Comments on

Discussion Paper on

Market Based Economic Dispatch of Electricity: Re-designing of Day-ahead Market (DAM) in India

A. Legal / Jurisdiction Issues

(a) At the outset, before considering the merits or demerits of the proposed scheme, it appears that implementation of the proposed framework may not be possible under the present legal framework. Issues related to jurisdiction of the Central Commission will be relevant. Certain issues in this respect are highlighted below:

(i) The Electricity Act, 2003 carves out specific domains for the Central Commission and the State Commissions, in due cognisance of electricity being in the Concurrent List of the Constitution of India. The authority to regulate various aspects of electricity business are clearly demarcated in the statute and there is no overlap area in the statute for exercise of such authority by the regulatory bodies.

(ii) Distribution businesses are under the jurisdiction of the State Commissions and are cognisant of State-specific issues. The powers of regulating their electricity purchase is also fully under the jurisdiction of the State Commissions, through operation of various sections of the Electricity Act, 2003 *inter alia* through Sections 86(1)(a) and 86(1)(b). The discussion paper appears to propose infringement of powers of the State Commissions by the Central Commission. In the absence of such specific powers granted to the Central Commission by the mother Act, the necessary legal authority for mandating power purchase through a specific route by distribution licensees appears to be absent.

(iii) Where the statute is clearly assigning certain powers to specific authorities, such powers cannot be taken away through an omnibus section on of market development.

(iv) Under the present regulatory regime, Section 61 prescribes that the State Commissions are to be "guided by" certain principles and methodologies specified for tariff determination of generation and transmission companies. This also cannot be the basis of power for instructing distribution licensees to adopt a specific mode of power purchase.

(v) State Governments are vested with the powers to provide direction(s) under Section 11. The proposed scheme does not deal with the situation under such circumstances. It will lead to legal chaos for the generating companies or distribution licensees under such circumstances.

(b) Even assuming provisions for such mechanism through the tariff policy or the National Electricity Policy, at present such policies are guiding policies and not mandatory for the Appropriate Commissions to emulate.

Mandatory implementation of policies so envisaged may not be possible till the Electricity Act, 2003 is amended. Legislative provisions cannot be altered substantially through executive action, as is being conceived.

(c) Certain aspects where the importance of the State Commission / State Government have been overlooked are detailed in later sections. Allowing transmission charges on MBED power, allowing penalty for short-lifted linkage coal as additional fixed cost for a station which is not being dispatched, station closure decisions are a few such examples.

(d) In this backdrop, the contents of the Discussion Paper appear to be premature and lacking the legal impetus to take it further.

(e) Comments are, however, being proffered on some aspects of the Scheme, as understood.

B. Operational Issues

(a) If there are multiple Exchanges involved then different MCPs for different Exchanges is not a feasible solution for the new mode of operation (MBED). There will have to be a coordinating body above them. And so there needs to be a single MCP discovered by the coordinating body. If so, then what is the utility of having multiple Exchanges? Clarifications on these aspects are necessary.

(b) The DISCOMs having long term PPAs with different Generators have already paid for the OA charges. Now if they have to procure power through the Exchanges only then they will have to bear OA charges once again. Clarification in this regard is necessary.

(c) Also, operating through Exchanges will require payment of the charges of the Exchanges, which will be an additional expenditure.

(d) If traders are involved between DISCOMs and GENCOs for the long term contract, then what will be their involvement? What happens to the Trading Margin if the generators are not scheduled? More clarification in this aspect is required.

(e) The paper considers National Level Merit Order Dispatch. Network congestion at the regional level has been dealt with for price discovery. Will that (network congestion) be applicable for private DISCOMs with embedded generation as well? In case of part of the embedded generation not getting scheduled through MBED, then this may result in network congestion due to additional import to be procured from the market. Clarification of this part is necessary.

(f) In the Transition Period (one year from the date of implementation) there will be provision for self-scheduling of long term contracts between DISCOMs and GENCOs and the rest of the requirement will be availed through the market. In the Final Period too, the right to self-schedule will be there. Then the difference in operation modality in the Transition Period and the Final Period may be clarified.

(g) Will the existing DAM and MBED Markets operate simultaneously? If so, how these two will be separated and clarification regarding the mode of operation in this scenario is needed.

