electricity market will lead to discriminating against the subsidising consumers served by the DISCOMs. **It has to be seen that cross subsidy surcharge levied on the open access consumers is commensurate with the cross subsidy burden of the subsidising consumers served by the DISCOMs.**

7 Subsidy

According to Amendment No. 16 in section 62 of the principal Act-

i) in sub-section (1) after clause (d), the following proviso shall be inserted before the existing provisions, namely:- "Provided that the Appropriate Commission shall fix tariff for retail sale of electricity without accounting for subsidy, which, if any, under section 65 of the Act, shall be provided by the government directly to the consumer;"

(ii) in sub-section (3), after the words "but may", the words "subject to provisions of the Tariff Policy," shall be inserted.

According to Amendment No. 18 in section 65 of the principal Act-

i) for the words "and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licence or any other person concerned to implement the subsidy provided for by the State Government:", the words "the amount of subsidy directly to the consumer and the licensee shall charge the consumers as per the tariff determined by the Commission." shall be substituted;

ii) proviso to section 65 shall be omitted

The above proposed amendments take away power of the SERC and the State Government to decide on the manner of payment of subsidy. **This neglects diverse situations prevailing in different states and tends to stress 'one solution fits all' formula.** This also applies to direct benefit transfer in the case of manner of providing subsidies. Take the example of agriculture services in Odisha and Telangana. As the number of agriculture services are less in Odisha there it may be possible for the State Government to directly provide subsidy to farmers. But in the case of Telangana where the number of agriculture services are quite large, more than 24 lakh, there it will be difficult for the State Government to directly provide subsidy to farmers. There it will be easier for the State Government to provide subsidy directly to the DISCOM. Metering and billing of agriculture services is a difficult task – organisationally and financially. Unlike other consumer categories agriculture services are spread over length and breadth of the State. As an alternative, distribution transformers (DTRs) serving agriculture services could be metered. Given the amount of subsidy being provided to agriculture services it is important to measure electricity consumption by these services. It has become a practice to show power theft as agriculture consumption. A part of the subsidy provided to agriculture goes to finance power pilfered through theft. In order to overcome this measuring agriculture consumption is very important and metering DTRs serving agriculture services is an implementable solution and subsidy also could be provided on the basis of consumption estimation arrived through this method. There are also issues

related to status of land records and clear titles to the land with the farmers which comes in the way of DBT to farmers. Then there are instances of lands leased out. In such cases who will receive subsidy – land owner or tenant – will be an issue that needs to be addressed. In case of delay in paying subsidy by the State Government directly to farmers they will be exposed to tariff shocks.

Similar problems will crop up in the case of domestic consumers in the slabs of 0-50 and 50 – 100 units who receive subsidy from the state governments. If the State Government fails to provide subsidy in advance domestic consumers in these slabs will not be in a position to pay full bill. Implementation of DBT in the case of poor households will become problematic.

There is also a danger that the consumers who receive subsidy directly from the state government in the form of cash may not use it to pay electricity bills and use it for other purposes. In such cases revenue recovery of DISCOMs will be impacted and they will be back to square one.

Keeping this in to account it is better to leave the manner of subsidies payment to the SERCs and the respective State Governments.

8 Adoption of tariff discovered through bidding

According to Amendment No. 17 to Section 63 of the principal Act …

“(2) The Appropriate Commission shall, after receipt of application complete in all respects, adopt the tariff so determined under sub-section (1), in a timely manner but not later than sixty days from the date of application: Provided that on expiry of sixty days from the date of application, if it is not decided by the Appropriate Commission, the tariff shall be deemed to have been adopted by the Appropriate Commission.”.

The Appropriate Commission needs to go into the merits of the matter and undertake due analysis of procedural compliance with respect to bidding guidelines. It needs to consider appropriate policy developments and any on-going legal proceedings and case law, before arriving at any decision. Further, the time taken for the process also depends on timely submission of all the related documents by the procurers and the project developer. As the tariff adoption process is not a mere token gesture, prescribing such a short and hard time limit after which the order is deemed to be adopted irrespective of its implications for consumer interest is highly inappropriate and should not be allowed.

9 Selection of SERC members

Amendment No. 20 to Section 78 takes the power of the State Government to constitute the Selection Committee to select Chairman and Members of the SERC away and keeps it in

the hands of the Central Government and Amendment No. 24 proposes omitting Section 85 from the existing Act that invested the power to constitute Selection Committee with the State Government. This is another instance of concentration of power in the hands of the Central Government. It is as if the central government i.e., GoI is a paragon of virtue and state govts are wallowing in dirt and mud. GoI track record in filling vacancies in Supreme Court and High Courts, CIC, Lok Pal etc., does not inspire confidence. We propose to set aside Amendment No. 24 and retain the Section 85 and changes proposed to Section 78 through amendment No. 20 to that extent needs to be set aside.

In order to improve the process of constitution of Selection Committee to select Members of State Commission we propose that **the existing Clause (a) of Section 85 to be amended such that the Chairperson of the Selection Committee will be a Retired High Court Judge nominated by the sitting High Court Chief Justice.** We also propose that the proceedings of the selection committee should be made public.

