

West Bengal State Electricity Board Officers' Association

(Regd. No. S/16108)

A united Organisation of WBSEDCL, WBSETCL & WBPDC

Vidyut Bhavan: Bidhannagar

Block-DJ: Sector-II: Kolkata-91

Memo No: WBSEBOA/2019-21/93

Dated: 05.06.2020

To
R.K SINGH
Honorable Minister In Charge,
Power & New & Renewable Energy
GOVT. OF INDIA
SRAMA SAHAKTI BHAWAN
RAFI MARG, NEW DELLHI -110001,

MEMORANDUM TO THE MINISTRY OF POWER, GOVT. OF INDIA ON DRAFT ELECTRICITY
(AMENDMENT) BILL 2020

Sir

On the part of **WEST BENGAL STATE ELECTRICITY BOARD OFFICERS' ASSOCIATION**, we submit our comments to the amendments proposed in Electricity Act 2003 through enacting the Electricity (Amendment) Bill, 2020, issued vide notification dated 17-Apr-2020.

Preamble:

Niti Ayog, think tank of Government of India unveiled "Strategy for New India @75" in November, 2018. It has detailed 41 identified area and avenues to achieve those. Major Policy declared is Smart Grid, Energy Efficiency. Discom privatisation with payment of subsidies to Discoms by direct benefit transfer as well 100% metering for supply of electricity.

Among other policy guidelines Niti has prescribed competitive bidding for Power Purchase Agreements between GENCO, DISCOM & other buyers in the interest of so called transparency. We need to recapitulate the fate of ICB for UMPP, CERC, APTEL and finally Supreme Court verdict has been toppled at the initiative of our policy makers in the interest of Gujarat investors. When India is inviting foreign investor with the slogan "Make in India" Government, in order to favour Adani, set a glaring example of travesty of international trade practice in Mundra tariff revision scandal.

It has prescribed privatisation of distribution business through franchise model to reduce AT&C losses both in Urban and Rural area with stipulation to ensure reliability and resilience. NITI prescription also includes autonomy of power regulators. They have prescribed upfront subsidy to per acre of land through direct benefit transfer (DBT). Besides decentralised generation & shortage system Niti has prescribed Solar pumps for agriculture and surplus power should be brought by DISCOMs from farmers. Imposition of fine for unscheduled power cut payable by DISCOMs. Niti has opposed high open access charges and cap on cross-subsidy, their prescription to government is to encourage power trading towards utilisation of existing upcoming generation assets. RPO should be strictly enforced to promote National level marketing and power balance. Its prescriptions for demand management are TOD metering, 100% metering, net metering, smart metering, Agriculture supply metering etc.

NITI prescription covered retirement of old state owned generation plant to widen the scope of marketing of Non-performing assets created by private developers. In brief, Niti prescription has

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suggested the avenues of implementation Electricity (Amendment) Bill 2018, when Electricity Act, 2003 came before Indian power sector as calamity.

On observing multi-directional planning, we may infer that the reform process has lost its direction. Neither the Government nor its policy formulating agencies found any alternative than privatisation. Tata, Ambani, Adani are major private players in power sector. Policies are formulated to favour these private players that too could not be complied on these or that plea.

We have noted implementation of formulated policy through budget speech of Hon'ble Finance Minister. Allocation of public Fund for replacement of meters is noteworthy. Government is determined to privatise distribution business with vast network for 250 million consumers, built through a few decades with investment from public exchequer. Before transferring public asset to profit-hunting business community, that budgetary allocation is nothing but naked illogical favouritism to future private players at the cost of public corpus. The proposed Electricity (Amendment) Bill, 2020, barring a few techno-commercial issues will yield nothing positive. Hence, legislation of the Bill should be dropped.

1. SCURRY AND HASTE OF THE GOVERNMENT INVOKES QUESTION ON AIMS:

Ministry of Power, Government of India vide its notification No. 42/6/2011-R&R (Vol-VIII) Dated 17/04/2020 circulated the draft Electricity (Amendment) Bill, 2020 with the core intention of expediting privatisation of electricity industry by the earliest possible time along with distancing state Governments from administering power sector. EEFI vehemently oppose this move on the part of the Government of India through its ministry of power, when in exercise of power of the Government under Disaster Management Act, 2005 entire country is locked down to combat COVID-19. All forms of protest in a democratic country are virtually withdrawn.

