The Institution of Engineers Sri Lanka (IESL)

Comments on the Draft Bill of Sri Lanka Electricity of 2024 (Issued on 17.04.2024)

Introduction

The thorough examination and subsequent recommendations presented herein by the IESL signify our unwavering commitment to ensuring the integrity and efficacy of the legislative framework governing Sri Lanka's electricity sector. Building upon our previous feedback provided on the initial bill issued on 05.12.2023, this endeavour represents a concerted effort to advocate for accurate and technically robust regulations in the electricity industry.

As custodians of technical excellence within Sri Lanka, we recognize it is imperative that the new Electricity Act reflects the core principles of transparency, competition, and sustainability. Through this thorough analysis, we aim to bridge any disparities between the draft bill and the prescribed reform agenda, thereby fortifying the foundation of Sri Lanka's electricity sector for the benefit of all stakeholders involved.

A. Fundamental Comments

a) Ensuring with Cabinet-Approved Power Sector Reform Committee Recommendations:

The Cabinet of Ministers appointed a Power Sector Reforms Committee on July 22, 2022, to review the scope and institutional framework laid down in Chapter VI of the Electricity Reform Act No. 28 of 2002. This review was to be conducted in the context of the present-day socio-economic and governance needs of the country, with the goal of recommending a suitable institutional framework for Sri Lanka’s future electricity industry. The committee submitted its report on October 20, 2022, clearly outlining a roadmap spanning 24 months for the reform process.

The Institution of Engineers, Sri Lanka (IESL) strongly recommends a thorough reassessment of the draft bill to ensure it genuinely incorporates the committee's recommendations, as it significantly diverges from the cabinet-approved concept paper on power sector reforms. This divergence undermines the committee's work and the integrity of the reform process, particularly concerning the independence required and the financial autonomy that is imperative of the regulatory body, which is crucial for effective oversight and management of the electricity sector.

To ensure alignment with the original objectives and recommendations outlined in the concept paper, it is strongly recommended to:

1. **Review the Draft Bill**: Compare the draft bill with the recommendations made by the Cabinet-appointed Committee in their report of October 20, 2022.
2. **Make Necessary Amendments**: Ensure that any discrepancies are addressed and the bill is amended to align with the agreed-upon framework.
3. **Engage All Relevant Stakeholders**: Immediately involve all relevant stakeholders to enhance the effectiveness of the proposed reforms in the electricity sector.

By taking these steps, the proposed reforms can be aligned with the comprehensive roadmap and objectives originally envisioned, ensuring a more effective and sustainable future for Sri Lanka's electricity industry.

b) National Electricity Advisory Council:

The establishment of the National Electricity Advisory Council (NEAC) should be driven by national objectives, such as preparing electricity policy in alignment with the National Energy Policy and other relevant national policies. Responsibilities should include issuing guidelines for the implementation of such policies. The NEAC should function solely as an advisory body to the Minister, ensuring the implementation of durable, long-term policies without executing corporate functions.

The NEAC must be an independent body to maintain transparency and objectivity. Currently, the Minister appoints NEAC members unilaterally, raising concerns about transparency and impartiality.Members therefore shall be nominated by the Minister from nominees of professional institutions incorporated by Parliament, with the Constitutional Council's concurrence.

The Public Utilities Commission (PUCSL), established by Act No. 35 of 2002, regulates the electricity industry based on national policies. The Sri Lanka Sustainable Energy Authority (SLSEA), established by Act No. 35 of 2007, develops renewable energy resources and implements energy efficiency measures. Under the Sri Lanka Electricity Act No. 20 of 2009, the PUCSL regulates the economic, technical, and safety aspects of the electricity industry.

