MAHAVITARAN
Maharashtra State Electricity Distribution Co. Ltd.

Ref.No. CMD/MSEDCL/Cyclone/03 ***Date: 05-June-2020***

To,
The Secretary,
Ministry of Power,
Government of India,
Shram Shakti Bhawan,
Rafi Marg, New Delhi

Subject: MSEDCL comments on Proposed Amendment to Electricity Act, 2003.

Reference: 1. Letter dated 17th April 2020 from Ministry of Power, GoI.
2. Letter dated 27th April 2020 from Ministry of Power, GoI.

Respected Sir,

The Ministry of Power notified the Draft Amendment to Electricity Act 2003 on 17th April 2020 and the the comments/ observations/ suggestions on the draft Electricity (Amendment) Bill 2020 are to be submitted on or before 5th June 2020. Accordingly, MSEDCL has prepared section wise comments on the said Bill in detail and attached herewith as an **Annexure-A.** Further the comments on some of the important issues are reproduced as below.

1) Distribution Sub-Licensee

The Proposed Amendment has provisions for Distribution sub-licensee and Distribution Licensee can authorize a person to distribute electricity on its behalf in a particular area within its area of supply, with the permission of the State Commission.The additional clause for Distribution sub-licensing will provide legal status to PPP framework infusion and the Licensee can explore more viable options for deploying agencies for enforcing efficiency in billing, collection and meter reading through Opex or Capex based models. However, more clarity is required in terms of operationalization of Distribution sub-licensee like Eligibility (both financial as well as technical), Functions, Responsibilities, Guidelines/procedure for appointment of Sub-Licensee etc. Also, more clarity is required in terms of roles/responsibilities of Sub-Licensee so as to avoid cherry picking of more profitable segments of DISCOM's jurisdiction. Following are some of the questions which need clarification regarding Sub-Licensee.

a) What is contractual position of Sub-Licensee? Will it be governed by only Electricity Act and/or Contract Act?

Office of Chairman & Managing Director, Maharashtra State Electricity Distribution Co. Ltd.
Prakashgad, Plot No. G-9, Bandra (E), Mumbai – 51; Tel : (P) 26474644 (O) 26474211 Fax : 26478672
HSBC Bank Building, M.G. Road, Fort, Mumbai – 01; Tel : (P) 22619499 (O) 22619100 Fax : 22650741
Email : md@mahadiscom.in Website : www.mahadiscom.in

b) What is the Authority of Licensee over Sub-Licensee?
c) Is a Distribution Licensee free to appoint Sub-Licensee as per his requirement or will there be any preconditions?
d) What will be the role of Licensee for the area given to Sub-Licensee?
e) Will the Sub Licensee be free to make decisions such as capital investment without the approval of Licensee?
f) What are the available remedies for non-compliance by a Sub-Licensee?
g) What is the procedure for regulatory requirement for the Sub-Licensee? Through Licensee or directly to State Commission?
h) Who will buy the power for sub-Licensee? In case sub-Licensee is allowed to buy power from market, DISCOMs will be left with costly power purchase from already signed Long Term PPAs.

Further, in the Definition of Distribution sub-licensee, it makes inadvertent reference to "sub distribution licensee" which needs to be corrected.

Additionally, the SOR says enabling provisions have been made to address the situations to deal the issues in Sections 126, 135, and 164. However, no such amendments are provided in Draft Bill.

