Power utilities' debarment shows India needs to fast-forward electricity reforms

The debarment by the POSOCO of electricity trading by 27 power utilities in 13 states has put the spotlight back on key reforms outlined in the Electricity (Amendment) Bill, 2022.

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In a letter sent to power exchanges, India Energy Exchange (IEX), Power Exchange of India Ltd (PXIL) and Hindustan Power Exchange (HPX), Power System Operation Corp. (POSOCO) asked them to restrict trading in electricity by 27 power utilities based in 13 states from August 19. In a first, the country's integrator of power systems, invoked the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, after utilities failed to clear Rs 5,085 crore owed to generating companies.

This effectively means that distribution companies or discoms won't be able to buy electricity from exchanges to meet their short-term requirements till they clear their dues. The gravity of the situation can be gauged from the fact that total outstanding owed by distributors to generation companies or gencos have risen by 4 per cent a year per annum to Rs 1,32,432 crore in June 2022, as compared to Rs 1,27,306 crore in June 2021, according to data from the Payment Ratification And Analysis in Power procurement for bringing Transparency in Invoicing of generators (PRAAPTI) portal.

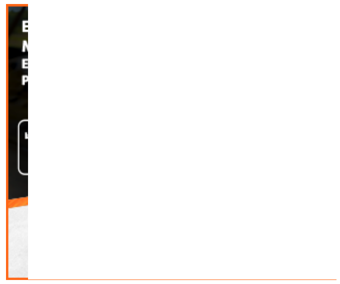
On August 18, six states from the list were allowed to trade on power exchanges after they claimed no outstanding dues. The list of remaining defaulters includes distribution companies in Karnataka, Madhya Pradesh, Mizoram, Rajasthan, Tamil Nadu and Telangana, and the union territory of Jammu & Kashmir. The states of Telangana (Rs 1381 crore), Tamil Nadu (Rs 926 crore) and Rajasthan (Rs 501 crore) lead the pack.

The debarment has put the spotlight back on key structural reforms outlined in the Electricity (Amendment) Bill, 2022. "The power distribution segment especially has been reeling under heavy losses and legacy debt, estimated at Rs 4.7 trillion for top ten states by CRISIL Research, which is 70 per cent of the demand as on fiscal 2022, has not been solved by often short-term liquidity plans rolled out by the government so far," informed director CRISIL Research, Hetal Gandhi.

Critics alleged that the invocation of the clause amounted to the government implementing the provisions of the bill from the backdoor. However, it remains a fact that, unlike the generation and transmission segments, the distribution segment has not demonstrated self-sustainability and has been a drag on the overall power sector.

Make discoms competitive

So, what do the key amendments propose? "The Bill has sought to tackle the challenges of unsurmountable financial dues of distribution licensees, it has also focused on the promotion of competition in the sector with a strong thrust being accorded to renewable energy generation," said managing partner at SKV Law Offices, Shri Venkatesh.



Its key proposals recommend multiple discoms to operate in the same area, with the existing discom providing non-discriminatory access to its network to all the other distribution licensees on payment of certain charges. To promote competition, the appropriate commission shall fix the maximum ceiling on tariff and the minimum tariff for the retail sale of electricity. As is the case in telecom, this will give the consumer the option to choose their electricity supplier.

The Bill also allows the appropriate commission to amend or revise rates in four stages under the tariff policy. It also proposes to empower the central and state load despatch centres in scheduling electricity supply in case an adequate payment security mechanism is not established and maintained by the distribution licensee.

It is also proposed that a distribution licensee to meet additional power requirements may enter into additional power purchase agreements (PPAs) after meeting the stipulated requirements. Disputes related to the performance of contracts will be adjudicated by the central and state electricity regulatory commissions.

The proposal for states to either meet or exceed the Renewable Purchase Obligations (RPOs) prescribed by the central government is expected to give a further boost to the production of clean energy.

These amendments seek to enhance private participation in the power sector. However, the perception that more powers may get delegated to the central government may become a cause for acrimony between the centre and states, considering that electricity is a concurrent subject under the Constitution.

"This may also be a challenge from the perspective that originally the ethos of the present Act was to distance the government from issues such as determination of tariff as specific statutory bodies have been formed under the act," opined SKV Law Office's Venkatesh.

Then there is the prospect of new players focusing only on profitable areas such as those having high commercial and industrial (C&I) loads for enhanced revenues.

"The proposed amendments may lead to more entities entering urban areas, while loss-making areas will be underserved. Farmers are also concerned as the bill will eventually lead to the end of subsidised power," averred partner at DSK Legal, Samir Malik.

Need for a consensual approach

Following protests by opposition parties, farmer groups and the All India Power Engineers Federation, the central government sent the Bill for review by the Parliamentary Standing Committee on Energy soon after its introduction on August 8. The committee is expected to shortly begin discussions on the document.

To prevent the Bill from being put on the back burner, DSK's Malik, suggested that recommendations from states should be taken into consideration for effective implementation, provisions related to subsidies should be elaborately debated and regulations for private players introduced to avoid differential distribution.

"Amendments are aimed at improving efficiency in the power sector and not reducing the state's role. This bill has become necessary to strengthen the regulatory and adjudicatory mechanisms in the Electricity Act and to improve the corporate governance of distribution licensees," he opined.

"Adequate clarity on subsidy eligibility and transfer needs to be communicated to all stakeholders. Hence, suggestions from a wider spectrum of stakeholders are to be carefully examined while resolving their apprehensions through meaningful dialogue," said associate director CareEdge, Agnimitra Kar in agreement.

Moreover, the government has set an ambitious target for renewable capacity expansion in the long term and this would require substantial investment by both domestic and overseas investors alike.

"Given that the distribution segment is the wallet for the power value chain, it cannot be more opportune time to further bring the reforms in the sector and inspire investors' confidence. The bill attempts to address some of the major issues and address the objectives of the Electricity Act, 2003, in the right earnest," said CareEdge's Kar.

The rollout of the proposed amendments through a consensus-based approach would go a long way in overhauling the weakest link in the nation's power supply chain.

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