Given the effective operation of PUCSL, SLSEA, and the proposed National System Operator, it is unclear why the NEAC needs to be a body corporate under Section 3(2) of the Bill. This could lead to redundancy and policy conflicts. The NEAC, should solely function in an advisory capacity to the Minister.

c) Independent System Operator:

A key goal of electricity sector reforms is to establish an Independent System Operator (ISO). However, as per the bill, the System Operator is reliant on the Minister and the National Electricity Advisory Council, consisting of members nominated by the Minister. Therefore, it is strongly recommended to ensure the independence of the System Operator. The autonomy of the System Operator must be maintained, and there should be no room for the NEAC to give directives to the NSO. The NSO should be solely responsible for the integrity of the entire power system of the country, as provided for in the bill, subject to the regulatory control of the regulator and the announced National Policy.

d) Competitive Power Generation:

Another key objective of the Bill is to establish a competitive electricity market and prevent anti-competitive practices, monopolies, collusion, abuses of a dominant position, and merger situations that affect competition in the electricity industry. Therefore, it is strongly recommended to amend the Bill to

(i) strictly enforce competitive bidding for the procurement of future power generation and,

(ii) disallow monopolies of generation licensees operating large-scale coal and LNG power plants when forming new generation companies.

e) Parent Company:

Establishing multiple standalone companies with government ownership can result in a loss of control and governance in the electricity sector. It is recommended to establish a government-owned public company to hold the shares currently held by the Government of Sri Lanka (GoSL) in generation, transmission, distribution, and other electricity sector companies before any divesteiture envisaged.

The new Act fails to address the status of subsidiaries owned by the Ceylon Electricity Board (CEB) under Sections 17 or 18 or elsewhere in the legislation. These subsidiaries, including Lanka Transformers Ltd., Sri Lanka Energies, Lanka Coal Company, and Trincomalee Power Company, possess assets worth billions. It is crucial to include a provision similar to Clause 51 of the 2002 No. 28 Reform Act in this new legislation.

This inclusion is vital to ensure proper oversight and management of these subsidiaries' assets, preventing the concentration of power and resources within a single entity. Failing to address the status and management of CEB-owned subsidiaries in the new Act could lead to ambiguities and potential mismanagement of valuable assets, undermining the efficiency and effectiveness of the electricity sector as a whole. Therefore, it is imperative to incorporate provisions that clarify the governance and oversight of these subsidiaries to uphold transparency and accountability in the sector.

f) Reforms:

For electricity sector reforms to be comprehensive and impactful, they must extend beyond the confines of the electricity utilities (CEB and LECO) to encompass regulator (to strenththen its independence), the ministry (redefining its new role) , and other organizations within the electricity sector. Establishing fundamental principles such as competition, fair play, transparency, and predictability is essential to realizing the objectives outlined in Section 2 of the Act. It is imperative to strike a proper balance between policy, regulation, and ownership/management to ensure the efficacy of these reforms.

To achieve this balance, it is proposed that the Minister issue policy directives and guidelines to the Regulatory Authority, which will be responsible for granting licenses to the respective licensees. To streamline this process, it is recommended to consolidate subsections 4(10)(a) and 4(10)(b) of the Bill and delegate these responsibilities to the Regulatory Authority. Moreover, activities pertaining to licensing, including issuance, modification, revocation, and assignment, being solely a regukatiryt finction should be exclusively be managed by the Regulatory Authority to safeguard its independence from undue influences byany party including political authority except on matters of National policy .

Furthermore, the Bill suggests the establishment of several companies under the purview of the Companies Act No. 7 of 2007 to assume the operations of CEB, with the intention to repeal the CEB Act No. 17 of 1969 upon the appointed date. Of these proposed companies, two entities will retain full government ownership, specifically those responsible for hydro generation and national system operation. However, the ownership structure of the remaining incorporated bodies has not been clearly defined.

To ensure transparency in the transfer of CEB assets, it is recommended that any divestiture involving CEB assets, which are held by the Treasury on behalf of the nation as national assets, must receive approval from both the Cabinet and the Parliament.

B. Short Title and Dates of Operation of the Act:

1. Section 1(2): It is recommended to introduce flexibility into the rigid time frame of six months for vesting the industry with the successor companies. This can be achieved by incorporating the last paragraph from subsection 1(5), which allows the Minister, with the approval of the Cabinet of Ministers, to extend the period by Order published in the Gazette for another six months. Furthermore, it is strongly advised that the determination of the time and date of operation be delegated to the Power Sector Reform Secretariat or a similar agency, depending on the preparedness of the existing entities to be vested in the new companies. The dates specified in the draft Bill are deemed highly impractical considering the complexity of separating entities with an unprecedented asset base.

