Submitted to Ministry of Power

Comments on Draft Electricity (Amendment) Act 2020

June 2020

The Ministry of Power vide Public Notice No. 42/6/2011-R&R (Vol-VIII) dated 17 April 2020 and 27 April 2020 uploaded on the Ministry's website has invited comments and suggestions from all stakeholders on the Draft Electricity (Amendment) Act 2020. The present submission is in response to the notice and the draft amendment act published thereunder. We request the Ministry of Power to accept this submission on record.

GENERAL COMMENTS

1. The Electricity Act 2003 has not been amended since 2007 and it is important to address all aspects of the Act comprehensively. While the current amendments do focus on stricter execution & enforcement of contracts, promotion of renewable energy, governance issues in State Commissions, prudent tariff determination, etc. it is largely silent on issues pertaining to transparency, consumer interests, structural reforms across power sector value chain, building capacities, skilling, etc. The Electricity Act introduced new institutions and concepts 15 years ago, and there has been a wealth of learnings and experiences accumulated since, Therefore, it is important to reassess these aspects, provide specific guidelines and amend the Act in totality or introduce a new legislation.
2. While the introduction to the Electricity Act defines its objectives, it is suggested that the objectives of the act should be re-assessed and tangible goals should be defined for the power sector, to be achieved within a specific time. Alternatively, a mandate may be made for defining such goals in subsequent policy formulations such as Tariff policy and National Renewable Energy Policy.
3. The proposed amendments offer incremental piecemeal solutions to some of the imminent existing issues of the power sector. The social cost, feasibility and impact of such amendments are not clear. It is suggested that various elements of the Electricity Act, along with proposed amendments, are critically analysed by setting up an expert committee and exhaustive consultations need to be carried out with various stakeholders including industry, power sector institutions, civil society, academic experts (technical and economist), consumer groups, etc. Further, State Governments also need to be brought on board to ensure the legitimacy of the proposed amendments.
4. The proposed amendments seem to alter the regulatory powers available to State Commissions and limit the power bestowed on States to govern electricity institutions and issues at the state level. In doing so, it is being suggested that State Governments are largely responsible for the prevailing crisis and poor performance of the distribution companies. While the role of State Governments is implicit, the shortcomings of central institutions in their capacity to drive prudent planning, renewable integration, training, research, etc. also need to be assessed.

Promoting Renewable Energy and Climate Action

5. The intent of promoting renewable energy is much appreciated, but it is suggested that the Electricity Act should look at the need for climate action, reducing carbon emissions and promoting renewable generation, energy efficiency and other climate-friendly technologies in an integrated manner. Towards this end, it is suggested that the wording "promotion of efficient and environmentally benign policies" be replaced by "promotion of efficient, carbon neutral and environmentally friendly policies."
6. The amendments propose formulation of a National Renewable Energy Policy. Instead of this, formulation of a cohesive 'National Clean Energy Transition policy' is suggested. The policy shall aim to promote renewable energy along with other clean energy technologies such as energy storage, energy efficiency and electric vehicles, address issues of grid integration and balancing resources, lowering the carbon footprint of the electricity grid including thermal assets, fuel mix optimisation, and creating market signal to meet the goals and objectives defined within the policy.
7. It may be noted that the role of States is crucial from a social, as well as an administrative perspective. Further, state institutions are more sensitive to local trends and better aware of development plans, and hence, they are more suited to lead the role of energy planning, transition and improving the performance of institutions at the state level. It is suggested that the Centre's role should be to develop optimal policy and regulatory frameworks for the State Governments without impinging on their powers. The role of central power sector institutions should be to help build the capacity of state institutions for better governance and evaluate the same from time to time.
8. To ensure the legitimacy of Renewable Purchase Obligations, States should be given the freedom to decide on targets within the frameworks of National Policy. Parameters such as demand profiles, resource availability, balancing resources, tariff control etc. can only be assessed, monitored and managed by respective states and hence they should have the flexibility to dictate their energy transition roadmap.
9. In the proposed amendment of Section 3 of the Act, provision for the creation of a fund under the jurisdiction of the State Energy Department may be made where all the penalties collected from non-compliance with RPO obligations shall be deposited. Further, a mandate may be introduced to deploy the funds for the promotion of Renewable Energy and meet the objectives of the National Renewable Energy Policy. Support for pilots for new technologies may also be allowed under the scope of the fund thus created.
10. The proposed amendments as per Section 3A provide for minimum purchase of electricity through hydro sources of energy. Considering the huge investments in the sector, cost & time overruns, high number of stressed hydro assets and the social & environmental impacts of hydropower, it should not be considered a renewable energy resource for the purpose of the RPO. However, suitable clauses may be introduced to create a market for ancillary services and balancing resources. Hydro and other suitable technologies such as battery energy storage are likely to benefit from the same.