For offering comments on the draft people (including employees and Engineers, the prime movers of power industry) were given 21 days time. Our organisation as a constituent of NCCOEEE sought for extension of time up to one month after withdrawal of lock down. That was not acceded to. Our first comment is, no policy decision in a democratic country, should be taken in this process. We, the power sector people are resorting to such scuttle when power grid is thrown on the verge of collapse. We think supply of energy to people or existence of the Government did not foresee such exigency. Hence, suitable time could have been allowed to people and power sector employees. We put our objection on record and insist on the Government to put hold upon the entire process of legislation on Electricity towards privatisation to gag the access to power of poor people and farmers.

2. STATEMENT OF OBJECTS AND REASONS:

The Statement of Objects and Reasons is an open declaration for privatization of electricity sector of the country by giving multiple benefits and concessions to private sector parties, corporate, IPPs etc. at the cost of State Discoms. The major steps towards privatization are :

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Setting up of Electricity Tribunal (Electricity Contracts Enforcement Authority = ECEA) for ensuring payment security mechanism as a pre-condition for scheduling and dispatch of electricity; proposals for Distribution Sub-Licensee and Franchise; etc. Bill proposed Franchise will not require any license.

- 2.1 The international financial institutions, namely the World Bank and International Monetary Fund, have made the pressure on transition in developing economies since the early days of neo-liberal regime to conduct privatization in electricity sector with the main aim focused to improve efficiency, thereby lower tariff. It has become more evident over the years that changes in ownership may not be sufficient to improve sector performance, particularly in electricity sector. Moreover, privatizing loss-making state-owned enterprise may improve microeconomic efficiency but finally result in loss of productivity and increased unemployment. In India, it was experienced that privatization in electricity sector does not necessarily generate economic gains, which in turn is affected by compromising social norms and standards. Even though, there was no mention in the Statement of Objects and Reasons regarding privatization of electricity system of Union Territories in isolation. Haste of the Govt. of India has by-passed its own procedure entirely and issued direct instructions to all the UTs of the country for starting / taking steps to privatize the electricity system of UTs. The action leads us to remind the old system of work of Feudal lords named zamindars. This major policy decision to privatize UTs was not included at all in the MOP proposals of 17-Apr-2020 or in the Statement of Objects and Reasons and therefore the instructions to privatise the UTs electricity system must be withdrawn / revoked.

3. ESTABLISHMENT OF ELECTRICITY TRIBUNAL, ECEA:

This proposal is a drastic measure to create another judicial authority by which high cost PPAs can be enforced on Discoms, so as to give huge profits to IPPs and generators. Instead of tackling the problem of high cost PPAs (Solar, wind etc.), the Govt. of India proposal is for enforcing such high cost PPAs and putting huge financial stress on the State Discoms. In fact we have an apprehension that in number of cases for power procured through competitive bidding State Electricity Regulatory Commissions had not agreed to increase the price of electricity beyond the price discovered through competitive bidding on the plea of change in fuel price due to so called change in law will now be attempted to regularized through this new body. Even if that is not done for the cases which are under legal dispute it will be tried on the new cases. The existing PPAs already have provision for dispute resolution and arbitration, along with the role of CERC / SERC which is clearly defined. Therefore, the proposal for setting up Electricity Contract Enforcement Authority (ECEA) must be withdrawn.

4. SINGLE SELECTION COMMITTEE FOR SERC, CERC, APTEL ETC.:

The proposal is an attempt by the Ministry of Power to dominate SERCs by having appointees selected by Central Government and planted in the State SERCs. This is a violation of the concurrent status of electricity. The role of State Governments in constitution of SERCs must not be eliminated as proposed.

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The track record of Govt. of India itself in selection/ appointments to statutory bodies itself is very poor and in the case of Central Electricity Authority, there are only three full time members against 8 vacancies. Against 6 part time members, there are nil appointments at present.

