ALL INDIA POWER ENGINEERS FEDERATION

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No. 41-2022/EA Bill 2022 10-07-2022

Sri R K Singh

Minister of Power

Govt of India

New Delhi

Sub: Comments and objection to the Electricity (Amendment) Bill – 2022

Respected Sir,

The Ministry of Power has issued the document of "key proposals" and proposed amendments in the electricity Act 2003.

2. In the two earlier amendment documents (draft) the All India Power Engineers' Federation had submitted its detailed comments and objections. The two earlier documents of Ministry of Power were

a) Electricity (Amendment) Bill 2020 cumulated on the Ministry of Power website on 17/04/2020, with draft put on the website and comments to be given in 21 days.

b) Draft The Electricity (Amendment) Bill 2021 dated 05/02/2021 circulated to principal Secy. Power of all State Govts. With comments to be given within 2 weeks (but this draft was not put on the Ministry of Power website.

2.1 The draft bill of 17/04/2020 as well as draft bill of 05/02/2021 had to annex "statement of objects and reasons" and "Brief Proposal"

3. The Amendment Bill now issued i.e. The Electricity (Amendment) Bill 2022 is incomplete and insufficient for the purpose of amendment to Electricity Act 2003 due to the following.

a) Draft not put on Ministry of Power website

b) Draft does not contain statements of objects and reasons.

c) No time frame given for submission of comments and objections.

4. OBJECTIONS ON MERIT

4.1 The Govt. of India has proposed amendments in the Electricity Act 2003 vide amendment bill of 2022. Since the purpose in the amendment of the existing statute 2003, it is compulsory that the procedure and methodology adopted in case of statute, Electricity Act 2003 is also adopted in amendment of Electricity Act 2003. The Electricity Act 2003 was finalized after extensive public interaction put on the Ministry of Power website as Electricity Bill 2001 before it was finalized. It follows that the Govt. of India / Ministry of Power should have put the draft of amendment on the Ministry of Power website and given adequate time and opportunity for giving comments.

4.2 The statement of objects and reason is the starting point of the state, i.e. Electricity Act 2003 and any proposed amendment must contain a statement of objects and reason. In case of the 2022 draft of amendment, there is no statement of objects and reasons.

4.3 In the case of Civil Appeal No. 5399-5400 of 2016 Energy Watchdog Vs. CERC and Others, the judgment of 11/04/2017 has quoted in full the statement of objects and reasons for Electricity Act 2003. The statement shows the importance of objects and reasons, and was quoted in full as under in pages 15 to 19 of the judgment.

The text is reproduced as under

"Relevant provisions of the Electricity Act, 2003

16. The 2003 Act did away with three earlier statutes in which a completely different regime for generating and supply of electricity was provided for, namely, the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1928 and the Electricity Regulatory Commissions Act, 1998. The Statement of Objects of Reasons for this Act reads as follows:

"The Electricity Supply Industry in India is presently governed by three enactments namely, the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948, the Electricity Regulatory Commissions Act, 1998.

1.1 The Indian Electricity Act, 1910 created the basic framework for the electric supply industry in India which was then in its infancy. The Act envisaged growth of the electricity industry through private licensees. Accordingly, it provided for licensees who could supply electricity in a specified area. It created the legal framework for laying down wires and other works relating to the supply of electricity.

1.2 The Electricity (Supply) Act, 1948 mandated the creation of a State Electricity Board. The State Electricity Board has the responsibility of arranging the supply of electricity in the State. It was felt that electrification which was limited to cities needed to be extended rapidly and the State should step in to shoulder this responsibility through the State Electricity Boards. Accordingly the State Electricity Boards through the successive Five Year Plans undertook rapid growth expansion by utilizing Plan funds.