11. In a significant shift from the pathway suggested by the proposed amendments to fix targets and enforce compliance, it is suggested that the energy transition process is decentralised with a mandate for states and union territories to build their individual and tailored roadmaps for the energy transition. Further, electricity utilities (generating, transmission and distribution companies) may also be mandated to prepare and execute their energy transition roadmaps to support the goals set by respective states.
12. Further, it is suggested that while it is important to have National goals for energy transition, such goals need to be technology-neutral to allow market forces to dictate the scaling of suitable technologies and optimise the cost for energy transition.
13. In line with the current approach to rationalising subsidies and executing targeted subsidies, it is recommended that the practice of capital subsidies should be dropped as it leads to restriction of competition and innovation. Further, there are significant institutional and financial costs for disbursement of such subsidies, and such mechanisms are prone to corruption, manipulation, and inadequate monitoring. Alternatively, subsidies may be targeted to reduce the cost of finance (default guarantees), limited and prudent subsidisation of basic infrastructure such as transmission networks, forecasting infrastructure and capabilities, pilots, skilling, awareness, grievance redressal mechanisms for consumers, performance monitoring and evaluation etc.
14. The act may be amended to pave the way for new institutions or restructure existing institutions to facilitate better planning, grid integration, technical and regulatory capacity building of sub-national institutions, promoting skills development and research
15. Variable renewable energy players may also be brought within the ambit of ancillary services by providing necessary balancing support through curtailment of generation. Suitable mechanisms for fair compensation may be adopted for the same, or the price for ancillary services may be dictated by market forces.
16. The proposed amendments in Section 176 (2) (ad) enable the central government to formulate rules regarding renewable generation obligation (RGO). It may be noted here that RGOs do not serve any specific purpose other than forcing generators to ensure some renewable generation. This may skew the market and introduce inefficiencies as it forces the generating companies to make investments after discounting their natural competencies, business prudence and interests. As suggested above, the regulatory frame should promote the growth of renewables without dictating to specific entities. It is of little consequence whether a thermal generator is in the business of renewables or not, as long as there is general growth in demand for clean and renewable energy. In such cases, policies and regulations need to facilitate lowering the carbon footprint of existing businesses and operations, and renewable energy should be treated as a mechanism for substitution. However, penalties accrued from non-compliance may be used for facilitating the growth of renewables or other low-carbon technologies, as may be deemed suitable.

Reforming Electricity Distribution

17. The proposed amendments seem to indicate that distribution companies and State governments are largely responsible for the prevailing woes of the power sector. However, we wish to bring to notice that enough documentation has been put forth in recent years discussing the implication of significant deviations in energy demand projects and over-capacity. Hence, it is recommended that foundational capacities to govern and monitor the sector should be strengthened.

18. It may also be noticed that business and operational risks are unequally distributed across the three verticals of generations, transmission, and distribution. Hence, it is suggested that the return on investment allowed for entities across the three verticals should be reflective of the risks, and consequently, transmission sector projects shall be allowed the lowest returns on investment amongst the three verticals.

19. In the proposed amendment of Section 14, a new entity 'Distribution Sub-Licensee' has been introduced which is authorised by the Distribution Licensee to distribute electricity in a particular area under permission to the State Commission. On the other hand, a Distribution Franchisee has been defined as a person authorised by the Distribution Licensee to distribute electricity in a particular area under information to the State Commission. This creates unnecessary duplicity of terms. Further, there is a lack of clarity on the functional differences between the two. Therefore, it is suggested that the distinction between these two entities should be provided.