C. Part I - Objects of the Act:

2. Section 2: The assignment of the subject of "safety" to the regulator should be incorporated into the Act. Given the absence of other authorities or laws addressing safety in the electricity industry (both supply and demand sides), stronger clauses should be included, referencing relevant clauses in the Public Utilities Commission of Sri Lanka (PUCSL) Act Sections 3(1), 3(1)(g), and 4(1)(a). Additionally, criminal accountability of licensees and PUCSL should be enshrined in this Act.

   It is crucial to incorporate the assignment of safeguarding consumer rights and enforcing "commercial quality" as objectives of the Act to ensure comprehensive protection for consumers.

   Reforms at PUCSL should be integrated into the bill. Activities assigned to PUCSL in its Act, which may not have been diligently followed in the past, should continue into the bill to avoid the failure of this reform process, similar to the shortcomings of the Sri Lanka Electricity Act of 2009. Therefore, it is recommended to propose amendments to reform the PUCSL Act in parallel with this Act.

3. Section 2(a): Ensuring transparent policy towards an equitable and sustainable electricity industry should be explicitly stated as an object of the Act.

D. Part II - National Electricity Advisory Council, The National Electricity Policy, and the Issue of Policy Guidelines:

4. The responsibilities and activities proposed for the National Electricity Advisory Council (NEAC) largely overlap with those of the PUCSL. Strengthening and ensuring the independence of the PUCSL from political interference are necessary steps. Creating another entity with similar advisory powers to directly advise the Minister on all aspects of the sector may lead to conflicting and confusing situations. It is strongly recommended to review the mandate and provisions of the PUCSL and make necessary amendments to ensure its independence while remaining accountable to Parliament.

5. Section 3(3): Ensuring the provision of electricity at least-cost to customers should be included as a responsibility of the National Electricity Advisory Council in advising the Minister. This is crucial to strategize and maintain regionally competitive electricity prices for consumers and for the insudtry to floursh.

6. Section 3(3)(a)(i): Instead of referring to "Electricity Policy," it is suggested to adopt the term "Energy Policy," aligning with international and Sri Lankan practices. Additionally, Section 3(3)(a)(v) should be clarified to emphasize the preparation of the Least

Economic Cost Long-Term Generation Plan and the Long-Term Transmission and Distribution Plan to ensure optimal system cost and reliability.

7. Section 3(6)(a): The requirement for the Director General of the NEAC to be an administrator should be deleted. It is our considered view that IESL does not support the NEAC to be an executive body, and hence there should not be any CEO other than a Secretary or a convenor. In this case, such an officer should be an engineer with experience in utility practice, given the technical complexities of the electricity sector and the advisory role of the NEAC. Additionally, the NEAC should have the flexibility to invite experts with specific qualifications and experience to its meetings as needed. It is once again reiterated that NEAC is not vested with executive powers (such as giving directives through the Minister), which shall pose a severe division of responsibility in the operation and development of the power system and greatly jeopardize the integrity of the system.

8. Section 3(12): This section allowing the Minister to issue directions and guidelines to the NEAC is a serious concern that manifests indirect political interference. It is recommended to remove this provision to ensure the independence of the NSO and other sector entities from political influence.

9. Section 4(8): The provision for a periodic review of the national electricity policy is important, but it should be conducted independently from political influence. Therefore, it is suggested to modify this section to ensure that the review is conducted based on the advice of the NEAC and stakeholders, rather than solely at the discretion of the Minister.

10. The Minister may once every five years, on the advice of the Council and after consultations with the stakeholders, cause a review of the national electricity policy to be conducted. However, according to Section 4 (10), the Minister may, in consultation with the Minister assigned the subject of policy and planning implementation and with the approval of the Cabinet of Ministers, from time to time, issue in writing policy guidelines relating to the implementation of the principles of the national electricity policy, including national strategies and national targets of such policy. This would greatly make the system vulnerable to instabilities and may jeopardize the continuity of power supply in the whole country. Especially because of Section 4 (11) (a), subject to any relevant written law, the Regulator and the National System Operator shall forthwith give effect to any written policy guidelines issued in terms of subsection (10). Though there are remedial measures enunciated in Section (11) (b), there is no guarantee that such directives given by the Minister when implemented may not jeopardize the system's integrity. In case any serious impact on the system occurs, it would not be possible to hold anyone responsible.