1.3 Over a period of time, however, the performance of SEBs has deteriorated substantially on account of various factors. For instance, though power to fix tariffs vests with the State Electricity Boards, they have generally been unable to take decisions on tariffs in a professional and independent manner and tariff determination in practice has been done by the State Governments. Cross-subsidies have reached unsustainable levels. To address this issue and to provide for distancing of government from determination of tariffs, the Electricity Regulatory Commissions Act, was enacted in

1998. It created the Central Electricity Regulatory Commission and has an enabling provision through which the State Governments can create a State Electricity Regulatory Commission. 16 States have so far notified/created State Electricity Regulatory Commissions either under the Central Act or under their own Reform Acts.

2. Starting with Orissa, some State Governments have been undertaking reforms through their own Reform Acts. These reforms have involved unbundling of the State Electricity Boards into separate Generation, Transmission and Distribution Companies through transfer schemes for the transfer of the assets and staff into successor Companies. Orissa, Haryana, Andhra Pradesh, Karnataka, Rajasthan and Uttar Pradesh have passed their Reform Acts and unbundled their State Electricity Boards into separate companies. Delhi and Madhya Pradesh have also enacted their Reforms Acts which, inter alia, envisage unbundling/corporatisation of SEBs.

3. With the policy of encouraging private sector participation in generation, transmission and distribution and the objective of distancing the regulatory responsibilities from the Government to the Regulatory Commissions, the need for harmonizing and rationalizing the provisions in the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 in a new self-contained comprehensive legislation arose. Accordingly, it became necessary to enact a new legislation for regulating the electricity supply industry in the country which would replace the existing laws, preserve its core features other than those relating to the mandatory existence of the State Electricity Board and the responsibilities of the State Government and the State Electricity Board with respect to regulating licensees. There is also need to provide for newer concepts like power trading and open access. There is also need to obviate the requirement of each State Government to pass its own Reforms Act. <u>The Bill has progressive features and endeavours to strike the right balance given the current realities of the power sector in India. It gives the State enough flexibility to develop their power sector in the manner they consider appropriate. The Electricity Bill, 2001 has been finalized after extensive discussions and consultations with the States and all other stake holders and experts.</u>

4. The main features of the Bill are as follows:-

(i) Generation is being delicensed and captive generation is being freely permitted. Hydro projects would, however, need approval of the State Government and clearance from the Central Electricity Authority which would go into the issues of dam safety and optimal utilization of water resources.

(ii) There would be a Transmission Utility at the Central as well as State level, which would be a Government company and have the responsibility of ensuring that the transmission network is developed in a planned and coordinated manner to meet the requirements of the sector. The load dispatch function could be kept with the Transmission Utility or separated. In the case of separation the load dispatch function would have to remain with a State Government organization/company.

(iii) There is provision for private transmission licensees.

(iv) There would be open access in transmission from the outset with provision for surcharge for taking care of current level of cross subsidy with the surcharge being gradually phased out.

(v) Distribution licensees would be free to undertake generation and generating companies would be free to take up distribution licensees.

(vi) The State Electricity Regulatory Commissions may permit open access in distribution in phases with surcharge for –

(a) current level of cross subsidy to be gradually phased out along with cross subsidies; and

(b) obligation to supply.

(vii) For rural and remote areas stand alone systems for generation and distribution would be permitted.

(viii) For rural areas decentralized management of distribution through Panchayats, Users Associations, Cooperatives or Franchisees would be permitted.

(ix) Trading as a distinct activity is being recognized with the safeguard of the Regulatory Commissions being authorized to fix ceilings on trading margins, if necessary.

(x) Where there is direct commercial relationship between a consumer and a generating company or a trader the price of power would not be regulated and only the transmission and wheeling charges with surcharge would be regulated.

(xi) There is provision for a transfer scheme by which company/companies can be created by the State Governments from the State Electricity Boards. The State Governments have the option of continuing with the State Electricity Boards which under the new scheme of things would be a distribution licensee and the State Transmission Utility which would also be owning generation assets. The service conditions of the employees would as a result of restructuring not be inferior.

(xii) An Appellate Tribunal has been created for disposal of appeals against the decision of the CERC and State Electricity Regulatory Commissions so that there is speedy disposal of such matters. The State Electricity Regulatory Commission is a mandatory requirement.

(xiii) Provisions relating to theft of electricity have a revenue focus.