Amendment No 22 iv) proposes, "If there is no chairperson and member in a State Commission to perform its functions, the Central Government may, in consultation with the state government concerned, entrust its functions to any other State Commission or Joint Commission, as it deems proper." Absence of State Commission in Telangana for nine months in 2019 reflects this possibility of non-existence of the Commission. To overcome the recurrence of such possibility a monitoring cell may be set up either at the Department of Power, GoI or at the Forum of Regulators to keep track of vacancies in the State Commissions and alert the respective State Government to constitute a Selection Committee. It is odd that the situation of non-functional SERCs is visualised even under the proposed centralised process for selection of chairman and members of the SERCs!

10 Electricity Contract Enforcement Authority

Amendment No. 28 proposes setting up Electricity Contract Enforcement Authority (ECEA). According to the proposed Sub-section (2) of Section 109A, "Notwithstanding anything contained in this Act or any other law in force, the Electricity Contract Enforcement Authority shall have the sole authority and jurisdiction to adjudicate upon matters regarding performance of obligations under a contract related to sale, purchase or transmission of electricity, provided that it shall not have any jurisdiction over any matter related to regulation or determination of tariff or any dispute involving tariff."

According to proposed Section 109J (3) the Authority will have all the powers of civil court. Many power industry players have welcomed the creation of ECEA saying that judicial powers invested in it will help to resolve the disputes in the power sector. Here it is to be noted that SERCs have the same judicial powers. According to the existing Section 94 of the Act SERCs have the same powers as are vested in a civil court. The creation of another judicial authority in the form of ECEA is questionable as SERCs already have the powers and

mandate to adjudicate disputes related to enforcement of contracts. It is difficult to imagine that where SERCs have failed ECEA will succeed. Several other sectors such as telecom, civil aviation, etc., have their own regulatory bodies. They do not have such a dual regulatory structure. These regulators also perform the function of enforcement of contracts. This shows that there is no need to create another judicial body – ECEA.

SERCs approve PPAs along with power purchase tariff. Because of this they have better grip over issues related to implementation/execution of PPAs. The proposed amendments indicate that ECEA will be concerned with only contract enforcement disputes but not tariff related issues. When disputes arise over enforcement of these agreements/contracts SERCs are in better position to adjudicate on these matters compared to a new a body like ECEA.

The creation of this new institution will not help to speed up the matters. It will only complicate the matters further. It is very likely that disputes related to jurisdictional issues will crop up between ECEA and SERCs. Questions like whether ECEA has the mandate to take up disputes related to net metering contracts and open access contracts will also crop up.

Many of the cases before SERCs are related to contract enforcement. If all these cases before 26 SERCs and Joint Commissions in the country are transferred to the Authority it will be overwhelmed, even if it has two or more benches. **Given the enormity of the problem it is impractical to create a single body to deal with them.** It is practical to continue with the present dispensation.

Mala fide and unequal agreements/contracts need to be questioned, whenever and wherever an opportunity is available. ECEA may become a hatchet in the hands of Central Government to silence State Governments when the latter raises questions on PPAs imposed on these States. It is widely noted that Electricity Contract Enforcement Authority is introduced in the background Andhra Pradesh (AP) experience. New government which came to power in AP in 2019 directed APDISCOMs to renegotiate PPAs with wind and solar developers where there is wide divergence between generation tariff incorporated in PPAs and tariff realised in open competitive bidding. While cost plus tariff approved in the case of wind units is about Rs. 4.75 per unit tariff realised in open bidding is about Rs. 2.50 per unit. APSPDCL signed PPA for the purchase of 400 MW of solar power generated at the solar park set up at Galiveedu Mandal, Kadapa district in AP at Rs 4.50 per unit, while the prevailing price of solar power in open market bidding is Rs 2.44 per unit. This wide divergence in tariffs prompted the GoAP to renegotiate these PPAs. **The proposed amendment related to creation of ECEA will disempower state governments as well as other stakeholders from questioning lopsided PPAs even when evolving technical and economic conditions point to the need to re-evaluate such agreements.**

In view of the above the Amendment No. 28 shall be set aside. At the same time, steps shall be taken to improve functioning of SERCs.

Notwithstanding the above if ECEA is created following the proposed amendments it has to be seen that it functions in transparent manner. All documents related to the disputes filed before it and its Order on the same shall be made public expediently. The electricity

consumers who are impacted by the adjudication process shall have an opportunity to participate in the process and provide their inputs.

Notwithstanding the above we also would like to point out that the qualifications of the members of the ECEA as mentioned in the proposed amendment renders them unequal to the situation. An Additional District Judge is qualified to be a Judicial member of the ECEA. In the case of Technical members qualifications mentioned are vague. Members of ECEA who are called upon to decide on intricate matters of contract enforcement are expected to have experience and understanding of techno-economic and legal aspects of the power sector and the stature to stand up to the pressures exerted by different stakeholders of the sector.