20. Further, it is also suggested that contracts for the distribution franchisee and distribution sub-licensee must be approved by the electricity commission for prudence check. Both the distribution franchisee and distribution sub-licensee should be mandated to report on the standard of performance and other data for which responsibility is vested upon them through the contract with the parent distribution company. Such reporting may be made directly or via the parent distribution company with proper differentiation of performance of the former.

21. It is also suggested that structural reforms should be initiated to facilitate better autonomy for public distribution companies and develop an ecosystem for commercial decision-making and management.

22. Common power procurement entities that procure power on behalf of multiple power distribution companies to force a differential in procurement cost should be dismantled since it disincentivises better-performing distribution companies and its consumer.

23. It also recommended that distribution companies establish themselves as independent entities and roles to the State Government shall be limited to the Board of Directors. Each company shall be mandated to operate and manage their websites, assets and services independently, irrespective of the fact that the companies may belong to the same state.

Transfer of knowledge, resources, technology etc. between such entities within the state or outside the state shall be allowed through commercial channels and terms only.

24. It has been observed on the ground that along with the prevalence of unmetered connections for agriculture supply, unmetered billing is quite prevalent in rural areas for other categories wherein meters are reported as faulty and not replaced in a timely manner (sometimes for multiple years). Such practices create ambiguities in the accounting of revenue, collection, and estimation of subsidies. It is recommended that as a general principle, the practice of unmetered supply should be prohibited by introducing suitable amendments to the Electricity Bill. Further, a stricter standard of performance should also be mandated for the replacement of faulty meters.

Open Access

25. Improving competition in electricity distribution may dictate better performance by distribution companies. Ease of open access can introduce an element of competition in the monopolistic distribution sector, while also ensuring big consumers are able to optimise their input costs. Hence, initiatives may be taken to ease open access.

26. Towards this end, the application process for open access must be made easier and more transparent. A mandate may be given to SLDCs, RLDCs and NLDC to provide available spare transmission capacities amongst existing networks managed by them, details of transmission networks under construction along with an estimated timeline for completion, details of application and capacity under process for respective transmission lines. The application process should be made online and automated as far as possible.

27. It is also suggested that a market may be created for congestion-based pricing for transmission networks. This shall ensure that revenue from spare network capacity is driven by market forces, while also creating market signals for more equitable investments in generation capacity across India. Congestion-based pricing can also support the integration of renewables.

Payment Security for Scheduled Power

28. Section 28 (3a) and Section 32(2a) of the proposed amendments provide for non-dispatch of power by RLDC/SLDCs unless adequate payment security is provided as per the contract. In consultation with concerned stakeholders, minimum payment security based on transaction value may be defined to avoid ambiguity. Based on business risks, payment security of value higher than what is mandated may be allowed.

Cost Reflective Tariffs and Tariff Rationalisation

29. Cost-reflective determination of tariffs is bound to ease cash flows for DISCOMs and reduce carrying costs, ultimately benefiting all stakeholders in the long run. However, the elimination of regulatory assets shall render regulatory commissions without any tools to smoothen the impact of fluctuations in fuel prices. Although such a situation may be

unlikely in the near future with India's current fuel mix and its dependence on external markets, prudent use of regulatory assets may be allowed. Hence, it is suggested that a suitable framework may be devised for the same.

