

Draft Electricity Bill 2076 (2019)

Introduction

This Client Briefing is prepared in connection with the draft Electricity Bill 2076 (2019) (“Bill”). The Government of Nepal (“GON”) has prepared the draft Bill which is now being circulated by the Ministry Energy, Water Resources and Irrigation (“Ministry”) to invite comments from stakeholders and public.

The key provisions of the draft Bill, in summary, are discussed hereunder:

Alignment with the Federal Structure

The Constitution of Nepal has provided for division of power relating to national-level large electricity projects, State-level electricity projects, and small hydroelectricity and energy projects to the federal, state and local Governments respectively.

The draft Bill is in alignment to this federal-state-local structure as it demarcates the power to approve a project among the central, state and local Governments. The draft Bill provides that the agency empowered to grant approval to electricity projects up to 3 MW, above 3 MW and up to 20 MW, and above 20 MW shall be the concerned local Government, the concerned state Government and the central Government, respectively.

License through Open Competition

The draft Bill provides that the license for the development and operation of electricity generation project shall be issued through an open, fair, and competitive process. Though the Directive Related to Licensing Power Projects 2075 (2018) stated that the project enlisted in the GON’s project bank can be developed through an open competition, it is for the first time that open competition is being used for granting license for energy development in Nepal. The Ministry will now be required to publish notices inviting proposals from private developers and competent developers shall be selected based on the open competition.

Open competition, however, will not be required for the following:

- Projects for which survey licenses have already been obtained and are now in generation, distribution or transmission stages;
- Project operated by the GON or its agency or any organization where the GON has ownership of 51 percent or more; and
- Projects operated by the GON, foreign States or donor agencies either solely or jointly.

Validity of Approval

Entities wishing to engage in business of generation, transmission, distribution or operation of electricity must obtain a license. The validity of the license for generation of hydroelectricity will be 35 years and for generation through other sources will be 25 years.

The term of transmission, distribution, and operation of electricity trading licenses shall be 25 years. Entities must handover hydroelectricity generation stations and associated structures, transmission lines and other infrastructure to the GON after the expiry of the term of the license.

Approval for Single Purpose

The draft Bill provides for a grant of single purpose approval only. As such, one entity may obtain approval for only one among generation, transmission, distribution or conducting electricity trading or consumer service. Entities which are currently involved in more than one activities of generation, transmission, distribution or operation of electricity trading will be required to establish a separate entity for each activity within three years from the date of enactment of the Bill as an Act.

Share Transfers

The draft Bill aims to prohibit electricity project companies from selling more than 25 percent of the share acquired by its promoter prior to the commencement of commercial generation.

Determination of Electricity Tariff

Entities which have obtained approval to distribute electricity will have to submit their proposal before the Electricity Regulatory Commission (“Commission”) for the determination of electricity tariff rate. The Commission will then determine the tariff and issue a public notice regarding such determination.

Acquisition of Land or Other Property

If an entity is in need to acquire or use lands belonging to others to conduct activities specified in its license, it must submit a request in writing to the Ministry and the latter shall, after examining the requirement, provide such building or land to the former in accordance with the law. If the land required is public land or is part of the national forest region, then such land shall be provided through a lease.

It is the responsibility of the entity to provide for the re-settlement and re-habilitation of persons displaced out of their property or house due to the grant of lands.

Penalties

An organization engaged in the act of surveying, generating, transmitting, distributing or operating electricity business without obtaining prior approval are liable to fine up to NPR 5 Million. Similarly, a person engaged in the act of causing adverse damage to the electricity infrastructure is liable to compensate for the damage caused or imprisonment up to 10 years or both.

Conclusion

The need for a new law relating to electricity project development and electricity generation, distribution, etc., has been felt for some time now. Although the current law regulating survey, generation, transmission, and distribution of electricity – the Electricity Act 2049 (1992) encouraged private investment in energy sector in Nepal, a need for revised law seemed necessary to address fundamental issues, i.e., competition in licensing process, transfer of licenses, etc. It was seen in the past that person/entities hold licenses for years without intention to develop projects but only to sell them for a profit to others. The draft Bill when implemented as an Act shall definitely discourage such practice. The Bill ensuring open competition for energy development in Nepal is commendable and it will open avenues for fair opportunity to genuine developer to develop electricity projects.

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