(h) Since Exchanges operate on advance payment mode, if the total operation shifts to MBED mode, then the DISCOMs will have to pay for the power procured in advance instead of payment on monthly basis at the end of the month post-procurement. Financial liquidity of the DISCOMs may prove to be an issue. This also may lead to higher requirement of working capital and funding costs for contracted power and for power procured under Section 62. These additional costs shall be allowed to be passed through, for which mechanism has to be provided in the proposed MBED.

(i) If all the DISCOMs and GENCOs do not participate in the MBED mode of operation i.e. there is partial participation, then that scenario will not be different from the present day scenario. So study of pros and cons before implementation is vital and clarifications in this regard are necessary.

(j) The above point will also cause deviation from the content of the agreements between the DISCOMs and GENCOs regarding scheduling and payment terms. Will that require redoing the contracts? Implications of violating Contracts Act needs to be dealt with. Clarification in this regard is also necessary.

(k) MBED mode of operation preferably is not to be handled in an isolated manner. This should be considered together with the amended DSM Regulation and the future implementation of the Real Time Market (RTM) in a coordinated manner in order to arrive at the best working solution.

(l) There may be impacts on fixed costs of operations for both GENCOs and DISCOMs. Proper studies need to be carried out before implementation of the proposed MBED.

C. Allied and Consequential Issues

(a) Coal linkage issues for the generators have not been addressed at all in the discussion paper. At present coal supply, to some extent, is ensured only to those generators who have long term agreements with DISCOMs for supply. Other generators are at the mercy of monopolistic players like the Coal India and the Indian Railways. The proposed MBED will result in frequent modifications of coal linkage and FSAs with significant changes in dispatch mechanism.

(b) The stations which are not dispatched will incur penalties for not lifting adequate coal. State Commissions are having an obligation to pass through this cost to the consumers. This hidden cost is effectively pushing up the cost of power procured through MBED, without featuring as an item for consideration.

(c) Similarly, transmission and other charges incurred for sourcing power to the licensee's bus is another cost, which is not apparent when power is procured. This is another hidden cost.

(d) Generators can offer better prices in a pool only when they are assured of the supply of requisite coal in desired quality and quantity. Preparedness of the Railways and Coal Sector to ensure such supplies are not addressed in the discussion paper.

(e) Old stations are operated on several specific considerations such as mitigating demand shortages for certain periods because of lower fixed costs, State-specific issues including emergencies / exigencies as well as at the time of festival or examinations, often given effect to through directions of State Governments. Without dealing with those issues, the proposed scheme may jeopardize the power supply situations of the State.

(f) For regulated supplies, with DISCOMs likely to place requisitions for contracted power based on the capped/determined tariff, there might be situations when all the requirement is not met at that price. Considering Universal Supply Obligations as well as security issues (particularly of cities of importance), creation of shortages through the market must be avoided.

(g) Under certain circumstances State Commissions devise schemes for back up supply to the DISCOMs under its jurisdiction. Sometimes, single part tariff is designed for such transactions, particularly if such back up or emergency supplies are provided by another licensee in the State. The discussion paper has not considered such situations.

(h) Investments already made based on certain assurances or policies in States may get jeopardized. We apprehend that certain plants may not be in readiness to supply and will move towards closure. Those closure decisions cannot be taken at central level as many employment and other social issues are interlinked with such decisions.

(i) MBED mechanism proposes to assure recovery of fixed costs determined by the State regulator. Present tariff regime also provides for truing up of costs. This may become a necessity for many stations not being dispatched at current level or at all. These could be with higher burden of working capital for advance payments, higher O&M needs or skewed dispatch levels at sub-optimal efficiency. Under the proposed MBED mechanism, procurers will also be constrained to make advance payments at the exchanges for the power procurement, which is in contrast to the present system of payments at the specified due date after the end of the billing month.

(j) In this context, it may be noted that cost of long term debts may also increase for both the generators and the procurers, if such are market linked, on account of uncertainties of dispatch with the proposed regime. Such adjustment are needed to be provided.

Considering all the possibilities and implications discussed above, it will be prudent to avoid implementation of the proposed MBED without considering all the operational and commercial implications on the GENCOs and DISCOMs, as also the legal issues. Also, if at all it has to be implemented after addressing all such issues, it should be operationalized on a voluntary basis rather than as a mandatory mode of operation. Even so, the legal backdrop might be reviewed.