

പതിമൂന്നാം കേരള നിയമസഭ

പന്ത്രണ്ടാം സമ്മേളനം

നക്ഷത്ര ചിഹ്നമിട്ട ചോദ്യം : *350

16. 12. 2014 ൽ മറുപടിക്ക്

കേന്ദ്ര വൈദ്യുതി നിയമ ഭേദഗതി - വൈദ്യുതി മേഖലയുടെ സ്വകാര്യവൽക്കരണം

ചോദ്യം


ഉത്തരം

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ശ്രീ. ആര്യാടൻ മുഹമ്മദ്
(ഊർജ്ജ വകുപ്പ് മന്ത്രി)

<p>(എ)</p>	<p>കേന്ദ്ര വൈദ്യുതി നിയമഭേദഗതി സംസ്ഥാനത്തെ വൈദ്യുതി മേഖലയെ ഏതെല്ലാം തരത്തിൽ ദോഷകരമായി ബാധിച്ചിട്ടുണ്ടെന്ന് വിലയിരുത്തിയിട്ടുണ്ടോ;</p>	<p>എ, ബി, സി & ഡി</p> <p>2003 ൽ പുറപ്പെടുവിച്ച കേന്ദ്ര വൈദ്യുതി നിയമം, 2007 ന് ശേഷം നാളിതുവരെ ഭേദഗതി ചെയ്തിട്ടില്ല. എന്നാൽ 2013 ഒക്ടോബർ 17 ന് വൈദ്യുതി നിയമം ഭേദഗതി ചെയ്യുന്നതിനുള്ള കരട് നിർദ്ദേശം കേന്ദ്ര ഗവൺമെന്റ് പുറപ്പെടുവിച്ചിട്ടുണ്ട്. ടി നിർദ്ദേശങ്ങളിന്മേലുള്ള അഭിപ്രായം സംസ്ഥാന ഗവൺമെന്റുകളോടും വൈദ്യുതി ഉത്പാദകരോടും പ്രസരണ യൂട്ടിലിറ്റികളോടും വിതരണ കമ്പനിക്കാരോടും ആരാഞ്ഞിട്ടുണ്ട്.</p> <p align="center">കരട് വിജ്ഞാപനത്തിന്റെ പ്രധാന നിർദ്ദേശങ്ങൾ താഴെപ്പറയുന്നവയാണ്.</p> <p>(1) വൈദ്യുതി എത്തിയുന്നതിന് പ്രത്യേക സപ്ലൈ ലൈസൻസ് ഏർപ്പെടുത്തുന്നതിന് നിഷ്കർഷിക്കുന്നു. കൂടാതെ നിലവിലുള്ള ഡിസ്ട്രിബ്യൂഷൻ ലൈസൻസിയുടെ ഉത്തരവാദിത്വം വൈദ്യുതി കടത്തിവിടുന്നതിനു വേണ്ടിവരുന്നതിനാവശ്യമായ അടിസ്ഥാന സൗകര്യം ഉണ്ടാക്കുന്നത് മാത്രമായി ചുരുക്കിയിരിക്കുന്നു.</p> <p>(2) കേന്ദ്രഗവൺമെന്റ് കാലാ കാലങ്ങളിൽ പുറപ്പെടുവിക്കുന്ന ദേശീയ ഇലക്ട്രിസിറ്റി പോളിസി, ദേശീയ താരിഫ്</p>
<p>(ബി)</p>	<p>വൈദ്യുതി മേഖലയെ ശിഥിലമാക്കി സ്വകാര്യവൽക്കരിക്കുന്നതിന് സാഹചര്യമൊരുക്കലും വൈദ്യുതി നിയമ ഭേദഗതിയുടെ ഉദ്ദേശമായിരുന്നവെന്ന ആക്ഷേപത്തിൽ നിലപാട് വ്യക്തമാക്കുമോ ;</p>	
<p>(സി)</p>	<p>വൈദ്യുതി ഉൽപ്പാദന-പ്രസരണ-വിതരണ രംഗത്തെ കേന്ദ്ര സർക്കാരിന്റെ എന്തെല്ലാം നിലപാടുകളോടാണ് വിയോജിക്കുന്നതെന്ന് വ്യക്തമാക്കാമോ;</p>	
<p>(ഡി)</p>	<p>പുതിയ നിയമഭേദഗതി നിർദ്ദേശം സംബന്ധിച്ച് കേന്ദ്രം സംസ്ഥാനത്തോട് അഭിപ്രായം ആരാഞ്ഞിട്ടുണ്ടോ; സംസ്ഥാന സർക്കാർ നൽകിയ മറുപടി വെളിപ്പെടുത്താമോ?</p>	

