



## Association of Power Producers

# ELECTRICITY (AMENDMENT) BILL 2021

The proposed delicensing of distribution coupled with measures to improve sectoral and regulatory functioning promises to be a game changer for the power sector. These amendments have the potential to bring about radical transformation, leading to long term sustenance and commercial excellence of the sector.



# Electricity (Amendment) Bill, 2021 – Key Amendments



- The proposed amendments can be segregated into two broad categories:
  - **Delicensing of Distribution and Supply and introduction of multiple distribution companies in a given area, with or without own network**
    - Distribution delicensed, only Registration is required; no expiry of Registration - valid till cancelled/revoked
    - Deemed Registration for Companies operating on the date of amendment
    - Power from PPAs with the existing distribution company to be shared among all the Distribution Company (Supplier) in the area of supply
    - Universal Service Obligation Fund to be created for areas with multiple Distribution Companies (Suppliers)
  - **Measures to improve Sectoral and Regulatory functioning**
    - Addition of new member in CERC/SERC bench; separate bench for adjudicatory functions (contract enforcement); powers of Civil Court decree for non-compliance
    - Increasing bench size of Appellate Tribunal
    - Additional responsibilities and oversight for NLDC
    - Suo moto tariff fixation
    - Penalty for non-compliance of RPO
    - Provisions for Cross Border Trading
    - Re-affirmation of Payment Security Mechanism instituted by Ministry of Power

# Demonopolizing Distribution – Implications & Benefits

- **Current Distribution Utility functions can be segmented into two different activities - Electricity Supply And Network management. The amendments effectively propose that:**
  - Any distribution company can supply electricity using the network of other distribution company on non-discriminatory basis, i.e., usage of wire business as a common carrier in addition to option of laying own network.
  - For supply function the incumbent Distribution will have competition from multiple new players.
- **Benefits of the proposed approach:**
  - Providing consumers with a choice;
  - Improving power access and availability;
  - Facilitate ease of entry for newcomers;
  - Improving efficiency and loss reduction;
  - Introduction of innovative products catering to demand response, seasonal variations etc;
  - Greater efficiency in customer services;

The system will benefit in terms of – (a) Reliability, (b) Cost Optimization; and (c) Service and Tariff

# Demonopolizing Distribution - Key Issues, Suggestions and Potential Resolution (1/4)

- **Area of Supply**
  - **Suggestion** - For predictability and certainty of regulatory regime, safeguards required to:
    - Insulate areas where Central Government has initiated or will be initiating share sale of distribution companies;
    - Ring fence jurisdictions where such share sale has already occurred.
    - Insulate franchise areas, where bidder is selected through competitive bidding process, till the completion of tenure of franchise agreement. Alternatively, existing franchise should be considered as deemed Distribution Company with ownership of network created by franchise
    - Prioritize areas for participation by multiple Distribution Companies (Suppliers) – offering potential for significant improvement in technical and financial performance
- **Consistency of Provisions**
  - Section 79(1)(ja) provides for registration of a distribution company by CERC for supplying electricity in more than one State
    - However, as per Sections 24(D), 86(1)(jb) and 60A(1), the following responsibilities have been entrusted with the SERCs - amendment and cancellation of registration, issue of directions for coordinated use of distribution system and arrangements for PPA sharing, respectively.
    - **Clarity may be provided on the role of CERC for inter-State Distribution Company.**

# Demonopolizing Distribution - Key Issues, Suggestions and Potential Resolution (2/4)

- **Neutrality, Transparency and avoidance of Conflict of Interest**
  - Dual role of incumbent Distribution Licensee functioning as Network Operator and Distribution Company (Supplier) may involve conflict of interest.
  - **Suggestion – In order to address the issue of conflict of interest and ensure that the intent of introducing competition is achieved while maintaining neutrality and transparency, it is suggested that:**
    - a) **A transparent mechanism to determine wheeling charges of the Distribution Company should be prescribed; and**
    - b) **Separate record keeping of the Network Operator and Supplier functions should be done** - to ensure correct recording and reflection of technical and financial performance and key parameters of each activity
  - This approach will ensure that the network operation and supply activities are **run at arms-length** and will lead to the following benefits:
    - Network Operator: No risk of any under-recovery of network charges. Can also be encouraged to reduce losses and improve service quality;
    - a) Multiple suppliers giving choice and in turn competition for supply. Thereby, offering better tariff design and cost recovery