11. Section 4(11): One of the main objectives of Electricity Sector Reforms is to establish an Independent Regulator and an Independent System Operator. However, according to Sections 4(11)(a) and (b), the Regulator and System Operator are completely dependent entities on the National Electricity Advisory Council and Minister. It is recommended to make the Regulator and System Operator independent.

12. The issue regarding the grid code and distribution code should be addressed by explicitly stating that there shall be one single grid code and distribution code in Sri Lanka to avoid confusion and ensure consistency in regulations.

E. Part III - Regulator for the Electricity Industry

13. Section 5(3): The provision for feed-in tariffs contradicts the bill's objective of promoting competition among alternative electricity generation processes. It is recommended to make this provision in alignment with the overarching goal of fostering a competitive and transparent electricity generation market.

14. Section 5(3)(f): The bill states that the PUCSL shall "inquire into and take necessary actions to prevent anticompetitive market practices, mergers and acquisitions, and abuse of dominant positions." However, the Act does not specify how these actions should be taken. Comprehensive antitrust and competition laws are necessary to prohibit anticompetitive practices and ensure fair competition in the electricity sector. Therefore, there shoukd be provisions in this bill that explicitly address issues like price-fixing, market allocation, and collusion among electricity providers.

15. This bill should address mergers that affect competition in the electricity industry. This bill should include clear provisions and enforcement mechanisms to ensure that the PUCSL can effectively regulate and maintain a fair and competitive electricity market.

F. Part IV - Establishment of the National System Operator

16. Section 10 (1) (a): The current bill lacks an independent mechanism for appointing directors, which contradicts the recommendations of the Cabinet-appointed committee of 2022. It is proposed to establish an independent committee similar to the Monitoring and Advisory Committee (MAC) in the Electricity Reforms Act 2002 to make recommendations on the appointment and removal of directors. Alternatively, the NEAC should be made independent and empowered to handle these responsibilities.

17. Section 10 (1) (c): The current bill lacks specific qualifications for the CEO of the NSO. It is proposed that the CEO of the NSO must have more than 20 years of experience as an electrical engineer in power system planning, procurement, and business administration. This experience should include a comprehensive understanding of power system operations, grid management, and regulatory compliance.

18. It is observed that "National Load Dispatch Centre" is replaced with "System Control Centre" to better reflect its functions. It should be revised to align with proposed changes throughout the bill.

19. Section 10 (2): There is a lack of clarity on the bulk supply transaction account. It is proposed that the account should include all major transactions between the NSO and other companies, and there should be clarity on monthly public disclosure requirements.

20. Section 10 (3): The NSO is currently dependent on the Minister, which risks undue political interference. It is recommended to ensure the NSO operates independently to maintain the technical and economic integrity of the national grid. The Minister should not interfere in the technical operations of the NSO.

21. Section 10 (5): The planning window is currently limited to 10 years and an indicative plan for a further 10 years. It is proposed to extend the planning window to 20 years to align with industry practices and ensure an optimal generation mix based on least cost principles. Once approved, the plan should remain fixed for the first 5 years unless extraordinary circumstances arise.

22. Section 10 (7): Responsibility for Plan Amendments- The NSO is not solely responsible for the plan after it is amended by the regulator and the Minister and approved by the cabinet. It is recommended to make the NSO solely responsible for any plan amendments to mitigate risks. Anyone amending the plan should be held accountable for any resulting system failures.

23. Section 10 (9): Notification of Deviations from the Plan: The clause is vague about the reasons for deviations. It is proposed to specify the reasons for deviations to ensure accountability and transparency.

24. Section 10 (11) (a): Methodology for Assessing Electricity Demand: There is a lack of a defined methodology for assessing demand. It is recommended to use well-formulated mathematical and scientific methods to ensure accuracy and avoid subjective assessments.

25. Section 10 (13) (b): Approval for Electricity Trading with Other Countries: Approval for electricity trading with other countries is currently limited to the Cabinet of Ministers. It is proposed to require parliamentary approval for international electricity trading agreements to safeguard national sovereignty.