30. The third provision of Section 42 (2), Section 61 (g) and Section 181 (p) of the proposed amendments state that cross-subsidies are to be reduced as specified in the National Tariff Policy. Currently, it is being done by the State Commissions. Electricity supply is an essential service which significantly impacts the quality of life, livelihoods and thrivability of industry. While in an ideal scenario, the elimination of cross-subsidy shall be welcome for the purpose of efficiency and economic competitiveness. However, in a developing country like India with increasing economic disparity, social costs also need to be acknowledged and recognised. Hence, it is recommended that, with an aim to reduce cross-subsidy, a framework may be provided in the National Tariff Policy for better-targeted subsidy to lower economic strata of the populations in an effort to reduce the overall subsidy burden on the state and high-paying consumers. The same shall be indicated in the act through amendments.
31. Section 62(1)(d) stipulates that Appropriate Commission shall fix tariffs for the retail sale of electricity without accounting for a subsidy, which will be provided by the government directly to the consumer. Section 65 of the draft amendment bill further states that the State Government shall pay the subsidy amount directly to the consumer and the distribution licensee shall charge consumers, the tariff determined by the Commission. It should be noted that DBT implementation can have a significant impact on electricity consumers from economically weaker sections. Many challenges with the implementation of DBT for electricity subsidies such as ensuring subsidies reach the user of electricity rather than the owner of the electricity connection still need to be addressed. Millions of farmers and marginal tenants are likely to be directly impacted by such gaps in the implementation of DBT. Further, given those collection efficiencies amongst economically poorer sections are lower, DBT of subsidies may increase losses of DISCOMs since they are not in a position to collect their dues, to begin with.
32. Lastly, we submit that the issue of DBT and cross-subsidy shall be relooked in a cohesive manner. Challenges with smoothly implementing should be recognised, especially gaps in DBT implementation can have a significant impact on electricity consumers from economically weaker sections. Further, provisions may be made to introduce better-targeted subsidies. It is suggested that intensive consultations and pilots need to be undertaken before mandating DBT to transfer electricity subsidies.
33. Alternate mechanisms such as escrow accounts or upfront subsidies by State Governments may be explored to eliminate the risk of non-payment.

Regulatory Governance

34. Ensuring capacitated and non-partisan individuals in regulatory and dispute handling bodies such as Appellate Tribunal, Regulatory Commission etc. is essential for good governance of the power sectors. It may be noted that States have primary accountability towards their residents, and they are also more sensitive to local trends, needs and issues. Hence, it is advised that instead of limiting the power of States, the Central institutions need to assist State Governments and concerned institutions in building their capacity for better governance of power sector.

35. In Section 78, the constitution of Selection Committee has been proposed to recommend Members for the purposes of selecting the Members of the Appellate Tribunal and the Chairperson and Members of the Central Commission, Electricity Contract Enforcement Authority, State Commissions and Joint Commissions to constitute a Selection Committee. The proposed selection committee has disproportionate representation from the States for selection of members for their respective regulatory commissions, with larger decision-making power resting with the Centre. This is a clear infringement of power of state governments, and same should be avoided for reasons stated in section 34 of this submission. Alternatively, it suggested that a framework may be provided to ensure non-partisan appointment to the regulatory commissions. Towards this end, provisions such as follows may be introduced:

    a. No history of formal engagement with the respective State Government, bureaucracy, and power institution (public and private) in last 10 years

    b. No reappointment in public services within the State for next 5 years after expiry of the term

    Such provisions shall ensure that conflict of interest does not exist and the probability of State Government to influence the members and Chairman of the commission is low.

36. Under Section 90, there is no provision for the removal of a member of a State or Central Commission on account of non-performance. The same should be introduced, along with metrics for performance evaluation through ancillary policies or regulations.

Resolution of Disputes

37. In the proposed amendment to Section 109A, a new body ‘Electricity Contract Enforcement Authority (ECEA)’ has been created to adjudicate upon matters regarding the performance of obligations under a contract related to sale, purchase or transmission of electricity. While the intent of swift and non-partisan resolution of disputes is appreciated, the initiative to create a new body at the National level while undermining the functions of regulatory commissions is a clear move towards centralisation and questions the ability of State-level institutions to operate in an autonomous non-partisan manner. By similar logic, sub-national courts are also vulnerable to similar concerns, and hence adjudication of cases should only happen via the Supreme Court. It must be

recognised that National institutions can also be influence by the Central government, and the same does not imply their powers or roles need to be curtailed. Indian democracy is built on decentralised institutions of governance, and the same should be respected as per the provisions of the constitution. Restructuring of institutions shall be done in a manner which ensures that regulatory institutions are immune to the influence of central and state governments.