2) Subsidies, Cross Subsidies and additional surcharge to Consumer

The proposed Amendment provides that tariffs should reflect the cost of supply of electricity and cross subsidies shall be progressively reduced by the State Commission in the manner as may be provided in the Tariff Policy. Provisions of Tariff Policy shall be mandatory for State Commission. Further, State Commission shall fix tariff for retail sale of electricity without accounting for subsidy. The proposed Amendment also provides for direct transfer of subsidy to consumers in advance and charge the consumers as per the tariff determined by the Commission which will be without subsidy. MSEDCL submits that the mechanism of cross subsidy through tariff by SERC and subsidy from the State Government envisages a support to consumer categories in it's licensee area with low capacity to pay or sectors doing economic activities (e.g. BPL, low end residential consumers, agriculture) having impact on society as a whole. It cannot be denied that the tariff for electricity can be ideally decided among different categories of consumers only after the cost to serve the category is correctly established. State Commission has been setting tariffs in line with the tariff philosophy adopted by it in the past, and as per the provisions of law. The tariffs and categorisation is being determined so that the cross-subsidy is reduced to the extent possible without subjecting any consumer category to tariff shock. The applicable tariff for a consumer category and its cross-subsidy level would also depend upon the present tariff structure, number of

consumers, consumer mix, and consumption mix. Further, every State has different consumer mix and State specific requirement of cross subsidy for a particular category of consumers also varies. For example, in Maharashtra, there are highest no. of Agriculture pumps in country and their electricity consumption is significant whereas same is not the case for all other States. Thus, while the tariff design exercise may strive to bring the tariff for each consumer category close to ACoS, some degree of cross-subsidisation across consumer categories is unavoidable.

However, Owing to the historical legacy and background of the present tariff for various consumer categories, it is difficult for State Commission to eliminate the cross-subsidy entirely. In case stringent target of cross subsidy reduction is provided in Tariff Policy, which becomes mandatory as proposed in the Amendment, it will lead to a tariff shock to certain categories. Therefore, the State Commissions need to be allowed to decide the progressive reduction in the cross subsidy without mandating it and treating Tariff Policy as a guiding principle/document. Further, MSEDCL submits that before going for such change to DBT as proposed in amendment, certain ground realities regarding Residential/Agriculture consumers need be considered. The identification of beneficiary for DBT will be a challenge as presently the meter is on the name of owners/old owner, one of the family members and occupancy of premises is done by tenants or other member of family/person. So the DBT may get passed on to premises and not on actual user of electricity, which is not expected in DBT.

Further, the manner of disbursement of DBT is also not clear and even though the Draft Amendment has mentioned it as in advance, it is expected that it will be done post payment of bills by the Consumer. Thus, the reference of "in advance" need to be removed. In Maharashtra, for Agriculture consumers, it will be a radical change for them. At present, the Agriculture consumers are not even paying the bills charged with subsidised tariffs. In case the consumers are charged without subsidised tariffs, it will be more difficult for them to pay. This will further result into non-payment of bills, increase in arrears, additional burden of penalties for consumers and increase in financial woes of the Licensee. The end result of such non-payment is disconnection which is not expected in the DBT.

The impact of advance payment of electricity bills by Agriculture consumers on Discoms in some of the States where the electricity is free and who have never paid bills, will be much higher. Currently, the delay in receipt of subsidy is

being borne by the DISCOMS. However, in case of delay in transfer of subsidy, the consumers may opt for not to pay the future bills.

There will be far-reaching impacts of DBT in power sector. Several ground realities and difficulties need to be addressed before implementing such new initiative. To ensure proper implementation of DBT, a robust IT system with correct consumer mapping and regular payments by consumer and update in system needs to be in place. Therefore, till the time such issues are not addressed, the existing mechanism of billing with subsidised tariffs for Agriculture consumer and transfer of subsidy to DISCOM need to be continued. To start with, the DBT may be extended to paying consumer categories such as Industries/ power-loom.

Additional Suggestion:

A) CSS to deemed Distribution licensee:

As you know, the state of Maharashtra is one of the agrarian State in Indian and MSEDCL is the only distribution licensee in the State which caters to more than 42 Lakhs agricultural category consumers of the state. The electricity consumption by the agricultural category consumers is ~30 % of the total electricity consumption of MSEDCL and Ag cross subsidy is getting passed on to the only MSEDCL subsidizing consumers. The higher tariffs of the cross subsidising consumers of MSEDCL (Industrial, Commercial, high end residential etc.) is impacting sales and revenue of MSEDCL thereby requiring tariff hike and thus entering into a vicious circle. Hence there is a necessity to maintain a balance in tariff of the subsidised AG consumers and the high end subsidising consumers of MSEDCL.