26. Section 11 (1) (a) (i): Compliance and Competition Contradictions: Clauses in the current bill contradict the promotion of competition and transparency. It is recommended to mandate competitive procurement for all power plant projects to prevent unsolicited proposals and ensure transparency, fairness, and efficiency.

27. Section 11 (1) (a) (ii): Competitive Procurement Process: Allowing unsolicited proposals can undermine transparency and increase costs. It is proposed to mandate that all power plants and projects undergo a competitive procurement process to ensure fairness, efficiency, and affordability.

28. Section 12 (1): Exemption of Captive Generation from Licenses: There is a lack of clarity on the regulation of captive generating plants. It is proposed to ensure that all generation and transmission activities comply with national safety and operational standards to avoid compromising the integrity of the electrical network.

29. Section 13: Open Access Rights for Existing Power Plants: The bill is ambiguous on whether existing power plants with PPAs are allowed open access rights. Clear regulations should be established to ensure that open access rights do not disadvantage consumers relying on affordable electricity from low-cost power plants. The Act should balance the benefits of open access with the need to protect public interests and maintain low electricity prices.

30. Section 11 (a) Page 34-35: Long-Term Forced Outage Clause: The clause allows bypassing competitive bidding in long-term forced outage situations, which should be planned for with reserve margins. It is recommended to delete the phrase "a long-term forced outage of a major generating plant" and clarify that "least cost" procurement requires a bidding process to ensure transparency and efficiency which is a contradiction as currently worded.

G. G Part V - Transmission Network Service Provider

31. Section 14: Transmission loss reduction and efficiency improvement are the primary objectives of the transmission planning process. This should be the responsibility of the National Transmission Network Service Provider, and penalties should be incorporated into the transmission tariff for non-achievement of loss targets.

32. Section 14. (1): Correct the abbreviation to kV. The boundary statement is incorrect. In generating substations, step-up transformers (typically 12.5 kV/220 kV) are owned by the generation licensee. Furthermore, in case there are step-down transformers of 132kV/11 kV inside transmission substations, such transformers too must be with the National Transmission Network Service Provider. "National Grid of Sri Lanka" is undefined. In Sri Lanka's terminology, the national grid refers to all generators, lines, transformers, and customer equipment connected to one network. Hence, the terminology used else such as in India cannot be used in the Sri Lankan context.

33. Allowing private transmission lines and issuing separate transmission licenses to companies where the government may have zero stakes jeopardizes the spirit of the clause that the government must hold 50% of shares in the National Transmission Network Service Provider. Although a transmission licensee is prohibited from engaging in generating business, natural collusions will be formed, hindering the development of renewable energy when a private entity holds a transmission license to a renewable resource-rich area. Therefore, a mechanism to engage private investments in transmission devised witg provisioin for theasset to be transferred and operated by the National Transmission Network Service Provider, with provision for the investor to be paid a wheeling charge recover their investment.

34. Section 14 (2): "Any person who has been issued with a letter of award by the National System Operator for constructing a transmission line in accordance with paragraph (b) of subsection (1) of section 11 shall apply to the Regulator for an additional transmission license and for approval to proceed with the construction in accordance with the applicable grid code and other technical standards and parameters. Such additional transmission licensees shall be authorized to keep the ownership of such transmission assets built by them...". If there is no requirement/benefit for such additional transmission licensee to hold on to such asset, there should be provision for such transmission assets to be vested with the National Transmission Network Service Provider according to a predetermined formula for such divestiture.

35. The division of responsibilities between the NSO and the National Transmission Network Service Provider (NTNSP) at the System Control Centre (SCC), which is owned by the NSO, must be clearly defined. It is crucial to understand that the NTNSP cannot "operate" the transmission network from outside the SCC.

36. Section 16: The bill lacks clarity on the procurement processes for transmission infrastructure necessary to integrate new-generation plants. To address this, it is proposed to include competitive bidding requirements for all transmission infrastructure projects. This will ensure transparency, cost-effectiveness, and quality in procurement, promoting fairness and competition while avoiding potential favouritism and corruption. Clear procurement guidelines are crucial for the successful integration of new-generation plants and overall sector reliability.

