

Electricity Bill Act, 2003

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The Electricity Bill, 2003 passed by Parliament promises to usher in sweeping changes. The Bill seeks to provide a legal framework for enabling reforms and restructuring of the power sector. It simplifies administrative procedures by integrating the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 into a single Act. The Bill has become an Act now after the Presidential assent and notification by the Ministry of Power on June 10, 2003. The Electricity Act, 2003 is based on the principles of promoting competition, protecting consumers' interests and providing power to all. The Act has freed the generation of electricity from licensing, and has liberalized the captive power policy. Moreover, it provides open access to transmission and distribution network, and has laid out the stringent penalties for power theft. The new legislation can usher in paradigm shifts in the power sector. Competition will be possible not just in generation, but also in every facet of the sector including distribution. Moreover, private sector investment will be facilitated by greater transparency that will come about. The Bill is a consolidation of the laws relating to generation, transmission, distribution, trading and use of electricity and facilitates all measures that are conducive for the development of the sector.

Introduction

The power sector has traditionally been one of the areas, which is most sluggish, as far as reform is concerned. This has basically been due to three reasons:

- *This is one sector, which is highly politicized with subsidies going to the farm sector, consumer sector, small industry etc.*
- By false representation under one of these sectors, many ineligible candidates often reap the benefits of free or subsidized power.
- The collection and distribution of power is often extremely difficult, given the low technology, low maintenance and semi-urban structure of the country.

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However, the point had come where something had to be done. India was looking at a number of blackouts, later on in the decade, unless something was done. Given the seriousness of the situation, no less a person than the prime minister took the initiative to get at least common agreement among 14 states, which was later extended to 27 states—known as the common minimum program. This was worked on and eventually led to what is known as the Electricity Bill 2003—a radical breakthrough in the field of power in the country.

Some of the key features we have discussed here are regarding—generation of electricity, licensing, transmission of electricity and related disputes, distribution of electricity, Tariffs, Work of licensees, Role of Central Electricity authority, and Strict regulations against theft.

Generation of Electricity

Some of the salient features are:

- *Any generating company may establish, operate and maintain a generating station without obtaining a licence under this Act if it complies with the technical standards relating to connectivity with the grid referred to in clause (b) of section 73.*
- Notwithstanding anything contained in section 7, any generating company intending to setup a hydro-generating station shall prepare and submit to the Authority for its concurrence, a scheme estimated to involve a capital expenditure exceeding such sum, as may be fixed by the Central Government, from time to time, by notification.
- The Authority shall, before concurring in any scheme submitted to it under sub-section (1) have particular regard to, whether or not in its opinion, the proposal is feasible, and the party has the technical competence to carry it out, and they shall respond accordingly.
- *A person may construct, maintain or operate a captive generating plant and dedicated transmission lines, provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company. They shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use.*
- *The duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made there under. Every generating company shall—submit technical details regarding its generating stations to the Appropriate Commission and the Authority; co-ordinate with the Central Transmission Utility or the State Transmission Utility for transmission of the electricity generated by it.*

Licensing

- A person is authorized to transmit, distribute and trade in electricity by a licence issued under section 14, or is exempt under section 13. However, provisions of section 12 shall not apply to any local authority, like *Panchayat* Institutions.
- The Appropriate Commission may, on application made to it under section 15, grant licence to any person—for transmission /distribution and trading in electricity. Procedure for Grant of Licence within the same area, subject to the conditions that the applicant for grant of licence within the same area shall comply with the additional requirements as may be prescribed by the Central Government, and no such applicant who complies with all the requirements for grant of licence, shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose.
- *Conditions of Licence—The Appropriate Commission may specify any general or specific conditions which shall apply either to a licensee or class of licensees and such conditions shall be deemed to be conditions of such licence. A licence shall continue to be in force for a period of 25 years unless such licence is revoked.*

No licensee undertakes any transaction to acquire by purchase or takeover or merge, sale, lease, exchange his utility without the prior approval of the Appropriate Commission. If the licensee breaks any of the terms or conditions of his licence the breach of which is expressly declared by such licence to render it liable to revocation under sub- section (1).

