

Power

Draft Electricity (Amendment) Bill, 2020 – Worst of times bring out the best

The Ministry of Power (MoP) has released the much awaited Draft Electricity (Amendment) Bill, 2020, which proposes many critical changes to the existing Electricity Act, 2003. These amendments were essential since the electricity sector in India has been evolving with increasing non-government investments and structural changes throughout the value chain. Some of the important proposals in the bill include: establishing an Electricity Contract Enforcement Authority (ECEA) addressing contract disputes, disallowing regulatory asset creation, reducing cross-subsidies and separating state subsidies from tariff by introducing DBT, ensuring strict compliance of RPOs (and including hydro in RPO), providing legal backing to LDCs to make despatch conditional to payment security, expediting tariff adoption by regulators, proposing 'distribution sub-licensees' (aimed at expediting partial / complete discom privatisation), and formalising procedure for selection of members of Commissions for greater transparency.

The MoP had been working on the National Tariff Policy and this draft for the last one year, but was facing objections to some of the proposals, mainly the higher say which the Centre will have after the amendments. However, due to the financial stress emerging from Covid-19, state discoms are now facing increased liquidity concerns and lack of availability of funds at viable rates, giving Gol an upper hand in the negotiations. Another key point to note is the timeline – stakeholders, including the states, have to submit their comments within 21 days, post which a financial package will be provided. After this, the Bill will be placed in the Union Cabinet for approval and is expected to be tabled in the monsoon session of Parliament (most probably in Jul'20) for it to be passed.

Key beneficiaries: The amendments are aimed at improving the viability of the entire sector resulting in its rerating. Private players including Torrent Power and CESC will benefit on the discom privatisation front, while payment improvements will benefit gencos like NTPC, JSW Energy and other PSU gencos and transcos.

Top picks: Our top picks in the sector remain NTPC and CESC

- ▶ **Bill addresses several critical issues:** The Bill picks up from where UDAY scheme's timelines ended, i.e., 31st Mar'20. Even though UDAY was successful in reducing AT&C and annual discom losses, it was unable to make some key structural changes due to the concurrent nature of the sector. The Bill tries to address those crucial pending issues. Of the many proposals mentioned, we believe some of the most critical are: 1) formation of ECEA for contractual dispute resolution in a time-bound manner (ensuring sanctity of contracts, which were lately being challenged by many); 2) disallowing creation of regulatory assets, and focusing on recovering entire cost of supply in tariffs and reducing cross-subsidies (which is the biggest reason for the current discoms' liquidity crunch as they were selling 40-45% of their volumes to industry, which contributed 65-70% of their revenues); 3) exclusion of state subsidies in tariff determination, which will pave the way for DBT for the subsidised consumers (reducing power theft); 4) inclusion of hydro in RPOs; 5) proposing distribution sub-licensees / franchisees (aimed at partial/complete privatisation, especially for discoms that are unable to reform and meet the proposed stringent criteria); 6) streamlining and simplifying selection of members of Commissions, improving transparency and independence in decision-making.
- ▶ **Aimed at improving viability of the entire sector:** If the Bill is passed in Parliament even with some minor changes, it will be a landmark reform as it will improve the viability of the entire sector. The proposed amendments have the potential to revive demand by reducing unscheduled power cuts by discoms due to their inability to pay for power procurement, revive the capex cycle especially in distribution, comfort investors in the sector whose confidence was shaken by the Andhra renewables PPA cancellation issue last year, provide aggrieved parties to contracts a definitive recourse, and uphold contract sanctity. Thus, the Bill has the potential to rerate the sector in a major way.

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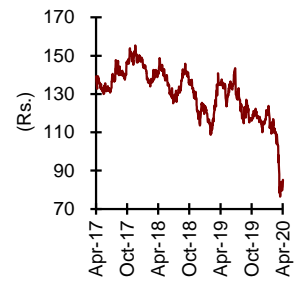
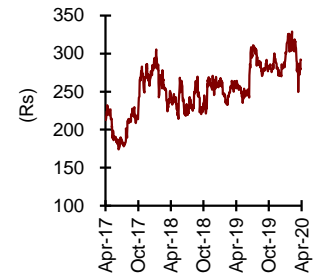
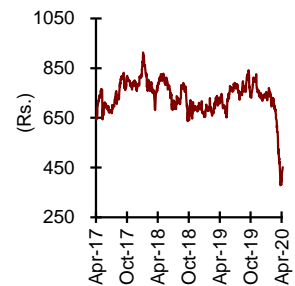
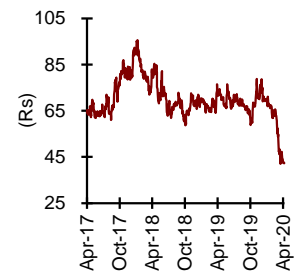
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Key points from the Bill:

- **Contractual dispute settlement: The Bill proposes to set up an Electricity Contract Enforcement Authority (ECEA)**, which shall be the sole authority to adjudicate on specific performance of contracts related to purchase or sale of power and transmission between a genco and a licensee, or between licensees. Currently, this function is being carried out by the CERC. However, the CERC has fallen short in its jurisdiction over enforcement of orders.
 - Application to ECEA shall be filed within six months from the non-performance of obligation/s under the contract. Fee is yet to be prescribed.
 - ECEA will determine whether a valid contract subsists between the parties and whether any party is in violation of any of its obligations under the contract.
 - If violation is found, the ECEA shall have the power to direct the parties to immediately perform their obligation/s under the contract and/or payment of costs on account of the breach of contract or non-fulfilment of obligations, and any further amount as it deems fit.
 - ECEA will dispose the matter within 120 days of receipt of application.
 - Composition of ECEA:
 - Chairperson: Judge of a High Court
 - Two or more Judicial Members: District Judge or Additional District Judge for minimum seven years
 - Three or more Technical Members: Additional Secretary or above for at least one year in the Union Ministry/Department of power/infrastructure, or, an eminent person.
 - Term of office is five years; maximum up to 67 years of age.
 - Jurisdiction can be extended to benches.
 - Orders of the ECEA shall be executable as a decree of civil court.
 - Appeal against orders of the ECEA shall be heard by the APTEL.
- **Tariff determination:** Certain restrictions will be imposed on deferring revenue recovery (basically disallowing regulatory asset creation). The amendment proposes that tariff should reflect the cost of supply of electricity and cross-subsidies should be reduced (20% is prescribed in the current act vs actual being much higher). State Commissions will determine tariff for retail sale of electricity without any subsidy under section 65 of the Act. *This is a major reform as it will pave the way for introduction of DBT for the subsidised consumers.*
- **Timely adoption of tariff** discovered under competitive bids as per section 63. On expiry of 60 days from the date of application, if it is not decided by the appropriate Commission, the tariff shall be deemed to have been adopted.
- **RPOs:**
 - Increased penalties have been proposed to ensure strict compliance of RPOs, to the tune of:
 - Rs0.50/kWh of shortfall in the first year of default
 - Rs1/kWh of shortfall in the second successive year of default

- Rs2/kWh of shortfall after the second year of default
- Scope of RPOs expanded to include hydro sources.
- State Commissions to be empowered to specify the RPO as per RPO trajectory prescribed by the Central government.
- The distribution licensee can recognise and authorise a person as '**Distribution sub-licensee**' to distribute electricity on its behalf in a particular area within its area of supply, with permission of the appropriate SERC. Distribution sub-licensee shall not be required to obtain any separate license.
- **CERC will be empowered** to oversee cross-border transactions.
- **National Renewable Energy Policy** is being proposed, in consultation with states and the Centre, to promote generation of electricity from renewable sources of energy. Minimum percentage of purchase of electricity from renewable and hydro sources of energy will be prescribed.
- It is proposed to **empower load despatch centres to oversee the payment security mechanism** before scheduling despatch of electricity. No electricity shall be scheduled, or despatched, under such contracts unless adequate security of payment, as agreed upon by the parties to the contract, has been provided. Currently, there is no such legal mandate; hence even the LC mechanism enforcement was facing challenges.
- In case of a non-functional SERC due to vacancy, other state Commissions including **joint Commissions** shall be empowered to discharge functions of such state Commission.
- It is proposed to have a **single selection committee** for the posts of Chairperson and Members of the APTEL and all Regulatory Commissions.
 - Qualification for appointments of Chairperson and Members of Central and State Commission are proposed to be made uniform.
 - Reference to the Committee will have to be made within 12 months before superannuation/end of tenure, or within one month from resignation/removal/death of the member/chairperson.
 - Recommendation to be made within three months of receipt of reference.
 - The Committee shall consist of :
 - Chairperson: A judge of the Supreme Court to be nominated by the Chief Justice of India
 - Member: Secretary-in-charge of the Union Ministry to be nominated by the Central government
 - Member: Chief Secretaries of two State governments (alphabetically starting with Andhra Pradesh and Arunachal Pradesh for a period of one year)
 - Member and convener of the Committee: Secretary-in-charge of the Union ministry of power.

Price charts**NTPC****Torrent Power****CESC****JSW Energy**

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