H. Part VI - Incorporation of Public Companies under the Companies Act, No. 07 of 2008

37. Appointment of the Boards of Directors to successor companies, qualification and experience criteria and whether a transparent process will be followed or the term of appointment etc. are not stated in the bill. In the 2002 Electricity Reform Act, this function was entrusted to the Monitoring and Advisory Committee (MAC).

I. Part VII - Licensing

38. Declaration Clause and Prohibition of Holding Shares in Prohibited Licensee's Company.

    A clause for a mandatory declaration must be included in the bill, specifying that it is an offence to hold shares directly or indirectly in a prohibited licensee's company. This provision should include specific penalties to be imposed by a court of law if such actions are discovered. The bill should also prohibit the granting of licenses to certain licensees handling different functions. The Regulator should have the authority to inquire about such holdings during the license application process and disqualify the applicant if found to be in violation. Furthermore, if a licensee acquires prohibited shares after being granted a license, the Regulator should take relevant actions under this Act (Section 31) or the PUCSL Act using provisions in the competition chapter, Part V.

39. Section 20 (6): Addressing Loopholes in Shareholding Restrictions: The bill currently stipulates that only a person holding more than 50% of shares in a single company shall not be granted a combination of licenses such as NTNSP with Generation or Distribution, or NSO with Generation or Distribution, and a Generation License with a Distribution License. However, this provision inadvertently creates a loophole that could lead to the establishment of private monopolies. For instance, an individual owning 49% of shares in a single company could still be part of a group holding multiple licenses, posing a significant threat to the electricity industry's future.

40. Eliminating the Minimum Shareholding Requirement to Prevent Monopolies: To address this issue and prevent the emergence of private monopolies, it is imperative to remove the requirement of a minimum shareholding of 50% for the application of restrictions prescribed in Section 20(6). By eliminating this requirement, the bill can effectively safeguard against potential monopolistic practices and ensure fair competition within the electricity sector. This adjustment will uphold market integrity principles and prevent undue concentration of power, fostering a more competitive and dynamic industry landscape.

41. Section 21 (2): Removing Ministerial Concurrence in Licensing Decisions: The Cabinet-appointed Committee recommends, per Section 82(18) II, to amend the 2009 Act by removing the phrase "concurrence of the Minister" from Section 13. This amendment aims to place licensing decisions solely under the jurisdiction of the Regulator. This recommendation was included in the cabinet paper, and the Bill gazetted in December 2023 accepted this change, with Section 20 (2) proposing only to "inform the Minister." However, the Bill reintroduces the requirement for the "concurrence of the Minister" for the issuance/extension of licenses. It is recommended to amend this clause to delete the "concurrence of the Minister" requirement, ensuring that licensing decisions remain within the Regulator's sole jurisdiction to enhance regulatory independence and integrity.

J. Part VIII - Tariff

42. Section 5(j) assigns the calculation of feed-in tariffs to PUCSL, indicating that such non-competitive procurements will persist in the future. Additionally, Section 29(3)(a) confirms that feed-in tariffs will remain, updated every six months, without addressing the intricate issues of extending retiring agreements, which could benefit society. Power plants using renewable energy without paying royalties for the use of a public resource may prioritize investor profits over contributing to the economy. Moreover, in Section 53 (interpretations), "feed-in tariff" and "embedded generator" are defined, while "standardized power purchase agreement" is described as a power purchase agreement with predefined terms and conditions for renewable energy-based power plants with a maximum capacity of 10 MW.

43. The "Tariff Methodology" must be prescribed by the regulator or described within the bill itself. It should include methodologies to determine end-user prices, phase out subsidies, and finance lifeline tariffs. Introduction of cross-subsidy recoverable or cross-subsidy surcharge unnecessarily complicates matters after giving certain customers the choice of supplier. Cross-subsidy surcharge undermines the spirit of competition and should be avoided. Tariffs should be cost-reflective for each customer category, and if generation procurement is competitive, there's no need to introduce a cross-subsidy surcharge for customers with the choice of supplier or wheeling customers. It's notable that captive generation located elsewhere from the customer's physical location is exempt from cross-subsidy surcharges.