- Sale of utilities of licensees and obligations imposed on him by his licence; or to make the deposit or furnish the security, or pay the fees or other charges required by his licence; where in the opinion of the Appropriate Commission the financial position of the licensee is such that he is unable fully and efficiently to discharge the duties and obligations imposed on him by his licence and of the public interest.
- Upon suspension of license under sub-section (1) the utilities of the distribution licensee shall vest in the Administrator for a period not exceeding one year or up to the date on which such utility is sold in accordance with the provisions contained in section 20, where the Appropriate Commission revokes the licence .The utility of the distribution licensee shall be sold within a period of one year from the date of revocation of the licence in accordance with the provisions of section 20 and the price after deducting the administrative and other expenses on sale of utilities be remitted to the distribution licensee.

Transmission of Electricity and Related Disputes

In this section, the roles of NLDC (National Load Despatch Centre), RLDC (Regional Load Despatch Centre) and SLDC (State Load Despatch Centre) have been discussed broadly. These bodies are vital towards integrating the various parts of the grid. Things can get complicated when the different neighboring states fall into conflict for not transmitting electricity to each other and the policy regarding these need to be streamlined. In this regard, the different bodies have been demarcated, which can make the transmission of electricity more economical,

efficient and integrated to facilitate voluntary interconnections and co-ordination of facilities for the interstate, regional and interregional zones.

Interstate Transmission

National Load Despatch Center

- *To avoid the dispute between two states, the central government may make region-wise demarcation of the country.* The Central Government may establish a centre at the national level, to be known as **NLDC** for optimum scheduling and despatch of electricity among the Regional Load Despatch Centers.
- The constitution and functions of the NLDC shall be such as may be prescribed by the Central Government, provided that the NLDC shall not engage in the business of trading in electricity. A Government company or any authority shall operate the NLDC or corporation established or constituted by or under any Central Act.

Regional Load Despatch Center

- *The Central Government shall establish a centre for each region to be known as the **RLDC** having territorial jurisdiction as determined by the Central Government for the purposes of exercising the powers and discharging the power and discharging the functions.*
- A Government Company or any authority shall operate RLDC or corporation established or constituted by or under any Central Act, as may be notified by the Central Government.
- RLDC shall be the apex body to ensure integrated operation of the power system in the concerned region. RLDC shall comply with such principles, guidelines and methodologies in respect of the wheeling and optimum scheduling and despatch of electricity as the Central Commission may specify in the Grid Code.
- RLDC shall be responsible for optimum scheduling and despatch of

Electricity within the region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region, to monitor grid operations and to keep accounts of the quantity of electricity transmitted through the regional grid, to exercise supervision and control over the inter-State transmission system and

- *RLDC, to be responsible for carrying out real time operations for grid control* and despatch of electricity within the region through secure and economic operation of the regional grid in accordance with the Grid Standards and the Grid Code.
- RLDC may levy and collect fee and charges from the generating companies or licensees engaged in inter-State transmission of electricity, as may be specified by the Central Commission. Every licensee, connected with the operation of the power system shall comply with the direction issued by the Regional Load Despatch Centers under sub-section (1).

Intra-State Transmission-SDLC

The State Commission shall facilitate and promote transmission, wheeling and inter-connection arrangements within its territorial jurisdiction for the transmission and supply of electricity by economical and efficient utilization of the electricity. The State Government shall establish a Centre to be known as **SLDC** for the purposes of exercising the powers and discharging the functions under this Part.