The proposal to have uniform selection committee will result in political appointments favourable to Central Government / political parties of Central Government being appointed and planted in the SERCs. In fact this may become a weapon to disturb the different state governments not aligned to the political wish of the party in power in central government. This proposal is not acceptable and must be withdrawn.

Moreover in the proposed amendment the qualification requirement of fourth member has not been specified. Moreover in the experience of field a new area has been mentioned as "public policy". It is apprehended by using these two statutory tools the Central Government will always push their political candidate to serve the purpose of political party in power in Central Government.

5. NATIONAL RENEWABLE ENERGY POLICY:

Govt. of India has already set a high target of 175 GW (Giga watts) renewable power capacity target of the country to be achieved by 2022. This target has further been steeply increased to 450 GW by 2030. Govt. of India proposal to have renewable power purchase obligation will result in States being forced to purchase renewable power as per enhanced targets with the result that the State thermal generating stations would have to be massively backed down / shut down or dismantled.

The present PLF of thermal stations which is about 50% only would further steeply reduce. The Govt. of India paper on renewable energy purchase obligations has not examined this aspect at all and Govt. of India has not studied the impact of hugely increased renewable energy targets on the shutting down of existing thermal power stations in the state sector. Govt. of India must therefore review and amend the proposal concerning renewable power policy and bring up a revised comprehensive proposal where the impact on existing thermal stations should be studied in detail and projected along with the RPO proposal. Idea evolved by CEA on retrofit, modernization and Life Extension of Coal Based Power Station at a very low cost in comparison to cost of installation has been wiped out. It is evident that priority before the Power department is creation market for the NPA of the IPPs. No Government should make their policy biased or eccentric to profit of a particular section of business community.

6. RPO FIXING POWER:

It may be noted that renewable potentials are not uniformly distributed among the states throughout the country. The present policy of nil transmission charges and nil transmission losses (subject to conditions) for solar and wind energy has resulted into distorted market completion in those states where such renewable potential is low. Thus those states are suffer from investment in their state on

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this sector **and are economically suffering**. In fact this step is not only against the spirit of non-discrimination open access but also introduction of freight equalization policy in this segment against the policy of removal of freight equalization on commodities in the country. In fact this is acting

against the economical development of the states having low RE potential. This issue tandem with the proposed rule framing power of GOI to fix the RPO obligation of the states will put the state commission/ State Government in difficult position to align itself with the economical position of the states as it will have to follow the GOI made rule even if it is found that such RPO obligation is against the interest of the state economy as well as the consumer of the DISCOM.

In view of the above fact the policy of making transmission charges and transmission losses nil for solar and wind require to be reviewed and RPO fixing power shall continue to be lied with the State Electricity Regulatory Commission as per existing provisions of the Electricity Act 2003.

7. COST REFLECTIVE TARIFF, TARIFF STRUCTURE AND CROSS-SUBSIDY:

This provision is an attempt to dominate and dictate by the Govt. of India to the Regulatory Commissions, CERCs or SERCs regarding the tariff structure and thereby encroaching upon the jurisdiction of the Regulatory Commissions. The existing statute, Electricity Act 2003 is already based on the fundamental principle that Government must be distanced from tariff determination since tariff determination is the purview of Regulatory Commissions. Therefore, in formulating the amendments to Electricity Act 2003, the Govt. of India preserve and abide by the existing principle for distancing of Government from tariff determination.

The proposal of tariff reflecting the cost of supply under proposed clause (g) of section 61 is in dichotomy with the principle of third proviso of sub-section (2) of section 42 of EA 2003 which speaks of progressive reduction in Cross- subsidy as gradual reduction is not possible if proposed clause (g) of section 61 is to be maintained. In fact the only possible solution by maintaining both principles is to eliminate the cross-subsidy totally (instead of gradual reduction) by moving towards voltage based tariff. This will result into huge tariff shocks to domestic and irrigation consumers. Most of the state governments are not in a financial position to make such situation acceptable through huge subsidy. Moreover, the cross-subsidy reduction road map has been proposed to be done through Tariff Policy under proposed amendment of clause (g) of section 61 in place of the power provided to State Electricity Regulatory Commissions in the existing provision. As from state to state the socio-economic development is differs widely thus the removal of cross-subsidy by a single formula will be against the interest of the state and the large number of consumers of the states. Thus the proposed amended of clause (g) of section 61 and third proviso of sub-section (2) of section 42 of EA 2003 shall be dropped.