38. It is suggested that initiatives should be made to strengthen the electricity commission, ensuring their autonomy (from State as well as Central Governments) and augmenting their capacity to swiftly adjudicate cases.
39. The jurisdiction on disputes regarding contracts for trading activities should also be clearly defined.
40. Further, a central authority based in the National Capital raises the issue of access and increased transactional costs for dispute resolution, proportional to the distance from the National Capital. To address issues of efficiency and transitional costs, it is suggested that as far as possible, dispute resolution processes shall be made online, automated and handled through virtual environments. Regional offices of ECEA may also be established towards this end.
41. In the proposed section 109D for the qualification for appointment of Chairperson and Members of Electricity Contract Enforcement Authority, the technical member "is, or has been a person of ability and standing, having adequate knowledge or experience in dealing with the matters relating to electricity generation, transmission, distribution and regulation, or economics, finance, public policy, commerce, or management with experience in infrastructure related matters" without any mention of years of experience and level of technical expertise. This may be amended by specifying a minimum of 15 years and 20 years of experience for members and Chairman, respectively, in relevant fields and work with Distribution Companies or Generation Companies or Transmission Companies or Load Dispatch Centres or electricity planning agencies of Public or Private Sector / State Government/Central Government/Institutions of International Repute or as may be specified.

Consumer Rights and Interests

42. Contrary to experiences and learnings, the proposed amendments fail to address issues concerning the rights and interests of electricity consumers. We petition to take cognizance of the issues concerning consumers and through the amendments in the Electricity Act, enforce appropriate provisions to safeguard their interests.
43. In line with the commitment of the National Government, it is proposed that the right to 24x7 reliable, quality, and affordable power is enshrined within the Electricity Act, with appropriate exceptions. In conjunction with this, a mandate to establish stricter and uniform Standards of Performance across distribution utilities should be made. While

appropriate deviations may be allowed across consumer categories and between urban and rural feeders, the practice of average reporting shall be discontinued since it allows unfair disparity, especially amongst urban and rural supply of electricity and related services. Hence, universal supply obligations of Distribution Licensees should be explicitly mentioned for all categories (Agricultural etc.) and areas (rural/urban).

44. Further to this, in the case wherein DISCOMs fail to adhere to Standards of Performance, provision for automatic and fair compensation to consumers shall be made.

45. 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 the issue of fair compensation and compensation amounts remain stagnant over the years without being linked to any index such as inflation.

46. The Act can make provision so that a group of more than 50 consumers can approach the Commission directly to ensure compliance with Standards of Performance regulations and seek compensation on behalf of a group of consumers (which may include consumers not approaching the Commission) to increase accountability of distribution and supply licensees.

47. A group of consumers being served by the same licensee, with similar complaints should also be allowed to approach the CGRF to represent their views together.

48. Provisions for payment of compensation in case, the order passed by the Consumer Grievance Redressal Forum (CGRF) or the Ombudsman is challenged by the utility before the High Court, should also be introduced.

49. Regulations and infrastructure dedicated to grievance redressal of consumers are inconsistent across the states and generally found to be inadequate. Taking cognizance of issues on the ground, suitable provisions shall be made to formulate 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 the mandatory inclusion of independent consumer representatives and advocates in grievance redressal forums and institutions across different tiers.

50. 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 the resulting course of action between the two.

51. A recent judgement by the Supreme Court has allowed recovery of such arrears resulting on account of the inefficiency of DISCOMs, which results in an undue burden on consumers. It is suggested that the issue of recovery of arrears which are more than 2

years old shall be addressed in the act to remove ambiguity and safeguard consumers from implications of DISCOM inefficiencies.

52. Access to regulatory institutions and appellate authorities by consumer advocates and civil society continues to be a grave concern. Individuals and organisations are forced to bear extremely high fees and other expenses while they fight for the interests of the public and work for their welfare. Citizen and civil society participation in regulatory decision-making and reforms is a pillar of vibrant democracy and accountable governance. It is suggested that suitable amendments should be introduced to mandate a nominal fee and reduce other barriers to access. It is also requested, that on the merit of the respective cases, regulatory commissions and appellate authorities should reimburse prudent expenses towards consumer advocates/civil society.

53. All power sector institutions should be mandated to timely report all relevant data in the public domain in a timely manner. Along the same lines, the mandate of timely response to queries under the RTI Act should be reinforced. A Forum of Regulators may be tasked to provide guidelines and a framework for the same to ensure consistency.

54. An independent autonomous online and offline infrastructure should be created under the office of the ombudsman to facilitate awareness amongst consumers regarding their rights and responsibilities and grievance redressal. The mandate should also be made to provide advisory and legal support to consumers, especially those from marginal backgrounds, for the redressal of grievances.