		<p>പോളിസി എന്നിവ കേന്ദ്ര വൈദ്യുതി റെഗുലേറ്ററി കമ്മീഷൻ, സംസ്ഥാന വൈദ്യുതി റെഗുലേറ്ററി കമ്മീഷൻ, സംസ്ഥാന ഗവൺമെന്റുകൾ, വൈദ്യുതി ഉത്പാദകർ, മറ്റ് എല്ലാ ലൈസൻസികൾ എന്നിവർക്ക് നിർബന്ധമാക്കിയിട്ടുണ്ട്.</p> <p>(3) സംസ്ഥാന വൈദ്യുതി റെഗുലേറ്ററി കമ്മീഷനുകളുടെ പ്രവർത്തനം വിലയിരുത്തുന്നതിന് അപ്പലേറ്റ് ട്രൈബ്യൂണൽ ഓഫ് ഇലക്ട്രിസിറ്റിയെ അധികാരപ്പെടുത്തിയിട്ടുണ്ട്.</p> <p>(4) സംസ്ഥാന ഗവൺമെന്റുകൾ സമയബന്ധിതമായി ഇലക്ട്രിസിറ്റി റെഗുലേറ്ററി കമ്മീഷനിലെ ചെയർമാൻ, മെമ്പർമാർ എന്നീ ഒഴിവുകൾ നികത്താത്തപക്ഷം, ടി ഒഴിവ് നികത്തുന്നതിന് ഓരോ ഒഴിവിലേയ്ക്ക് രണ്ടുപേരുടെ പാനൽനിർദ്ദേശിക്കുന്നതിന് കേന്ദ്രഗവൺമെന്റിന് അധികാരമുള്ളതാണ്. ടി പാനലിൽ നിന്ന് ഒരാളെ സംസ്ഥാന വൈദ്യുതി റെഗുലേറ്ററി കമ്മീഷനിലേയ്ക്ക് നിയമിക്കാവുന്നതാണ്.</p> <p>ടി കരട് വിജ്ഞാപനത്തിന്മേലുള്ള കേരള സംസ്ഥാന വൈദ്യുതി ബോർഡിന്റെ അഭിപ്രായം കേന്ദ്ര ഗവൺമെന്റിനെ അറിയിച്ചിട്ടുണ്ട്. ഇതിന്റെ ഒരു പകർപ്പ് അനുബന്ധമായി വച്ചിട്ടുണ്ട്.</p>
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 സെക്ഷൻ ഓഫീസർ

KAR IAS

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KSEB/TRAC/EA 2003 Amendment

26-11-2013

To

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

Sir,

Sub: Proposed amendments in EA 2003 - comments - forwarding - reg
Ref: 1. No. 42/6/2011 - R&R (Vol-III), GoI, MoP, dated 17-10-2013

