



INSTITUTE FOR SUSTAINABLE DEVELOPMENT AND ENERGY STUDIES

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Institute for Sustainable Development and Energy Studies (In-SDES)

In-SDES registered under Malabar societies Act 1860 is a Study and Research organisation established in 2015. In-SDES envisions strengthening the knowledge and capacity of Individuals and organisations through Research and Deveopment through academic and research in the field of Energy and Power sector. As we are an organisation interested in the Indian power sector, we went through the Indian Electricity (amendment)Act 2018 and wish to submit our comments on the amendment as follows

Comments on Act Amendment

General

1. Cross Subsidy :

The 2003 Act originally envisaged the total elimination of Cross subsidy. The clause was later modified for 'reduction' of the cross Subsidy by an amendment in the Parliament. The amendments now proposed again envisage limiting the cross subsidy to 20% immediately and eliminating the same within 3 years.

We are of the opinion that our society has not shown any considerable change in the last 15 years to reintroduce the clause for total elimination of cross subsidy. Actually the economic disparities have shown an increasing trend. We feel that Domestic consumers who consume more than ,say, 500 units per month should subsidise poor domestic consumers . Commercial consumers like shopping malls should subsidise small commercials consumers. Large industrial consumers should subsidise small industries. In other words in a stratified society like ours , cross subsidisation should continue.

The proposal to subsidise small and poor consumers by Direct Benefit Transfer shall entrust the burden on public exchequer only . That cannot be approved . The mandate for elimination of cross subsidy should be left to the discretion of the State Governments who can decide upon the matter in accordance with the concrete situations in the respective states.

We propose that all clauses mandating elimination of cross subsidy should appropriately modified.

- 2. Separation of Content and Carrier :** The main agenda of this amendment to Electricity Act 2003 is the separation of Carriage and Content, ie. Distribution and Supply. The business of supply licensee is to purchase power, sell it to consumers in the licensed area using the Distribution network of the Distribution licensee and collect money. They do not own any power system assets. So it is very clear that the separation of supply of electricity from the existing distribution licency and the introduction of supply licency for this purpose is not going to improve the service available to consumers.

If the objective of the separation of Carriage and Content is to remove hurdles in competition for large consumers, the same can be achieved by modifying the provisions relating to open access. There is no experience any where in the world to establish that the separation of carriage and content is beneficial to small consumers. No enhancement in the efficiency of the existing distribution system is envisaged in the proposed amendments. Consumers can not expect any cost or quality advantage in the power supply and the services. Rather he will only be put to more trouble and uncertainties. The small consumer in the remote villages of our country will not be benefited by such reforms. He will be forced to approach multiple agencies to get connectivity , to get power supply , to make payments etc . So it is better to go for a Pilot Implementation of Carriage and Content separation before going for the direct implementation through out the country.

- 3. Concentration of Authority to Central Government :** In tune with the general perception in certain corners that power sector reforms are delayed in the country due to the lethargy

shown by State Governments , the proposed amendments attempt to concentrate more authority to Central government. The perception is partly correct in the sense that the Distribution wing has to face the direct heat of public wrath and State Governments have to face the public unrest on the matter. But the solution for the problem is not to concentrate the authority in Centre but to tune the reforms in a more people friendly manner.

It is seen that the Amendments propose to concentrate more authority in the Centre in the following manners : 1. Tariff policy is made mandatory and compliance by State Regulatory Commissions to the Tariff policy is ensured in multiple ways. 2. The Selection Committee for selection of State Regulators will be constituted by the Centre and will be heavily dominated by the Centre. 3. Authority of State Governments to issue directives to Generating stations in a State under section 11 is taken over by the Centre.

These proposals heavily undermine the principles of federalism in the country and hence cannot be approved

Section specific Comments

Section 45(b) *Where the State Government or any other agency proposes to provide any subsidy to any category of consumer, it shall be through Direct Benefit Transfer.*

This will be a huge financial burden to the state governments and public exchequer in the event of elimination of Cross subsidy as per Sec. 61-1g. And also will result in abnormal increase of electricity charges of consumers who are enjoying the benefits of cross subsidy. Ultimately this will result in denial of electricity to the weaker sections of the society. So it is better to continue with the present practice.