It is pertinent to note that Maharashtra has around 9 Deemed Distribution Licensees. (as per the Specific Conditions of Distribution Licence issued by MERC). Further, some other Organisations such as Maharashtra Industrial Development Corporation, Aurangabad Industrial Township Limited etc. also trying to make a case for supply of electricity to the consumers in their area. It is pertinent to note the consumer mix of these Deemed Licensees is mostly Industrial and Commercial. Further, till the time of full operations or till the time of filing tariff Petitions, these Deemed Licensee use MSEDCL tariff as ceiling tariffs and use the cross subsidy built in MSEDCL tariffs to their advantage. In fact, considering their consumer mix, they don't require cross subsidy as such.

It is also pertinent to note that there are 3 Distribution Licensees in Mumbai having around 20% total state sale. These Licensee have favourable consumer

mix without any AG category consumer and although ACoS of Mumbai utilities is higher as compared to MSEDCL, the tariff to subsidising category consumer in Mumbai area is low. These consumers have higher capacity to pay in comparison to the Agricultural category consumers. Thus, the consumers of Mumbai Licensees and SEZs are protected from the burden of the cross subsidy for AG consumers in the Maharashtra.

Therefore, a suitable amendment is required in the Electricity Act 2003 so that the burden of such cross subsidy is shared by all the consumers of the State i.e. by all the other Licensees including the Deemed Distribution Licensees. This will also reduce the tariff difference among similar category consumers across the State. Therefore, MSEDCL proposes following suggestion.

Suggested Amendment:
Following proviso may be added to Section 42 (2) after first proviso:
Provided also that a surcharge shall be levied on the all distribution licensee including Deemed Distribution Licensee for the loss of cross subsidy to the incumbent Distribution Licensee.

B) Additional Surcharge to CPP:
Section 2 (47) of the Electricity Act 2003 defines "Open Access', while Section 42 (2) of the said Act inter – alia mandates the Distribution Licensee to provide Open Access to eligible consumers, subject to payment of "Cross Subsidy Surcharge" in addition to the charges for wheeling. Fourth proviso of the subsection 2 of Section 42 of the Act also provides for exemption from levy of Cross Subsidy Surcharge (CSS) to person who has established a captive generating plant for carrying the electricity to the destination of his own use.

After completely specifying the provisions of sub-section 2 of Section 42, the sub-section 4 of Section 42 provides for the levy of "Additional Surcharge" to meet the fixed cost of distribution licensee arising out of his obligation to supply. Thus from the complete reading of Section 42 of the Act, it is amply clear that that the Act does not specifically provide for any exemption of levy of Additional Surcharge to captive generating plants.

Captive power plants (CPP) are set up primarily for their own consumption. Therefore, the captive plants need to be conceived / conceptualized right at the time of setting up of the plant. The CSS exemption was justified in the 2003 since these plants were set up during the power shortage situation and were captive in real sense as per the spirit of the Act. It is pertinent to note that captive generation was encouraged by the Government of India during the

period when the electricity requirements of the industrial consumers were to be met by captive generation due to the shortage of power to meet the continuous power requirements of such consumers.

However, by changing the shareholding in accordance with the Electricity Rules 2005 by selling 26% of equity, a generating plant originally setup as an Independent Power Producer (IPP) is being converted to a Group Captive Generating Plant. Thus the majority shareholders (74%) avail the financial benefits of group captive structure without consuming any power. In known Case No. 117 of 2012 before MERC, in the matter of Petition of M/s Wardha Power Company, it has been observed that power plant has been set up by the promoters, but the promoters including the incorporated entity owning the plant itself does not consume any power. By modifying the shareholding, the captive consumers are able to get the benefit of exemption from levy of CSS and Additional Surcharge.