- SLDC shall be operated by a government company or any authority or corporation established or constituted by or under any State Act, as may be notified by the State Government, provided that until a government company or any authority or corporation is notified by the State Government. The State Transmission Utility shall operate the State Load Despatch Center, conditioned that no State Load Despatch Center shall engage in the business of trading in electricity.
- The SLDC shall be the apex body to ensure integrated operation of the power system in a State. SLDC shall be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State; to monitor grid operations; to keep accounts of the quantity of electricity transmitted through the State grid; to exercise supervision and control over the intra-state transmission system; and be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.
- *Collection of fees for intra-state transmission—SLDC may levy and collect fee and charges from the generating companies and licensees engaged in intra-state transmission of electricity as may be specified by the State Commission.* SLDC in a State may give such directions and exercise such supervision and control as may be required for ensuring the integrated grid operations and for achieving the maximum economy and efficiency in the operation of power system in that State.
- SLDC shall comply with the directions of RLDC with reference to the quality of electricity or safe, secure and integrated operation of the State grid or in relation to any direction given under sub-section (1). It shall be referred to the State Commission for decision, provided that pending the decision of the State Commission, the licensee or generating company shall comply with the direction of the SLDC.

Other Provisions Relating to Transmission

- Every transmission licensee shall comply with such technical standards of operation and maintenance of transmission lines, in accordance with the Grid Standards
- Every licensee shall, on an order made under section 35, provided his intervening transmission facilities at rates, charges and terms and conditions as may be mutually agreed upon, provided that the Appropriate Commission may specify rates, charges and terms and conditions if these cannot be mutually agreed upon by the licensees.

- The Appropriate Government may issue directions to the RLDC or SLDC to take measures for maintaining smooth and stable transmission and supply of electricity to any region or State. The Central Government may notify any government company.

More Issues of Transmission Licensee

Inter-State transmission system or intra-State transmission system, as the case may be; should be:

- To comply with the directions of the Regional Load Despatch
- Centre and the State Load Despatch Center to provide non-discriminatory open access to its transmission system for use by any licensee or generating company on payment of the transmission charges; or (ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon
- The manner of payment and utilization of the surcharge shall be specified by the Appropriate Commission, provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use. A transmission licensee may, with prior intimation to the Appropriate Commission, engage in any business for optimum utilization of its assets.

Distribution of Electricity

The goal of any power system is to provide reliable and economic electric service. In the same regard, the Electricity Bill Act 2003 has made certain points crystal clear to facilitate the system efficiently. Under the new Act, the following features would accompany Distribution of Electricity—

- **Open access** states the non-discriminatory provision for the use of transmission lines or distribution system by any licensee engaged in generation to transport electricity across regions. The open access model allows the generators to enter into direct contract with distributors or large consumers without the need of an intermediary buyer like the State Electricity Boards and *vice versa*. The State Commission shall introduce open access in such phases and subject to such conditions, including the cross subsidies, and other operational constraints, within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling. It shall have due regard to all relevant factors including such cross subsidies, operational constraints and the charges for wheeling as may be determined by the State Commission. Such surcharges (which can be progressively reduced) shall be utilized to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee. However, there has been a big debate to open access in terms of providing the electricity without any discrimination, which is not possible because the source of revenue for the generators would be decreased as they get the revenues based on the capacity supplied to the consumers, as in case of the industry, where the per unit charge is lowered than the household consumption.

- **Surcharges:** Consumer shall be liable to pay additional surcharge on the charges of wheeling to meet the fixed cost of distribution licensee arising out of his obligation to supply. *Every distribution licensee shall, within six months from the appointed date or date of grant of licence, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission and grievances can be redressed to an authority to be known as Ombudsman, to be appointed or designated by the State Commission. The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.* Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply, provided that where such supply does not require extension of distribution mains, or commissioning of new sub-stations. The distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the appropriate commissioning or within such period as may be specified by the Appropriate Commission, excluding the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area. If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty, which may extend to one thousand rupees for each day of default.
- The charges for electricity supplied by a distribution licensee shall be fixed in accordance with the methods and the principles as may be specified by the concerned State Commission. The State Commission may authorize a distribution licensee to charge from a person requiring a supply of electricity in providing any electric line or electrical plant used for the purpose of giving that supply.
- The State Commission shall specify an *Electricity Supply Code* to provide for recovery of electricity charges, intervals for billing of electricity charges disconnection of supply of electricity for non-payment thereof; restoration of supply of electricity; tampering, distress or damage to electrical plant, electric lines or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter; entry for replacing, altering or maintaining electric lines or electrical plant or meter.