5. The Bill seeks to replace the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998.

6. The Bill seeks to achieve the above objects." Un quote

4.4. While the Govt. of India intends to amend the Act 2003, we find that the starting point viz statement of objects and reasons for amendment is totally missing. For the proposed amendments there must be some objects or reasons on account of which the amendment is proposed, and in absence of such a statement, the entire exercise becomes meaningless.

4.5 The exercise for amendments has been in progress since December 2014 (Bill 2014), progressing to Bill 2018, 17/04/2020 (Bill 2020), 5/02/2021 (Bill 2021), and now reaching the presentation of July 2022. The level of transparency

has progressively reduced and with the passage of time it is impossible to figure out what were the statements of objects and reasons for the present exercise of July 2022.

The stakeholders have not been given adequate opportunity to study and examine the amendments proposed, and in absence of adequate opportunity, the entire exercise becomes invalid.

5. The statement of objects and reasons for Electricity Act 2003, as quoted by the Supreme Court in its order of 11/04/2017 states at page 17 as under.

"The Bill has progressive features and endeavours to strike the right balance given the current realities of the power sector in India. It gives the State enough flexibility to develop their power sector in the manner they consider appropriate. The Electricity Bill, 2001 has been finalized after extensive discussions and consultations with the States and all other stakeholders and experts".

5.1 The most important factor is the assertion that the Electricity Bill 2001 has been finalized after extensive discussions and consultations with the states and all other stakeholders and experts.

5.2 Thus, the same procedure, process and methodology as was adopted while finalizing Electricity Act 2003 must necessarily be adopted while dealing with any proposal/ proposals for amendment to the statute.

5.3 All India Power Engineers' Federation has obtained feedback from various stakeholders and as per our feedback is

a) There has been no discussion or consultations with the states, nor with other stakeholders, nor with experts.

b) The most important stakeholder in this entire exercise, the electricity consumers, has been conspicuously excluded. Similarly, the electricity workers and power engineers have been excluded from the process of giving comments on draft amendments.

c) Specific concerns raised by the farmers and farmer organisation have not been addressed and the farmers are not satisfied at all. Our comments in response to some of the slides of the MoP presentation are as follows.

6. Slide 5-6 proposals of the Bill to be retained: Comments

6.1 RPO Trajectory and penalty for non compliance.

As regarding RPO Trajectory it is observed that while RPO targets are being declared at national / international level, the ultimate consumers of renewable power would be the state discoms and the necessary coordination with the Discoms is not being done, while on the other hand the discoms are proposed to be penalized if there is shortfall in RPO target achievement too give two recent instances, the earlier target at National (All India) level was 175 GW renewable by 2022 (including 60 GW wind, 100 GW Solar and 15 GW small hydro etc.); however, the coordination with the states has been neglected.

Now the renewables target (at All India Level) has been ramped upto 500 GW by 2030, but state wise and year wise coordination is missing and there does not appear to be any coordination of how the target of 500 GW is to be achieved year wise from present target of 175 GW in 2022 going upto 500 GW 2030 and how much is expected to be allocated to the various states.

6.2 Amendments pertaining to SERC, CERC etc (Slide-5)

While the Ministry of Power has made several proposals regarding functioning of SERC, CERC etc. the fact remains that APTEL functioning has collapsed due to non appointments by Govt. of India. For the past 1 years, APTEL functioning has been at standstill. With such track record, how Govt. of India / Ministry of Power can make ad proposals relating to appointment in regulatory bodies.

The Govt. of India has made a proposal (slide -5, #3) that if SERC stops functioning due to vacancies, then the functions could be entrusted to any other SERC. Govt. of India must first respond to what should be done when APTEL stops functioning due to non appointments and has remained non functional for the past year.

6.3 Slide 19

Section 26 (4) (b)

The function of NLDC relates primarily to grid operation, security and safety of the grid on a national basis. The function of payment security mechanism is unrelated to grid operation as it is a commercial issue to be settled / decided on commercial consideration. The issue of payment security mechanism should not be given to NLDC or RLDC or SLDC.