1. Kind attention is invited to the above wherein the Government has directed to submit comments on the proposed amendments to Electricity Act 2003. The proposed amendments have a far reaching impact on the way power sector operates in the country. It seeks to comprehensively redefine the Distribution function of the Electricity sector which has remained squarely in the domain of the State Governments and the enabling provision of state governments to define strategies based on the local specificities is substantially diluted. It also seeks to streamline the functioning of the regulatory commissions within the policy framework prescribed by the Government. The amendments have a focus in ensuring the financial soundness of the sector through timely revisions in tariff.
2. The power distribution sector in each State had evolved in its own unique manner and at present is at different stages of development. While Kerala has achieved 100% village electrification during late 1970's itself, the situation is different in many other States. The distribution of natural resources used for power generation is not even across the states and hence the cost of power within each State and consequently the level of cross subsidy required to be maintained differ from State to State. The following comments are offered keeping in mind these aspects as well as the flexibility provided under the federal structure of the Nation which empowers the national and state level governments to deal with such situations.
3. Kerala has a unique/consumer pattern with the domestic consumer group constituting around 80% of the consumer base of KSEB and they consume about 50% of the electricity distributed within the State. Unlike in other parts of the country substantial portion of the consumption in the domestic sector is in the low income group. Households consuming around 1 to 3 units a day constitute around 75% of the domestic consumers. The consumption by this section needing tariff support comes to about 52% of consumption in the domestic category.

4. While the low end consumer segment has proliferated in the State, partly due to conservation efforts, the consumption in the heavy industry segment has stagnated due to a variety of reasons. The contribution from this sector is only 23% and thus the much needed base load of the power system is remaining at a narrow level. The unique consumption pattern in the State has resulted in a peculiar load curve with the summer evening peak demand recording more than double the off-peak monsoon demand, creating attendant problems including higher cost of delivered power.
5. Further, the tariff for the industrial segment has been retained at the level of average cost of supply and there is no significant cross subsidy support from this segment. The support for cross subsidy mainly comes from the commercial and services sector which is presently having a lower base but is growing. However, this small segment has to bear a significant burden of cross subsidy at present and can easily be cherry picked by subsequent supply licensees in the unique context of Kerala.
6. The lack of natural resources for power generation within the State has resulted in the use of higher quantum of imported fuels like Naptha, LSHS and now R-LNG which also jacks up power generation costs resulting in higher average cost of power delivered. The combined impact of low base of subsidising consumers, higher proportion of costly power and high proportion of low end domestic consumers call for a different approach in handling the cross subsidy content in tariff within the State.
7. The introduction of multiple Supply licensees who could cater to the specific needs of high end consumers in this unique situation could lead to cherry picking by new players leading to unintended adverse impacts on other segments of the society. The State Government which has to directly handle the issues of social needs and ensure equitable development of the society has to play a decisive role in such situations and the Constitution of the Nation adequately provides for the same by including Electricity as an item in the Concurrent list (List III of seventh Schedule). However, the proposed amendments leads to a situation where the authority of State Government on matters related with distribution and supply of electricity within the state is severely undermined and is in direct conflict with this provision in the Indian Constitution.
8. The measures suggested in the draft amendments to bring back overall supervision of the Central Government over the development of the inter-state generation, transmission and trading of power are welcome in this context. The restrictions proposed in invoking section 11 of the Act are also welcome.
9. At the same time, considering the Federal nature of governance enshrined in the Constitution, the powers to be exercised by the Governments needs to be appropriately shared among the State and Central governments. Thus while the National tariff policy, National electricity policy etc notified by GoI shall be binding on CERC on matters related to inter-state generation, transmission

and trading, the State Governments shall be similarly authorised to issue State Electricity policy applicable to each State which shall be binding on the state regulators on matters related to distribution and supply within the state as well as intra-state transmission and trading.