Tariffs

Independent regulators have been appointed time wise to regulate the power system to minimize the intervention of the government because it is the need in this competitive market. In the same regard, the government has kept the policy making powers in its own hands so that policy can allow the rate of return to different companies engaged in transmission, generation and distribution.

The Appropriate Commission has got the authority to determine the tariff in accordance with provisions of this Act for—supply of electricity (by a generating company to a distribution licensee), transmission of electricity; wheeling of electricity and retail sale of electricity but it would not be applied in case of distribution of electricity in the same area by two or

more distribution licensees. *The Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.* The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required. No tariff or part of any tariff may ordinarily be amended more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.

An application for determination of tariff under section 62 shall be made by a generating company or licensee in such manner and accompanied by such fee, as may be determined by regulations like every applicant shall publish the application, in such abridged form and manner, as may be specified by the Appropriate Commission. The Appropriate Commission shall, within 120 days from receipt of an application under sub-section (1) and after considering all suggestions and objections received from the public, issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order; reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and the rules and regulations made thereunder or the provisions of any other law for the time being in force, provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application. A tariff order shall, unless amended or revoked, shall continue to be in force for such period as may be specified in the tariff order.

If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under section 62, the State Government shall, notwithstanding any direction which may be given under section 108, pay, within advance in the manner as may be specified, by the State Commission the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licence or any other person concerned to implement the subsidy provided for by the State Government, provided that no such direction of the State Government shall be operative if the payment is not made in accordance with the provisions contained in this section and the tariff fixed by State Commission shall be applicable from the date of issue of orders by the Commission in this regard.

Work of Licensees

A licensee may, from time to time to lay down or place electric supply lines to carry out works such as to open and break up the soil and pavement of any street, railway or tramway; any sewer, drain or tunnel in or under any street, railway or tramway; to alter the position of any line or works or pipes, other than a main sewer pipe; to lay down and place electric lines, electrical plant and other works; to repair, alter or remove the same; to do all other acts necessary for transmission or supply of electricity. The licensee is required to submit the cases and circumstances, the nature and period of notice, the procedure and manner

of consideration of objections and suggestion, the determination and payment of compensation or rent to the repairs and works to be carried out when emergency exists; the procedure for alteration of the position of pipes, electric lines, the manner of deposit of amount required for restoration, all these to be submitted in writing to appropriate government, local authority, owner or occupier, as the case may be, shall be required for carrying out works.

Certain provisions related to overhead lines shall need prior approval of the Appropriate Government in accordance with the provisions of sub-section (2) and the provisions contained in sub-section (1) shall not apply in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer, in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation. The Appropriate Government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by it. When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

A licensee shall, before lying down or placing, within 10 meters of any telegraph line, electric line, electrical plant or other works, not being either service lines, or electric lines or electrical plant, for the repair, renewal or amendment of existing works of which the character or position is not to be altered, submit a proposal in case of a new installation to an authority to be designated by the Central Government and such authority shall take a decision on the proposal within 30 days.

Central Electricity Authority

The question was of constituting a sufficiently independent commission without losing the power of a statutory authority, has been one of the major issues confronting the power sector. Through this Act, Central Electricity Authority, thereof, shall be deemed to appoint the Chairperson, Members, Secretary and other officers and employees and they shall continue to hold office on the same terms and conditions on which they were appointed under the Electricity (Supply) Act, 1948. The Authority shall consist of not more than 14 Members (including its Chairperson). The Chairperson and all the Members of the Authority shall hold office during the pleasure of the Central Government. The following roles of central Electricity authority have been formulated through this Act.