44. Section 29. (1) "The national tariff policy shall include the principles to be adopted by the Regulator in setting the tariffs specified in subsection (3) and shall be submitted to the Cabinet of Ministers for approval". This violates the independence of the regulator and the purpose of Electricity Sector reforms aimed at separating the Owner (the Government), the Operator (respective licensees) and the Regulator (who is an independent entity of any of the other parties). The methodology for tariff determination is formulated by the independent regulator as per the existing Electricity Act. However, as per this Section, the methodology for tariff determination (National Tariff Policy) is formulated by the National Electricity Advisory Council (which is not independent) and approved by the Cabinet of Ministers. This will make tariff setting non-independent and tariff decisions may be biased. This provision should be vested with the regulator and not with tne cabinet.

K. Part IX - Wholesale Electricity Market

45. The proposed bill outlines that the Minister, with the approval of the Cabinet of Ministers and in consideration of national economic interests, may authorize distribution licensees to engage in power purchase agreements with generation licensees prior to the formal establishment of the Wholesale Electricity Market. It raises concerns regarding potential disparities in agreements that could favour specific parties, leading to market imbalances.

    Enabling distribution licensees to form such agreements prior to the establishment of the Wholesale Electricity Market introduces the risk of creating unequal terms that may not align with fair market practices. This could potentially distort the dynamics of the electricity market, impeding its ability to operate competitively and serve the interests of consumers effectively. It also exposes the market to potential manipulation by

participants, thereby compromising its integrity and equitable functioning. Moreover, the stipulation requiring an "Order" from the Minister to determine the commencement date of the Wholesale Electricity Market introduces uncertainties. If the Ministerial decision-making process lacks efficiency or transparency, it could result in prolonged periods of ambiguity, hindering market participants' ability to plan and adapt their strategies accordingly.

This reliance on Ministerial Decisions undermines the autonomy of the electricity market, potentially eroding its independence and fostering a climate of uncertainty among stakeholders and open up the doors for manipulations. Therefore, it is suggested to amend these clauses by eliminating ministerial involvement in decision-making within the Wholesale Electricity Market, allowing the market to operate independently under a robust regulatory framework.

L. Part Xi- Finance

46. The proposed Section 35 (1) of the bill states: "There shall be levied and recovered from every licensee an annual levy of such amount as may be determined by the Regulator with the approval of the Ministers assigned the subjects of Finance and Policy Implementation, by ‘Order’ published in the Gazette." This means that the annual levy imposed on licensees must receive approval from the relevant ministers before being finalized by the Regulator.

    This provision requiring ministerial approval for the Regulator's budget fundamentally undermines the financial independence crucial for effective regulatory oversight. The PUCSL Act originally established the Regulator's autonomy in budgetary matters to ensure impartiality and insulate the Regulator from undue influence or pressure. Such financial independence allows the Regulator to operate in the best interests of the electricity sector and its stakeholders.

    Financial independence empowers the Regulator to allocate resources judiciously, invest in critical infrastructure, and attract and retain the necessary expertise for robust regulatory functions. This independence fosters transparency and accountability, thereby bolstering trust within the industry and among consumers. It ensures that the Regulator can make objective decisions without the risk of political interference or bias in resource allocation.

    Granting the Minister authority over the Regulator’s budget jeopardizes this independence. It introduces the potential for political interference or bias in decisions regarding resource allocation. Such interference could compromise the Regulator’s ability to act objectively, eroding confidence in regulatory processes and impeding progress toward a fair, competitive, and sustainable electricity market.

    Preserving the Regulator’s financial autonomy is paramount for effectively fulfilling its mandate and ensuring the continued growth and stability of the electricity sector. Any encroachment upon this independence poses a grave risk to the integrity and efficacy of regulatory governance. It ultimately undermines the sector's long-term viability and the interests of all stakeholders involved. Ensuring that the Regulator can operate without undue political or external influences is essential for maintaining a transparent, impartial, and efficient regulatory framework that supports the sustainable development of the electricity market.