6.4 Slide 21

While the Section 91 (1A) relates to mechanism in SERC for monitoring compliance of Act/ Rules, there is no provision where Ministry of Power itself is not complying with Act/ rules, particularly with respect to section 110,111,112,113 to 125 wherein the non appointment of APTEL Member / Chairman has caused the entire section 110 to 125 of Electricity Act 2003 to collapse due to non compliance and non appointment of member/chairman by the Govt.

It is suggested that before the Govt. of India can take up any move/ proposal to amend Electricity Act 2003, the Ministry of Power itself should ensure compliance of the existing statute by the Ministry-as in the case of APTEL and sections 110 to115.

Choice of consumer through multiple distribution licensees.

7.0 Before examining the proposed amendments relating to consumer choice, it is essential to first examine the case where consumer choice was given and resulted in massive failure.

7.1 The suburban areas of Mumbai have two licensees operating in the same area, viz Tata and Adani and consumers have the choice of selecting the wires as well as supply provider. The experiment has failed since competition has not yielded LOWER TARIFFS, but in high tariffs that are regarded as highest in the country.

As far as competition is concerned, the practical experience of Mumbai is that the two licensees are primarily engaged in legal disputes and battles on

legal points against each other going up to Supreme Court and nowhere in there any evidence of competition resulting in lower tariffs. The only competition we can see is the infighting amongst the rival licensees. The consumer interests are the first casualty of such infighting amongst rival licensees.

7.2 Where multiple licensees are introduced as envisaged in the Ministry of Power presentation, it would open a pandora's box of dispute relating to energy accounting metering, electricity thefts and management of schedules. The Ministry of Power has not taken any presentation to first study the mess created in Mumbai and no safeguard is incorporated in the Ministry of Power model. There will be extended disputes and litigation, and their licensee would have to negate massive manpower of legal experts. While the Ministry of Power is proposing to introduce open access to ensure competition and lower tariff the practical case of Mumbai-BEST is that BEST has refused to allow open access as it would cause financial loss to the company.

As already stated, there would be disputes between licensees, and extended legal infighting while consumer service would suffer.

7.3 Before proposing multiple licensees, Govt. of India must first address the key issues of energy accounting losses measurement and apportionment of electricity theft. There is no working model or software to address these issues. Without correct energy accounting the multiple licensee model would fail.

7.4 The issue of consumer choice being achieved through multiple licensees is based on the experience of the UK / Britain. There the problem of electricity theft is practically nonexistent, while in the present context of India it is a major problem.

7.5 In UK / Britain a study was made by the National Accounts Office (equivalent to CAG of India) titled "giving domestic Consumers a choice of electricity supplier" dated January 2001 one key section is quoted. QUOTE Preparing the system of electricity companies for domestic competition cost the companies some 850 million pounds and took 5 months longer than originally planned……

The electricity regulator OFGEM allowed the companies to recover an additional 121 million pounds a year from customers between 1998-1999 and 2004-2005 to meet the additional cost they incurred".

This shows that in order to introduce consumer choice the elaborate and costly investments of Meteruing, software and IT have to be made which makes the entire system costly and increases the cost of power to the consumer.

7.6 The UK CAG report shows how expensive it is to develop and implement the software, metering and IT systems to introduce energy accounting. The expenditure of 850 Million pounds was not borne by the licensees companies— this amount was recovered from consumers through higher tariff which was allowed by the regulator.

7.7 Taking the case of consumer choice in India ,In the present system of state Discom being the sole distribution licensee, it is clearly known that any theft of energy would be to the exclusive account of state discom, and therefore the state discom has a high stake in ensuring theft is eliminated. By contrast, with multiple licenses, the apportionment of theft losses could be a major item if dispute.

7.8 The private sector licenses would insist that all the losses on account of theft must be loaded on the Discom account, and this could become a major dispute in energy accounting.

7.9 The Govt. of India / Ministry of Power proposal has not addressed the issue of how scheduling is to be implemented. Every private licensee would insist on getting his share from the lowest cost sources / PPAs – which would be practically impossible.