With this direction for removal of subsidy / cross subsidy, the cost of power in rural areas will steeply shoot up and have damaging impact upon use of electricity for improvement of standard of living of poor people as well maximizing agricultural production.

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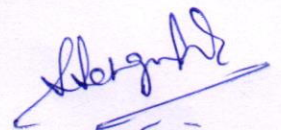
8. PAYMENT SECURITY MECHANISM:

The proposal is openly pro-private sector and in favour of IPPs / corporate private sector projects. The proposal is that the RLDC under section 28 of the Electricity Act 2003 should schedule/ dispatch only that power which has got payment security mechanism in favour of the generator. This is incorrect, unacceptable and should be totally rejected because of the following grounds:

- a) RLDC are to function as per the Grid Code i.e. IEGC (Indian Electricity Grid Code) which does not have any provision for payment security mechanism. IEGC is a statutory document approved by CERC and must not be twisted to favour IPPs by way of including payment security mechanism.
- b) Every power purchase agreement / contract/ PPA has already got clear-cut provision for payment security, such as opening of LC (Letter of Credit) or Escrow mechanism. Therefore, payment security mechanism should be as per terms and conditions of the contract or PPA and there is no role for RLDC or scheduling / dispatch in the subject of payment security mechanism. Therefore, the proposal of payment security mechanism through RLDC should be withdrawn.
- c) This an unlawful avenue to penalize the consumers, who are not in default in paying his / her dues to the discoms concerned. All of us are aware of siphoning corpus by the private merchants from one business to other for short or long term gain. Penalty or revoking license of the licensee will yield nothing but solace to suffering of consumers.

9. SUBSIDY:

Govt. of India has proposed this amendment to section 65 of the Electricity Act 2003 which is extremely harmful and damaging to the farmers. By this amendment, the Discom will recover the cost of electricity from the farmer and in case Government wants to subsidize this power, the Government should give direct benefit transfer (DBT) to the farmer. This DBT scheme is totally impracticable since the majority of state Governments are already facing acute financial distress and are unable to pay the required subsidy to the State Discoms under the existing section 65 of the Electricity Act 2003. Therefore, when the State Governments are not in a position to make the subsidy payments to the State Discoms, how the State Governments can be expected to give the DBT of subsidy to the lakhs of agricultural consumers. It will put the farmers to acute financial distress since the farmers will have to pay the electricity bill to the Discom while the DBT payment may be delayed to any extent for months together.



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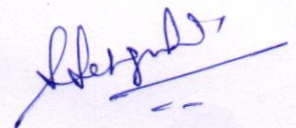
10. DEEMED ADOPTION OF TARIFF DETERMINATION THROUGH COMPETITIVE BIDDING:

Since under competitive bidding, the tariff already is determined, the State Regulatory Commission only has to adopt the discovered tariff after ensuring the compliance of guidelines issued by the Government under section 63 of the Electricity Act 2003. It is for the Central and State Governments to ensure the timely appointment of Regulatory Commission Members so that the delays are minimized. Instead of proposing an automatic adoption of tariff after specified time limit, the Central and State Governments should ensure timely advance action for filling up the vacancies in the Regulatory Commissions.

11. PENALTIES AND RPO – HPO:

The proposal for penalties in implementation of RPO-HPO is a one sided attempt to ensure that the high targets of renewable energy are off taken by the State Governments. It is observed that when the Central Government set the high target of 450 GW to be achieved by 2030, the Central Government did not discuss the same with the State Discoms of the country who are ultimately having to purchase and utilize this renewable energy. While on one hand, the Central Government did not get the consultation or concurrence of the State Discoms for purchasing and utilizing the high target of 450 GW, the Central Government is now prescribing stringent penalties to penalize the Discoms who do not meet the renewable purchase obligations. It was necessary and desirable that at the time of setting the target of 450 GW, the proposal should have been discussed in detail and decided with the concurrence of the State Discoms who are the ultimate purchasers/ utilizers of the renewable energy.