- The Authority shall perform functions and duties as the Central Government may prescribe or direct, *and in particular to advise the Central Government on the matters relating to the national electricity policy, formulate short-term and perspective plans for development of the electricity system* and co-ordinate the activities of the planning agencies for the optimal utilization of resources to subserve the interests of the national economy and to provide reliable and affordable electricity for all consumers;

- To specify the technical standards for construction of electrical plants, electric lines and connectivity to the grid; and the safety requirements for construction, operation and maintenance of electrical plants and electric lines;
- To specify the Grid Standards for operation and maintenance of transmission lines and the conditions for installation of meters for transmission and supply of electricity;
- To promote and assist in the timely completion of schemes and projects for improving and augmenting the electricity system and to take measure for advancing the skill of persons engaged in the electricity industry;
- To advise the Central Government on any matter on which its advice is sought or make recommendation to that government on improving the generation, transmission, trading, distribution and utilization of electricity; to collect and record the data. The recommendation would help in and to carry out studies relating to cost, efficiency, and competitiveness,
- To promote research in matters affecting the generation, transmission, distribution and trading of electricity; carry out, or cause to be carried out, any investigation for the purposes of generating or transmitting or distributing electricity;
- To advise any State Government, licensees or the generating companies on such matters which shall enable them to operate and maintain the electricity system under their ownership or control in an improved manner and where necessary, in co-ordination with any other government, licensee or the generating company owning or having the control of another electricity system;
- To advise the Appropriate Government and the Appropriate Commission on all technical matters relating to generation, transmission and distribution of electricity; and discharge such other functions as may be provided under this Act.

Strict Regulations Against Theft

The Electricity Bill Act 2003 has provided certain stringent penalties against misuse of connection, reconnection, alteration, prevention or improper use of the electricity and the theft of the property, as the case may be. Among stringent penalties are:

- Whoever dishonestly makes the damages to then electricity by any means shall be punishable with imprisonment for a term, which may be extended to three years or with fine or with both. The sentence shall be imprisonment for a term not less than six months but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity,
- Punishment for receiving stolen property done for profit or gain, is said to have committed an offence of theft of electric lines and materials, and shall be punishable with imprisonment for a term which may extend to three years or with fine or with both. If a person, having been convicted of an offence punishable under sub-section (1) referred to in clause (b), clause (c), clause (d) and that the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, it shall be presumed, until the contrary is proved, that such be, has been knowingly and willfully caused by such consumer.

- Negligently wasting electricity or injuring works, Whoever, negligently causes electricity to be wasted or diverted or negligently breaks, injures, throws down or damages any material connected with the supply of electricity, shall be punishable with fine which may extend to ten thousand rupees.
- *If the nature of the cases is repetitive in nature, no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any which an assessing officer referred to in section 126 or an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine the consequences of the offences. Moreover, no court shall take cognizance of an offence except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company.*

Conclusion

This Act represents a quantum leap when it comes to the transmission, distribution and regulation of electricity. There is an implicit recognition that the present system will not do the job in the current century. We were headed for massive power blackouts. The Enron Saga has shown very clearly (whatever the other issues) about the woeful shortcomings and lack of technical know-how in the existing system. Hence the elaborate representation of technical, financial and legal personnel in the Regulatory Committees. The need for representation of the government is most paramount, but there is no need for this representation to be dominant and overwhelming.

The generation of power in the private sector has been a debatable subject, as there is always the possibility of a monopoly. There have been several setbacks worldwide (perhaps more than successes) when it comes to the generation of power by private electricity plants. There have been investment problems, fuel problems and above all, collection and billing problems, which often Act against the socio-politico ethos.

While the pundits may look purely at economic criteria, it must be stated and re-stated that power is a socio-economic criteria, almost anywhere in the world, but more so in the developing countries. That is the reality of the situation. This is an essential service. At the same time, investments are huge, particularly in the case of investments for generation. With most of the benefits of privatization and with relatively less investment, arising in the case of distribution, there is a case for suggesting that this is the area, which should be concentrated on, as far as allowing the private sector, sufficient leeway is concerned. It is a win-win situation for the state—the essential service of power is in state hands, and the malpractices of distribution are taken care of, by competition in the private sector. It is hoped that matters would eventually move in this direction. □

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Useful source: www.powermin.nic.in, Ministry of Power, Government of India.