10. Thus a new section 2(a) may be inserted after section 2 as "The State Governments shall, in consultation with the State Regulatory Commission and the State Transmission Utility, notify a State Electricity Policy for the optimum development of the resources for equitable Distribution and Supply of electricity within the State. Provided that the State Governments shall be guided by the National Electricity and Tariff Policy notified by the Central Government from time to time while framing the State Electricity Policy". Also the wording "appropriate governments" appearing in the proposed section 3(a) may be deleted. Similarly the word "appropriate" appearing before the word "Commission" may be replaced with the word "Central". Further, section 3(b) may be added after proposed section 3(a) as "The State Electricity Policy notified by appropriate Governments shall be binding on the appropriate State Commissions".
11. The disintegration of distribution business into distribution and supply business at the current state of development of Indian power sector is too early and may lead to serious coordination issues as well as unintended cherry picking of subsidising consumer segments by subsequent supply licensees. This may lead to twin problems of bankruptcy of incumbent supply licensee and unbridled increase in market price for power. The direct subsidy burden of the state governments is also likely to go up in such a situation.
12. The introduction of supply licensees shall be only after ascertaining the state of readiness of the industry in each state. Thus the mandatory time limit of three years shall be removed. The separation of network and supply business were achieved in developed economies when the distribution network was in a fully developed state and the cross subsidies for bulk consumers were minimum or negative. When the distribution network in the country is underdeveloped there will be serious coordination issues among distribution licensees, supply licensees and consumers at every stage right from availing connection, enhancing contract volume for supply, supply quality etc. The cross subsidy pattern in the country is also different from that prevailing in developed economies. In India large bulk consumers like industries are bearing the burden of cross subsidy and small consumers who are large in number like domestic consumers are getting the benefit of cross subsidy. However in the developed economies the pattern is different with the bulk industries getting subsidised electricity to ensure their competitiveness and the domestic consumers bearing the burden of cross subsidy. The peculiar pattern of cross subsidy in India results in a small section of consumers consuming huge quantum of energy is paying at rates well above the average cost of supply and the same is mostly higher than the price discovered in the market. This pattern of cross subsidy can lead to large scale cherry picking by subsequent supply licensees and thus their entry has to be timed appropriately taking into consideration the prevailing level of cross subsidy in each state.

13. The present under-developed state of distribution network could create issues in supply side like (i) high distribution loss which has to be borne by the supply licensee as unnecessary power purchase cost (ii) low quality of supply like low voltage, supply interruptions etc leading to low revenue realisation (iii) overloading of lines which may necessitate shedding of loads of supply licensee (iv) low level of access, especially in rural areas leading to unmet demand. One of the identified chronic problems in Indian power sector is the high level of transmission and distribution loss and one of the major performance parameters prescribed now for distribution licensees is the loss reduction targets. If the distribution business is disintegrated without settling these problems it is likely to create anarchy in the whole value chain. The burden of additional power procurement due to high transmission and distribution losses will go unattended in the new arrangements.
14. Considering the twin issues of under developed distribution network and peculiar cross subsidy structure in Indian power sector, the segregation of distribution business and supply business in one go at this point of time is not advisable. The state governments may be given full freedom to decide the timing in consultation with the state regulatory commissions in a phased manner based on experience gained in each phase.
15. Thus 7th Proviso under section 14 dealing with issuing license to supply licensees shall be modified with by inserting the sentence "as and when the State Government allows multiple supply licensees in specified areas in such successive phases as specified in the State Electricity Policy and in respect of those applicants who were selected through a competitive process through an empowered agency of the State Government ..." after "Provided also that". Similarly the last proviso under the section proposed to be inserted in respect of intra-state traders, the wordings "deemed to be a supply licensee" shall be replaced with the wordings "shall become eligible through the competitive process for identification of supply licensee".
16. To avoid situations of unintended cherry picking by subsequent supply licensees, the words "take care" in first proviso to section 42(2) related to compensatory charge payable to incumbent supply licensee shall be modified as "fully meet" so as to ensure that the charge is adequate to offset the loss of cross subsidy support. The existing section 42(4) prescribing additional surcharge to meet the fixed cost of the incumbent licensee to meet the fixed cost of stranded generation and transmission assets contracted on long term basis to meet the obligation to supply shall be retained.
17. In order to ensure level playing field to all supply licensees, the onerous responsibility of service provider of the last resort may be removed from the shoulders of incumbent supply licensee. The responsibilities of all supply licensees shall be of similar nature. The wisdom in providing such a provision of 'supply licensee of last resort' unveils the realisation that the country as a whole is not yet mature for introduction of multiple supply licensees in one go. Thus the introduction of multiple supply licensees shall be done concomitantly along with separation of supply business from distribution business in phased manner based on maturity of the sector in each area. Once

the separation is achieved in an area, the responsibilities shall remain similar to all competing licensees.