8. Market failure in UK-consumers worst sufferers.

In UK which is regarded as the most ideal system for consumer choice there was a disastrous market failure on which the press agency Bloomberg gave the following report

UK Consumers Face £2.7 Billion Bill for Failed Energy Suppliers

- Regulator Ofgem’s light touch contributed to crisis, NAO says
- More than two dozen UK suppliers failed amid surging prices

By

Will Mathis

June 22, 2022 at 4:31 AM GMT+5:30

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TREASURY

Private Company

British consumers are set to foot a £2.7 billion ($3.3 billion) bill for a wave of failures among energy suppliers over the past year.

That sum will help cover the costs incurred by suppliers which took on more than 2.4 million customers from over two dozen of their failed rivals, according to a report from the National Audit Office. The extra costs will be spread around all energy bills and come on top of the surging gas and power prices that are set to hit households this winter.

The NAO criticizes Ofgem for overseeing a market with few barriers to new entrants. The regulator increased the risk and cost of supplier failures by prioritizing increased competition over scrutiny of the finances of market participants, the NAO found.

“Ofgem’s approach created an energy market built on shaky foundations,” said Meg Hillier, a member of Parliament and chair of the Committee of Public Accounts. “Once again, it’s the public who has to pay for the mistakes of those charged with protecting them. It’s unacceptable.”

The regulator began to toughen rules for new market entrants beginning in 2019, but didn't add new measures for existing suppliers until 2021. While Ofgem is now adding new protections, its previous approach left the sector exposed.

"By allowing many suppliers to enter the market and operate with weak financial resilience, and by failing to imagine a scenario in which there could be sustained volatility in energy prices, it allowed a market to develop that was vulnerable to large-scale shocks and where the risk largely rested with consumers, who would pick up the costs in the event of failure," the NAO said.

In addition, the UK is spending £900 million to run Bulb, a supplier that was so big when it failed the government stepped in to run it temporarily. The total cost of that stewardship won't be finalized until Bulb can exit administration either through a sale or by distributing its customers to other suppliers, the report found.

The Department for Business, Energy and Industrial Strategy and the Treasury decided not to hedge energy exposure, meaning costs could rise with wholesale prices. Ofgem itself could do little to control the soaring prices, the NAO said.

The NAO suggested a number of changes that Ofgem and BEIS should implement to improve the energy supplier market. They include further scrutiny of the energy price cap and how it would be impacted by various market fluctuations, examining alternatives to the price cap and reviewing the so-called supplier of last resort process that allocates customers from failed companies.

https://www.bloomberg.com/news/articles/2022-06-21/uk-consumers-face-2-7-billion-bill-for-failed-energy-suppliers

OFGEM Office of Gas and Electricity Market ie the Regulator authority in UK

NAO-- National Audit Office in UK (like CAG in India).

9. The lesson to be learnt is that when a market is developed to give consumer choice in electricity the most advanced and sophisticated market, with oversight by regulator OFGEM "Office of Gas and Electricity Markets" has a track record of disastrous failure with consumers being hit to the extent of billions of pounds.

9.1 When in India no market has been developed for giving consumer choice, the risks of market failure in UK/England are awful, and consumers have ended up suffering by losses aggregating to billions of pounds.

10. All India Power Engineers' Federation (AIPEF) requests the Ministry of Power, Govt of India not to rush through The Electricity (Amendment) Bill 2022 in the coming monsoon session of Parliament in haste. The Electricity (Amendment) Bill 2022 should be referred to the standing committee on Power of Parliament and all the stakeholders including electricity consumers and Power Employees/Engineers should be given due time for discussion on the proposed amendment in detail before introducing it in Parliament as was done in case of Electricity Act 2003.

Thank you with regards.

Sincerely Yours

Shailendra Dubey

Chairman

CC:

1. Chief Minister - All States / Union Territories with the request to take up the issue with Govt of India as electricity is on concurrent list of constitution and any unilateral change in Electricity Act 2003 will hamper the interest of State and common consumers.

2. Secretary, Power, Govt of India, New Delhi.