# Demonopolizing Distribution - Key Issues, Suggestions and Potential Resolution (3/4)

- **Power Purchase Management**

- It has been proposed that power from the existing PPAs with the existing distribution licensee shall be shared among all the Discoms in the area of supply as per the arrangements specified by the State Commission in accordance with the rules, if any, prescribed by the Central Government.
- This may turn out to be a lengthy process and may become the subject matter of challenges and disputes. Further, the allocation of PPA would be a dynamic process.
- **Suggestion – Creation of institutional arrangement to take care of existing PPAs and recovery thereof from Distribution Company**
  - **Such institutional mechanism can also be tasked with:**
    - Modelling power flows and PPA adjustments based on system needs of individual distribution companies and allocation of AT&C loss;
    - Aggregating power purchase payments of Discoms for onward payment to Gencos;
    - Treatment of past financial baggage of Discoms - Regulatory assets and past dues linked to power procurement and plan for liquidation; and
    - Phasing out of PPAs whose contractual tenure is ending.
  - Further, power purchase arrangements for Incremental power demand can be arranged by distribution company on their own.

# Demonopolizing Distribution - Key Issues, Suggestions and Potential Resolution (4/4)

- Universal Supply Obligations and Metering
  - Suggestions:
    - a) Default Discom along with default tariff to supply electricity in the event of cancellation of registration to be identified. Regulations may define:
      - Step-in process and supply continuity
      - Customer acquisition and credit balance transfer
    - b) To examine mechanism for meter reading, data collection and data aggregation, through an independent entity or housed with incumbent Discom to facilitate active interface of data transfer. This work would be consistent with installation of smart meters as being pursued by MoP.
- Cross Subsidy and USO Fund
  - Section 60A(2) – USO Fund proposed to comprise deposits from Discoms representing surpluses from cross-subsidy, cross-subsidy surcharge and additional surcharge for funding deficits of other Discoms in area of supply
  - Suggestion - This would require moving away from Average Cost of Service - Tariff would need to be aligned by SERC with actual cost of service for the applicable voltage and consumer category to determine surplus/deficit for subsequent transfer to USO Fund.
    - Suitable guidelines necessary under Tariff Policy

# Measures to Improve Sectoral and Regulatory Functioning (1/3)

## Timely tariff determination by Electricity Regulatory Commissions (ERC)

- In case discoms do not approach in specified time, ERC must initiate process
- In case application made by discom – ERC to finalize within 90 days
- In case of tariff adoption for generation projects – tariff to be adopted within 90 days, deemed adoption post 90 days

Will ensure financial viability of discoms as well as generators – especially in states like Telangana, Tamil Nadu, Andhra Pradesh as well as stressed IPPs

## Ensuring financial discipline

- Adjudication of performance of obligations under a contracts specifically mentioned as “duty” of ERCs
- No scheduling of power by Regional as well as State Load Dispatch Centre in case payment security has not been provided by discom
- Monitoring cell under ERCs to ascertain compliances by distribution companies
- Control of NLDC over RLDC and SLDC

Will resolve the perennial problem of huge outstanding receivables and lead to better financial discipline and functioning of discoms



# Measures to Improve Sectoral and Regulatory Functioning (2/3)

## Strengthening of Regulatory Oversight

- More members in APTEL would lead to faster dispute resolution
- Orders of ERCs to have power of court decree
- In case non-functioning of SERC due to vacancy – centre may entrust its function other SERC
- Judicial member in ERCs

Will reduce regulatory delays and improve independence

## Promoting renewables

- Overarching role for NLDC
  - Would control backing down on renewable power by SLDC
- Higher and increasing Renewable Purchase Obligation (RPO), with higher penalty in case of continuation of non-compliance of RPO
- RPO to be prescribed by Central Government

Will ensure growth of Renewables to meet commitments of Government and attract investment

**Suggestion – In case the Distribution Company (Supplier) is unable to fulfil RPO due to genuine reasons beyond its control, the SERCs should be provided the discretion to waive penalty in such cases**

# Measures to Improve Sectoral and Regulatory Functioning (3/3)



## Cross Border Trade of Electricity

- ‘Cross border trade of electricity’ provided with clear definition
- Central Govt to prescribe rules and issue guidelines for allowing and facilitating cross border trade of electricity
- Power granted to CERC to make Regulations consistent with the Act and rules and guidelines

Will contribute significantly towards strengthening the regional co-operation and trade.

Will also provide additional investment avenues and a wider market for sale of surplus power to neighboring countries.

**Suggestion –** The definition of ‘cross border trade’ may refer to “supply” and “trade” in place of “export” and “import”, in order to avoid application of custom duty in future.

Grounding of the measures as envisaged in the proposed Amendments, would complete the reform journey - from Regulation to De-regulation to Competition and Customer's Choice.

**Thank you**