The increasing trend of 'retrofitting' oneself as captive so as to somehow evade CSS and Additional Surcharge is alarming and requires to be taken judicial note of. Similarly, such evasion of CSS and Additional Surcharge affect the revenue of Distribution utilities and such under recovery gets passed on to other common consumers of distribution utilities resulting into increase in their tariff for no fault on their part. There have been number of cases where the shareholding pattern of the captive consumers is adjusted / changed within a financial year such that the captive consumption remains in proportion to the equity shareholding at the end of the year and satisfy the condition of 51% consumption by the captive shareholders as per provision in the Electricity Rules, 2005.

MSEDCL continuously is in power surplus since FY 15-16 because of sufficient power tied up to meet universal obligation of supply of electricity. Further, due to increase in Open Access, RE capacity addition to fulfil RPO Target, RE capacity addition by CPP because of low tariff and Net Metering etc., MSEDCL will continue to be in power surplus. To manage the surplus power, MSEDCL gives zero schedule/ back-down the high variable cost thermal generation as per Merit Order Despatch. However whenever such surplus capacity remains available, MSEDCL has to pay fixed/capacity charges irrespective of the scheduling or non-scheduling of power from the units which declares its availability. This burden of fixed cost of surplus capacity gets passed on to the common consumers of MSEDCL. In view of this, if there is addition of any CPPs in future or converts existing IPP into CPP or Group CPP, they should share the burden of fixed costs of surplus capacity to Discom. Considering the standby

services provided by the Licensee and various operational challenges faced by them due to these CPPs, it is high time to revisit the exemptions given to them. Therefore, MSEDCL categorically submits that the captive generating plants established after enactment of these Amendment should be charged with the Additional Surcharge applicable to the Open Access consumers. This will not only arrest the misuse of exemption by the converted CPPs but will also help in financial viability of the power sector in the State. Therefore, necessary amendment is required to be bring in for applicability of Additional Surcharge to CPPs.

Suggested Amendment:
Following proviso may be added to Section 42 (4):

Provided also that such additional surcharge shall be leviable in case open access is provided to a person who has established a captive generating plant after the enactment of this Act for carrying the electricity to the destination of his own use.

3) Payment Security against scheduled power

The proposed Amendment provides that no electricity shall be scheduled or despatched unless adequate security of payment, as agreed upon by the parties to the contract, has been provided. MSEDCL submits that the provision of submitting and maintaining Letter of Credit as a payment security mechanism is as per the Power Purchase Agreements (PPAs) between buyer and seller. This is a contractual obligation which is to be observed by buyer and seller as per PPA and with mutual understanding. In case, there is no (Letter of Credit) LC, the generator is free to declare his non-availability for generation as per PPA terms and conditions. Therefore, the SLDC or RLDC should not be involved in the contractual obligation of two parties and make them mandatory to ensure payment security mechanism for scheduling of power. Further the Contractual obligations should be left with the parties and should not be made binding on Discoms through Act. MoP has already provided that the Bill Payments for the State owned Generating Stations may be as decided by the respective State Governments. On similar lines, the other Parties should mutually decide the payment security. Therefore, the proposed provisions needs to be deleted from the proposed Amendment.

4) National Renewable Energy Policy & Penalty for non-fulfilment of RPO/HPO targets

It is proposed that the Government of India shall prepare and notify a National Renewable Energy Policy for the promotion of RE generation and specify

minimum percentage of purchase of electricity from renewable and hydro sources of energy. The proposed Amendment also provides for penalty for not fulfillment of Renewable Purchase Obligation (RPO) or Hydro Purchase Obligation (HPO) at a rate of 50 paise per unit for shortfall in first year, Rs. 1 p.u. for shortfall in 2nd successive year and at the rate of Rs. 2 p.u. for shortfall continuing after 2nd year. Also it mentions about Renewable Generation Obligation (RGO) without any details. MSEDCL submits that currently, the RPO targets are set by the SERCs after taking State specific realities such as financial position of the Licensee, availability of RE Sources in the State, present power mix, impact on consumer tariff etc. into account. It is pertinent to note that the present approach adopted through proposed amendment of setting single RPO target to all State through policy for diverse country such as India will add unnecessary financial pressure on Discoms

Further, as per the MoP Notification dated 8th March 2019, all hydro projects (more than 25 MW) shall be considered as renewable source of energy. The said notification also provides for hydro purchase obligation as a separate entity within non-solar RPO. In view of this, rationale behind provision of separate Hydro Targets needs to be brought out judiciously. Further, more clarity regarding Hydro Targets is required. Whether existing Hydro Projects or only New Projects will be considered? Whether existing projects without Long Term PPA will be considered? Answers to these questions need to be addressed before giving such targets.