- 11.1 There is also a very urgent need to ensure that the renewable power contracts finalized by the Central Government in respect of renewable power are at competitive rates which are with the consultation / concurrence of the State Discoms. Already there is a serious problem where in past years, some high cost PPAs were finalized/ signed for renewable energy but which are now being refused / rejected by the present Discoms on account of high rates being unaffordable. The Govt. of India must take adequate and complete precautions that the competitive rates at which the renewable PPAs are finalized must be kept in the knowledge and concurrence of the State Discoms to avoid any problem in future. However the approach of the Govt. of India is totally in the other direction that State Discoms must be forced to purchase the renewable energy irrespective of the rates finalized through the mechanism of RPO-HPO. The Govt. of India must amend its approach so that the consultation and concurrence of the State Discoms is ensured at the time of finalizing the PPAs, instead of the present approach for putting a penalty for shortfall of RPO obligations.



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12. DISTRIBUTION LICENSEE, SUB-LICENCE AND FRANCHISE:

This is an open attempt by the Govt. of India to introduce privatization of the Distribution System through the back door entry of distribution Sub-Licence or Franchise. This procedure has acute risk of cherry picking of profitable areas by the private sector Sub-Licensee or Franchisee by which the revenues of the State owned Discoms will sharply reduce and cause financial distress to become even more acute and unmanageable. Presently the State Discoms meet with the priority requirements of consumers such as agriculture with the help of cross subsidy from high revenue consumers such as industrial etc. If the high revenue consumers are taken away by the process of cherry picking, the finances of State Discoms are liable to collapse. The Central Government before putting such proposals should compile the list of Sub-Licensee and Franchisee proposals that have miserably failed in the past, such as the franchisee of profitable area at Nagpur, Aurangabad, Agra etc.

Moreover, if the definitions of Distribution sub-licensee and Franchisees are analyzed then it will be found that the distinction between these two proposed entities is not very clear. In case of Distribution sub-licensee it is not clear who will be legally responsible for ensuring supply to the consumers. In fact the whole attempt seems to have no well designed direction to achieve any certain objective.

The proposed Bill has prescribed 3Tier Distribution business. Last tier i.e. franchises will not require any license. The proposition transpires; MoP is conceiving innovative and ridiculous idea of informalization of risk prone electricity distribution job requiring high level of skill and acumen. Process of licensing requires verification of skill, expertise and experience of the applicant by the licensing authority. Through evasion of licensing process, distribution & sub-distribution licensees at their sweet will choose any Tom, Dick & Harry as Franchise. In turn, these franchises will not have any legal obligation to engage manpower with requisite skill, acumen, experience and professional license for undertaking appropriate jobs. Their motive will be towards lowering the manpower cost by engaging cheaper labour. We cannot accept this odd intention of the government to make the workmen scapegoat of surrendering safety by the lawmakers and consumers to bear the burden of frequent interruption.

13. WILFUL DISOBEDIENCE OF ORDER OF APTEL:

The appellate tribunal has been vested with power and authority of High Court to take action for willful disobedience of any of its judgment, decree, direction, order or other process or willful breach of an undertaking given to it. Such action will be taken by APTEL on its own motion or on a motion made by the Advocate General or such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, on a motion made by the Advocate General or such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer or the Advocate General. In same line **the empowerment of moving motion of contempt of court has to be ensured for the consumers, citizens, licensees, and generating companies in case of** willful disobedience

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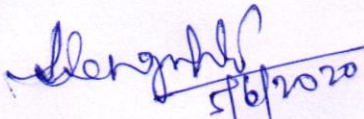
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of any of the judgment, decree, direction, order or other process of APTEL or willful breach of an undertaking given to APTEL.

Thanking you.

Your sincerely



(Siladitya Sengupta)

General Secretary

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