Miscellaneous Recommendations

55. Currently, subsidies contribute to about 20-25% of the total revenue requirement by the DISCOMs and therefore in order to ensure accountability, periodic reporting of information related to subsidies should be done by the DISCOMs to the state commission. The information may include category-wise subsidy promised and received along with details of delay in payment (schedule for advance disbursal, the date of actual disbursal etc.) as well as the financial impact of such delays (which includes interest payments for short-term borrowing undertaken due to delays).

56. Section 86 of the Act gives the State Commissions a wide range of duties, but it has been observed that they restrict themselves to activities pertaining to the determination of tariffs and other regulatory works. The scope and role of State Commissions can be widened with a suitable framework for implementation and provision of resources to monitor and review the implementation of central and state-level schemes/programs aimed at improving electricity supply and quality by conducting independent audits and setting up other necessary mechanisms.

57. The functions of State Commissions under Section 86 of the Act such as timely determination of tariffs, meeting of SAC committees etc. are often delayed or ignored because of lack of intent or capacity limitations. A suitable framework may be provided in

the Act to ensure the proper functioning of the regulator in conjunction with performance metrics for the regulatory commissions and its constituent members.

58. Provision regarding periodic review of the functioning of the commissions by the Forum of Regulators can be made with the submission of reports to the central government and respective state government to ensure accountability and the onus of performance on the commissions.
59. Provision regarding periodic assessment of the general performance of the Distribution Licensees including supply quality, addressing consumer complaints, regulatory compliance etc. with a focus on in-situ collection of data by commissions can be made.
60. Currently, the Act mandates the commissions to undertake public consultation before finalising tariffs. Public hearings should necessarily be conducted for all tariff-related matters concerning distribution, transmission, generation etc., approval of power purchase agreements, granting and revocation of licences, issues pertaining to access, quality of supply & service and compliance with standards of performance.
61. The Act should specifically mandate all commissions to undertake public hearings at a suitable location in the Distribution Licensee's area of operation for all tariff-related matters, instead of the current practice of conducting such hearings at the State Capital. Online participation and representation may be allowed towards this end.
62. All licensees should be mandated to maintain all petitions and subsequent filings submitted by them on their websites in both English and the local vernacular of the State in a segregated and easy-to-access manner.
63. Under Section 57, the state commissions have been mandated to specify Standards of Performance for licensees. Considering the number of years from the enactment of the Act, it is high time to include a few parameters of performance in the Act and make them universally applicable. The resolution of no current complaint grants a new connection, benchmark value for SAIFI & SAIDI and procedure etc. can be included in this.
64. Provision for automatic compensation which reflects in the next bill of the consumer can be made for select parameters as specified in the regulations of the State Commission. Collective action can be mandated for DISCOMs in an event like load shedding and any requirement of application for compensation can be foregone.
65. Section 74 mandates every licensee, generating company or person generating electricity to furnish to CEA statistics or information relating to the generation, transmission, distribution, trading, and use of electricity as it may require. However, there's no clarity on the consequences of noncompliance. This leads to misleading information by generators to CEA, delayed market monitoring reports and other publications by CEA. Suitable punitive provisions should be introduced to address the same.
66. Functional benches of the APTEL in all regional headquarters, and not just in Delhi, should

be introduced.

67. The compliance with the Electricity Act can be mandated to be monitored by CEA/CERC in the form of a report periodically to ascertain activities such as unbundling, elimination of cross-subsidy, progress under open Access etc.

68. The safety regulations are currently being formulated by CEA and the current framework provides limited transparency and participation, and no regulatory oversight. The state commissions should be a part of formulations of safety regulations as well as their implementation. Including safety in the standards of performance and providing compensation, instead of ex-gratia to accident victims, will incentivise improvement in safety standards. Therefore, amendments to Sections 53 (1), 57 (1), 161 (2) and 162 (1) are suggested.

69. Due to the increase in potential players and possible expansion of market operations in the coming years, Section 66 should be amended to mandate the constitution of market monitoring committees under the Central and State ERCs. The key trends in the market can be monitored to inform policy and regulatory processes by this committee and it can consist of representatives from the distribution licensees, LDCs, traders, power exchanges, open access and captive consumer associations.