Section 45A. *The Appropriate Government may, in consultation with the Appropriate Commission and the concerned authorities, prescribe the manner of collection and realisation of any dues under the relevant laws for the time being in force in the State along with the electricity dues.*

Why it is necessary to empower government to prescribe the manner of collection and realisation of any dues under the relevant laws for the time being in force in the State along with the electricity dues. This may be deleted.

Section 49(4)-*With effect from the commencement of the Electricity (Amendment) Act, 2018, all consumers having a connected load of 1 Mega Watt and above with the power system, may procure at their option electricity through open access under contractual agreement from any generating company, trading licensee, or from any other source.*

This provision will lead to erosion of the very revenue base of utilities and their existence itself will be in danger. This aspect is to be considered while finalizing the act.

Section 61 (1) **The Appropriate Commission shall, subject to the provisions of this Act, determine the tariff specify the terms and conditions for the determination of tariff, in accordance with the Tariff Policy issued under section 3 of the Act**

If the tariff is to be determined strictly in accordance with the tariff policy then there is no space for the discretionary decision making by State Regulators in tariff matters pertaining to the state , considering the ground realities of the State. This is against the federal principles as Electricity comes under the concurrence list.

Section 61 1 (g) *the cross subsidization of tariff of the consumers within the distribution area shall not exceed 20 percent and shall be progressively reduced and eliminated within three years. The Appropriate Commission shall determine the trajectory for reduction of cross subsidization of tariff, among the class of consumers and shall ensure that the reduction in cross subsidy shall be not less than six percent in one year.*

The condition that *the cross subsidization of tariff of the consumers within the distribution area shall not exceed 20 percent*

and shall be progressively reduced and eliminated within three years is not acceptable. The state government should be given power to decide whether to continue or not with cross subsidization. Electricity is an item under the concurrent list. So it is better to leave the matters regarding the policy of formulation of tariff and cross subsidy to the state governments in order to protect the interest of people of state.

Section 66 - Development of power market

The Appropriate Commission shall endeavour to promote the development of a market (including trading) in power and a market for encouraging energy efficiency in such manner as may be specified and which shall be guided by the National Electricity Policy referred to in section 3 in this regard and other directions issued by the Central Government in the public interest from time to time. Provided that the market for forward and futures contract in electricity shall be developed in a manner as may be notified by the Central Government.

The existing Indian Power Sector scenario is not suitable for the introduction of market for forward and futures contract in electricity, hence that proviso in the section 66 may be deleted.

Section 66 A - Ensuring Performance of the agreements for Sustainable power market

(1) The agreements for power purchase, etc entered between the licensees or by the licensees and generating Company, once approved by the Appropriate Commission, shall be mandatorily complied with by both parties failing which the Appropriate Commission may levy penalties as deemed appropriate. Any dispute between licensees which may arise may be adjudicated by the Appropriate Commission which shall pass orders in the matter.

The power purchase Agreement is between the Licensees or between Licensees and Generating companies. There will be provision in the PPA itself for compensation to either parties in case of violation of agreement. So it is not clear what is need for levy of penalty by the commission as deemed appropriate in this connection. Also how a third party (ERC) can intervene in the management of a contract between two parties is not understood.

Section 85 - *Constitution of Selection Committee to select Members of State Commission(1) There shall be a Selection Committee for selection of the Chairman and Members of the State Electricity Regulatory Commission as follows:*

(a) a Serving Judge of the Supreme Court to be nominated by the Chief Justice of India

.....Chairperson ;

*(b) the Secretary of the Ministry ofMember
Secretary Power, Government of India*

*(c) the Secretary of the Ministry of New and Renewable Energy,
Government of IndiaMember,*

(d) Chief Secretary of the concerned state or the Secretary-in-charge of the Ministry of the concerned State Government dealing with Power.....Member,;

(e) the Chairperson of the Central Commission Member,

(f) the Chairperson of the Authority Member,

As per the existing act, the selection committiee is as follows.

*(a) a person who has been a Judge of the High Court....
Chairperson;*

(b) the Chief Secretary of the concerned State.....Member;

*(c) the Chairperson of the Authority or Commission
Member:*

Two members of this committie are coming under the control of State Govt. And one member is under the control of Central Govt. But in the proposed amendment, out of six members of the committee, five members are under the control of Central govt. And only one member (*Chief Secretary of the concerned state or the Secretary-in-charge of the Ministry of the concerned State Government*) is under the control of state govt. This means that state govt. Is losing control in the selection of members of SERC. This is against the federal principles. This anomaly may be addressed in the final act.

Yours faithfully,

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