Further, RPO Regulations prepared by the State Commission already have the provisions for penalties for not fulfilment of RPO and at the same time waiver of penalties is also provided if Commission is satisfied that sufficient efforts are taken by Licensee. Therefore, provision of such penalties in Act is not required. Further, considering the REC floor prices and forbearance prices determined by CERC; the proposed penalties seem to be very high.

Before making such penal provisions in the Act, some of the ground realities need to be considered. Nowadays almost all RE purchase is being done on the basis of Competitive Bidding due to which REC availability is a major worry. Further, availability of transmission corridor for interstate RE purchase, availability of RE Sources in a State, Financial position of the Licensee to buy high cost power also need to be kept in mind.

The completion of bidding process as per MNRE guidelines and setting up of RE projects has its own time cycle. Further, delay in implementation of projects because of practical difficulties depends on various parameters which are

beyond the control of Licensee. The main reasons for delay in execution of RE projects are non-availability of corridor/ grid feasibility, non-availability of land, low commercial attractiveness of the ceiling tariffs, non-approval of discovered tariff/changes in terms of PPA by Commission while tariff adaptation, ROW issues etc. Further in spite of sufficiently contacted RE capacity, there may be some years when RE generation is lower like in Maharashtra, MSEDCL has contracted around 2400 MW bagasse based cogeneration capacity, however in some years, there is low sugar cane crop and subsequently availability of RE in that year is lower. Hence, holding responsible only to the Licensee for non-fulfillment of RPO targets and penalizing it is not correct. Therefore, MSEDCL strongly opposes the provision of such penalties in the Act. In fact after achieving the grid parity by solar, wind RE power and with the recent RTC power supply bid received from RE project to SECI at competitive rate, the necessity of RPO targets need to be checked. Hence, SERCs may be continued to decide the RPO targets and penalties for non-fulfilment of such target after considering the State specific conditions.

Further, proposed amendment empowers Central Government to make rules or procedures related to Renewable Generation Obligation and has just a mention about Renewable Generation Obligation (RGO). The definition, quantum/target, and manner of meeting the RGO is not mentioned in proposed amendment. With proposed RPO and HPO targets, there is no need of RGO and it will be duplication of the RPO targets. The generation is done for consumption or purchase by consumer/Licensee and there are already RPO targets for them. Hence no need of separate RGO target.

5) Enhancement in Fines for Non-Compliance

In the proposed Amendment, the fines for non-compliance of the order or directions have been enhanced under Sections 142 and 146 as under.

- Section 142: From one Lakh to one Crore; for continuing failure from Six thousand to upto one lakh rupees per day
- Section 146: From one Lakh to one Crore; for continuing failure from five thousand to one lakh rupees per day

MSEDCL submits that it is not clear whether these will act as ceiling or actual penalty. With depleted Financial Position, such high penalty may create issues in Discom's day to day Operations. MSEDCL submits that there are non-compliance or delay in implementation of any Order of SERC due to various unavoidable reasons which are beyond the control of Licensee. The amount of fine need to be indicative and not onerous which shall not provide unjust enrichment, profit to any party. There is an increase of 100 times and 20 times in the penalty and additional penalty respectively which is exorbitant. Therefore,

MSEDCL submits that such high amount of fine is not only unjust for the Licensee but also onerous which may affect the day to day operations of Licensee. Hence, existing penalties to be continued.