18. Thus section 51 A (2) shall be reworded as "The Appropriate State Government shall, in consultation with the Appropriate Commission and the State Transmission Utility, provide for separation of distribution and supply of electricity in such successive phases and in accordance with the timeframes specified in the State Electricity Policy notified from time to time and for such purpose issue appropriate transfer scheme and vest the supply functions in a supply licensee as per section 131."
19. In order to ensure level playing field to all competing supply licensees, all the provisos to section 51 B (1) shall be deleted and under the 7th proviso to section 14 the wordings "having specified load profile" shall be deleted.
20. The subsequent supply licensees are getting an opportunity to access scarce infrastructure (transmission & distribution assets as well as its right of way) built by incumbent licensee. The access to such finite resource when allowed in a phased manner shall only be on a competitive basis, the floor price of which shall be prescribed by the state commission. The revenue generated out of this shall be used by the distribution licensee for extending the infrastructure to rural areas as well as for upgrading the system to global benchmarks to facilitate introduction of subsequent licensees in more areas. The State Electricity policy shall prescribe the framework for the introduction of supply licensees. Thus insertion of section 2(a) as suggested in paragraph 10 above is suggested.
21. The power market in the country created in the last decade is still in the nascent stage and the lessons learnt during this phase makes it clear that the market will take time to mature. The low level of liquidity in the market, higher volatility in prices, innumerable disputes propping up from concluded contracts all indicate the immature nature of the market. The Central Government as well the regulatory commissions are responding to the evolving nature of markets through frequent changes in bid documents, regulations etc. The new set of bid documents released by the Central Government is still untested. The situation being so, and India still facing significant power shortages as well as transmission capacity constraints, there is every likelihood of generators in certain regions making wind fall profits while others may be finding the going tough.
22. During the evolving phase of the market, the Regulatory Commissions shall be authorised to prescribe generic tariffs for generating stations using different technologies/fuel from time to time. When there is significant variations in the discovered prices from the generic tariff in Case 1 and Case 2 biddings for long term and medium term the regulatory commissions shall not allow such contracts. In the short term market segment when there is huge volatility due to shortage of generation or transmission capacity, the regulatory commissions shall be authorised to direct the generators to transfer such surplus revenue to a common fund like PSDF the utilisation of which shall be regulated by the appropriate commission.

23. Thus a proviso shall be added under section 63 "Provided that in case the tariff discovered through such bidding process varies significantly from the generic tariff notified by the appropriate commission from time to time for different technologies/fuel, the appropriate commission may direct the procurer to cancel the bid." The second proviso to the section 63 may be inserted as "Provided also that in case of short term procurement of power where the tariff discovered is having significant variation from the generic tariff notified by the appropriate commission from time to time for different technologies/fuel, the appropriate commission may direct the supplier to transfer the difference between such generic tariff and discovered tariff to a common fund created by the appropriate commission for development of the power system."
24. From 2002 onwards Kerala has been prompt in the matter of appointment of State Electricity Regulatory Commissions and thus changes proposed under section 85(1)(a) and insertion of section 85(5A) in the matter of appointment of state commissions is unwarranted and amounts to casting aspersions on the ability of State Governments in taking rational decisions.
25. To ensure level playing field among competing distribution licensees and ensure orderly development of the sector in accordance with the State Electricity Policy notified by the appropriate governments, the following changes are required under section 86. Under section 86(1)(b), the wording "incumbent" may be deleted. Under proposed section 86(1)(jb) add the words "in accordance with the State Electricity Policy", at the end of the sentence. Under section 86(4) insert the words "State Electricity Policy notified by appropriate state government" after the words "tariff policy".
26. Considering the above aspects, the changes in the proposed amendments as suggested above may kindly be taken into consideration while finalising the proposal.

Yours faithfully,

Jimmy

CHAIRMAN.

M. S. S. S.