11 Usurping State Government powers

One common theme that runs through the proposed amendments to the Electricity Act, 2003 is the Central Government usurping the powers and functions hitherto discharged by the State Governments and SERCs. These include, among others, constitution of selection committee to select members of SERCs until now done by State Governments, installing ECEA to decide on disputes related to contract enforcement hither to discharged by SERCs, setting RPPO limits hither to set by SERCs, deciding on cross subsidies and subsidies hitherto addressed by state Governments and SERCs and larger role for NLDC. It is an attempt towards greater centralisation of power in the hands of the Central Government in administering the power sector in the country.

Under the Constitution of India electricity is placed in the concurrent list. Both the Central Government and the State Governments have jurisdiction to legislate on this matter. Electricity is not within the exclusive domain of the Central Government. Constitutional propriety requires the Central Government to allow a stake for each State in deciding matters within their jurisdiction. If the proposed Electricity (Amendment) Bill, 2020 is enacted whatever is left under the purview of the state governments would disappear.

Given the diverse conditions in the country of India’s size it is important that each State play its role in governance and development of the power sector in its area. It is in line with the spirit of federalism enshrined in the Constitution of India. It is also a practical approach to deal with state specific issues in power sector. The power sector in each state has developed differently responding to requirements and resources of each state. The challenges that confront the power sector in each state are different, likewise are the solutions. The draft amendments propose uniform solutions which may not be relevant for particular states. Instead of solving the problems being faced by the states they may give rise to new problems. The ‘Pan Indian Panaceas’ in power sector are unrealistic and impractical.

Each state should be empowered to formulate state specific solutions to address problems faced by the power sector in the state. This will be in keeping with the spirit of federalism as enshrined in the Constitution of India.

However, it is not to deny that many of the state governments and power generation, transmission and distribution companies under their control failed to meet the power requirements of the states. But the solution does not lay in the Central Government taking over powers and responsibilities hitherto discharged by the State Governments. The interventions designed at the Centre tend to treat the state level electricity systems uniformly, without any attention to state specific resources and choices. They also do not take in to account political and economic forces that constrain and shape choices of state governments. There is need to devise state specific policies and programmes to overcome problems faced by power sector in each state. For this the state governments shall be empowered to evolve and enforce solutions that best meet the requirements of each state. At the same time the Central Government must continue to set broad targets at the national level and provide guidance to the state governments instead of usurping their powers. **Cooperative federalism calls for smooth coordination between the centre and states but not confrontation between the two.** The press reports in the wake of the proposed amendments to the Electricity Act indicate that many state governments are not happy at the prospect of losing their say in the governance of power sector in their states. **To uphold the spirit of federalism as enshrined in the Constitution of India it is important to set aside the proposed amendments that erode state powers.**

12 Concluding remarks

The proposed amendments to the Electricity Act, 2003 are formulated with a view to address critical issues which have weakened the commercial and investment activities in the electricity sector that needs to be addressed immediately to ensure sustainable growth of the country. It was also felt that the few provisions of the Act are unable to cope with the rapid development of the electricity.

Already the country is in a power surplus situation. It was reported that until 2027 no new power plant need to be set up to meet electricity needs of the country. Already a number of power plants are stranded and those that are in operation are clocking low PLF. Even in this surplus situation a large number of households in the country are going without power. If the proposed amendments are carried out this situation will become even more severe. This shows that there is disjuncture between the central government's plans and the ground situation. The proposed amendments in no way address this predicament.

According to the 37th report of the Parliamentary Standing Committee on Energy noted that the power sector had Rs 6 lakh crore of bank loans as of June 2017. Of this, Rs 37,941 crore is NPAs, while restructured advances amounted to Rs 60,858 crore. This situation would have worsened further in the meantime. The proposed amendments do not address this financial mess even though their aim is to address commercial and investment weaknesses.

The proposed amendments also aim at sustainable development of the power sector. The proposal to treat large hydropower projects (> 25 MW capacity) as renewable energy and promote them through Hydro Power Obligation (HPO) show that the Central Government is working at cross purposes. Similar is the case with promotion of solar parks and mega solar power projects even when solar power is more suitable for decentralised development.

The proposed amendments do not address the increasing cost of power generation which is one of the important reasons for higher electricity tariffs faced by consumers. These also do not address declining governance standards in the sector and erosion of consumer services. With the creation of ECEA the distance between the consumers and regulators will increase further.

While the proposed amendments pay attention to payment security mechanism and contract enforcement to shore up finances of generation companies and improve finances of DISCOMs through cost reflective tariffs without subsidies and cross subsidies they do not pay attention to impact of stranded assets and surplus power even when large sections of population in the country go without power. This shows that the objectives and impacts of these amendments do not address ground realities, and their aim appears to be to serve interests of certain sections.

The way these amendments are being pushed is also very disturbing. When the whole country is caught up in the crisis thrown up by the spread of coronavirus and the whole country is placed under locked down conditions and at a time when the voices of the whole country is gagged in the name of controlling the pandemic amendments to the Electricity Act are placed before the country. This shows that the aim of the Central Government is much more than that appears in the 'Statement of Objects and Reasons' to the (Amendment) Bill 2020.

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