M. Part XII - Repeals & Transitional Provisions

47. Responsibility for Grid Code and Distribution Code: The bill fails to designate responsibility for preparing, approving, and revising the grid code and overlooks the distribution code entirely. Instead, elements that should be part of a distribution code have been incorporated into the "Electricity Supply Code" in Schedule III and the "Use of Electricity Meters Schedule IV." This integration neglects the existing Distribution Code and the responsibility of Distribution Licensees to plan the network and submit investment plans, which are crucial for revenue filings. Including part of the distribution code within the Act complicates revisions, especially in light of dynamic changes in distribution and supply, such as distributed generation, aggregation, and demand response. This oversight necessitates a more flexible approach that allows for regular updates to the distribution code to keep pace with industry changes.

48. Section 52 allows the Minister to decide the Appointed Date within six months of the Act's passage in Parliament. Upon gazetting the Appointed Date, the Electricity Act No. 20 of 2009 and the CEB Act of 1969 will be repealed, potentially causing confusion and disorder in the electricity sector. If the Cabinet fails to approve the Preliminary Transfer Plan within six months, similar issues could arise, leading to a chaotic transition. To mitigate these risks, it is recommended that the Transfer Plan be finalized and gazetted before the appointed date. This ensures a stable and clear framework is in place, minimizing potential disruptions during the transition period.

49. Section 53 defines the National Grid as "the transmission network operating at a voltage greater than 33 kilovolts, consisting of transmission assets owned by the National Transmission Network Service Provider and additional transmission licensees." This definition excludes generation plants connected at the 33 kV level from the national grid, implying these plants fall under Provincial Councils' purview per the 13th Amendment of the Constitution. This fragmentation could lead to regulatory inconsistencies and inefficiencies, potentially compromising safety and system integrity. Additionally, phrases like "applicable grid code" suggest multiple grid codes might exist, further complicating regulatory coherence.

    To avoid these issues, it is crucial to state explicitly that there shall be a single grid code for Sri Lanka and a single distribution code, if intended. This clarity will help maintain consistent and efficient management of the electricity supply chain, ensuring system integrity and safety across the country.

N. Part XIII : General

50. The Hydro Power company, NSO, and the company managing EPF & Pension funds are fully owned by the Government of Sri Lanka (GoSL), with over 50% of the National Transmission Network Service Provider (NTNSP) also under GoSL ownership. However, other companies are subject to potential privatization. The 2002 Act's Section 51 mandates that any divestment, apart from a 10% share allocation for employees of successor entities, requires Parliamentary approval. The current Bill lacks a similar provision, not even requiring Cabinet approval for divestiture.

    To address this, it is proposed to introduce a clause similar to Section 51 of the Electricity Reforms Act of 2002, which mandates parliamentary approval for divesting strategic assets. This clause is essential to ensure transparency and accountability in

the divestment process, safeguarding national interests and preventing the undue privatization of critical assets without appropriate oversight.

The absence of such a clause would deprive Parliament of its rightful role in reviewing nationally significant decisions regarding the divestment of successor entities. This oversight could lead to potential mismanagement of strategic assets and undermine public trust in the divestiture process. Therefore, it is imperative to enact safeguards that uphold parliamentary scrutiny and accountability in managing key national resources.

O. General Corrections:

- The term “energy produced” in the interpretation of “Indigenous energy resources” is technically incorrect.
- The use of “thing” in the interpretation is meaningless. "Line" means any wire, cable, pipe, conductor, or other similar item.
- The term “load dispatch activities” is incorrect. Load cannot be dispatched.
- "Standard Power Purchase Agreement": The definition does not fully reflect the features of the SPPA, such as being standardized, non-negotiable, lenient to the seller devoid of **liquidated damages, etc.**
- "Transmission network": In the definition, the use of the term “substation” is incorrect. Sri Lanka defines even a distribution transformer as a substation.
- The term "thermal" is incorrectly used in Schedule (C), as it encompasses coal power plants, which are also thermal. The correct term should be "liquid fuel." Additionally, the second line of Schedule 1 contains a technical inaccuracy that needs to be addressed to ensure precise terminology and clarity.
- Section 4(10)(a)(iii): The wording related to estimating the electricity requirement for Sri Lanka needs clarification to ensure technical accuracy using industry best practices and hence shall include such unambiguous and well-defined wording.