6) Electricity Contract Enforcement Authority

The proposed Amendment provides for a separate Electricity Contract Enforcement Authority (ECEA) for ensuring performance obligations under a contract related to electricity. It will be the sole authority and jurisdiction to adjudicate upon matters regarding performance of obligations under a contract related to sale, purchase or transmission of electricity. An order made by the Electricity Contract Enforcement Authority shall be executable by it as a decree of civil court. Further, any person aggrieved by any decision or order of the Electricity Contract Enforcement Authority, may file an appeal to the Appellate Tribunal within sixty days.MSEDCL submits that the Principal Act already has sufficient provisions to adjudicate the disputes between Generators and Licensees by SERCs. Further, the SERCs are empowered to deal with the matters related to Contract and issue Orders on any matter as deemed appropriate. Therefore, establishment of such Authority is not at all required. At present matters related to Contract obligations as well as Tariff are being heard by the State Commission. Since only one authority hears all the matters, there is consistency in the decision due to benefit of entirety. Considering the fact that this Authority will be responsible for all Contracts related to electricity, the proceedings before such Authority will not add to the time but also increase the litigations due to lack of clarity. The Authority shall be responsible for almost all the Contracts related to electricity. In such situation, the pendency of the cases before such Authority will also be a concern.

The proposed amendment suggests that the Authority shall not have any jurisdiction over any matter related to regulation or determination of tariff or any dispute involving tariff. It is pertinent to note that almost all the contractual disputes ultimately leads to tariff only. Therefore, without clear cut differentiation in functions, jurisdiction etc. between SERCs and ECEA, such Authority will only add chaos to the regulatory proceedings. MSEDCL feels with SERCs having sufficient powers and authority already in place, such Regulatory Body with overlapping functions will add only a level to the regulatory processes which may not serve any purpose. This may also result into one more authority similar to APTEL wherein the Orders of ECEA shall be referred back to SERCs for deciding the implications on tariffs. Therefore, MSEDCL vehemently opposes for constitution of such Authority and submits that the existing provisions empowering SERCs to deal with the matters related to Contract need to be continued.

MAHAVITARAN
Maharashtra State Electricity Distribution Co. Ltd.

7) Empowerment of National Load Despatch Centre (NLDC)

As per the proposed amendment, NLDC will be responsible for optimum scheduling and despatch of electricity; monitoring grid operations; supervision and control over the inter-regional and interstate transmission network. The proposed amendment also provides that NLDC can give directions to RLDC, SLDC, Generation Companies/Station, Licensee etc. for ensuring the stability of grid operation throughout the country which they will have to comply. MSEDCL submits that earlier NLDC was looking after the grid discipline. Now it is proposed to make it responsible for optimum scheduling and despatch of electricity in the country. This seems to be in line with the MoP proposal for implementation of National MOD and Real Time Market.

In view of the National Merit Order Dispatch through Market Based Economic Dispatch (MBED) of Electricity and Security Constrained Economic Dispatch (SCED) of ISGS Pan India, NLDC is expected to play major role in power scheduling. Therefore, NDLC may have been empowered for optimum scheduling and despatch of electricity. It is expected that with the National MoD, power purchase cost will get optimized and states will get cheaper power. However while exercising these powers in real time, the decision taken by SLDC being a local despatch centre of that area should be full and final.

The proposed amendments has far reaching impacts on Distribution licensees and hence it is requested to take on record above comments/suggestions of MSEDCL and be considered while finalising the draft Electricity (Amendment) Bill 2020. The comments are also enclosed in tabular form with this letter for ready reference please.

Submitted for kind consideration please.

Encl.:- Comments on Draft EA 2003 in tabular form.

Yours Sincerely,

Dinesh Waghmare, IAS
Chairman & Managing Director
MSEDCL,Mumbai

Office of Chairman & Managing Director, Maharashtra State Electricity Distribution Co. Ltd.
Prakashgad, Plot No. G-9, Bandra (E), Mumbai – 51; Tel : (P) 26474644 (O) 26474211 Fax : 26478672
HSBC Bank Building, M.G. Road, Fort, Mumbai – 01; Tel : (P) 22619499 (O) 22619100 Fax : 22650741
Email : md@mahadiscom.in Website : www.mahadiscom.in