**Tangled issues in electricity law**

*Proposed amendments promote consumer choice, but pushing multiple licensees for distribution is risk*

*Shantanu Dixit and Ann Josey,Prayas (Energy Group)*

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The Electricity Act, 2003, a two-decade-old legislation, is proposed to be amended. In these two decades, the sector has undergone many significant changes. For example, solar generation which was practically absent in 2003 has assumed centre-stage in capacity addition.

Newer technologies such as grid-scale energy storage systems, which are critical for managing the increasing share of renewables, are on the verge of similar commercialisation. India has firmly moved away from persistent, large-scale shortages and has attained near-universal electrification.

On the other hand, we still need to go a long way in improving the quality of supply and service, especially for semi-urban and rural consumers. We need concerted efforts towards enabling increased consumption by poorer households and small enterprises to address the challenge of poverty and improve the quality of life. Problems of financial stability of the sector, especially the distribution sector, still necessitate periodic rescue packages.

The proposed amendments to the Electricity Act need to be seen in this larger context. Some suggestions are positive, while others are risky.

**Some risky proposals**

Allowing multiple distribution licensees for consumer choice is a major restructuring proposal. As per the proposal, any licensee is allowed to use the wires network of other licensees to supply to any consumer in the area of supply. There are many related provisions such as a provision to fix minimum and ceiling tariffs, the creation of a cross-subsidy balancing fund, sharing of existing power purchase amongst all the distribution licensees.

However, there are several open questions and issues to be addressed. For example, how does one handle the requirement of providing a cost-reflective tariff to the distribution licensees operating in the same area but with a very different consumer base, and cost structure, and also foster competitive pricing?

Where there are multiple licensees how is resource adequacy as mandated in the proposed amendment ensured? Will the minimum and maximum tariff be different for different consumer categories? All these licensees will be entitled to invest in the distribution network, so how to avoid either duplication of wires investment or under-investment in the network? How to prevent cherry-picking effectively?

Poor metering and energy accounting have been a long-standing problem for the distribution sector. Will the proposed structure further aggravate this problem? Some of these questions may be attempted to be addressed or clarified through rules and regulations or policies. But the experience of litigation in the sector, weak regulatory enforcement, and the inherently complex nature of this arrangement would be a significant risk to achieving the objective of a financially viable and competitive distribution sector. It may also lead to many complex litigations resulting in inaction when clear policy frameworks are urgently needed.

Certainly, there is a need to provide competitive supply options for consumers. This may be achieved through a route similar to the recently notified Green Open Access Rules. The Electricity Act mandates open access for all consumers above 1 MW load since 2008. Considering the reduction in metering costs, technological developments, energy accounting systems, etc,. the time is ripe to deepen the open access route.

All consumers above, say, 20 kW load may be made eligible to avail of open access in a phased manner over, say, five years. This should be supplemented with specifying a reasonable cross subsidy surcharge for a fixed period of, say, seven years to compensate the incumbent distribution licensee for loss of revenue.

As open access has been practiced for several years, necessary energy accounting and procedural practices are already in place. Hence, this would be a faster and less risky route to provide consumers choice. This arrangement will also provide choice to the class of consumers who are most likely to exercise it.

**Necessary changes**

Many of the proposed amendments are aimed at addressing certain gaps in the legislation based on the last two decades’ experience and to give effect to judicial directions. Appeals against orders of the regulatory commissions go to the Appellate Tribunal for Electricity (APTEL).

Delays in APTEL judgments on crucial matters involving tariff orders, disputes regarding PPAs, and interpretation of various rules and regulations lead to muddled regulatory decision-making. It also creates regulatory uncertainty and huge carrying costs, further exacerbating the financial woes of the distribution companies. In this context, the proposal to enhance APTEL members to minimum seven is welcome.

Another necessary proposed amendment is to bring in clarity that energy storage systems form part of the power system. This will pave the way for policy and regulatory measures to optimise the deployment of storage systems to benefit overall grid stability and reliability in the era of large-scale renewable energy. The proposal to bring consistency in renewable purchase obligations across States and to sharply increase the penalty for non-compliance is also essential.

The proposed changes in the Act also need to be seen alongside many rules issued by the Central Government. These include, Late Payment Surcharge and Related Matters Rules, Green Open Access Rules, and the Draft Electricity Amendment Rules regarding the procurement of renewables and timely recovery of revenue for utilities.

The electricity sector is at a crucial juncture. At this stage, a fundamentally new structure with significant uncertainty pose the risk of inadequate investments in generation as well as distribution. This may be too big a risk, especially when other options exist. It is welcome that the Parliamentary Standing Committee on Energy is seized of the matter and would be deliberating the proposed amendments.

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