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Hon. Kanchana Wijesekera, M.P.

Minister of Power and Energy.

Dear Sir,

Thank you for the letter dated 19 December 2023, requesting comments on the Sri Lanka Electricity Bill.

While not as comprehensive as I wished, I believe getting some comments in by the deadline is better than not sending any. I shall be pleased to elaborate on any of the matters raised below, or assist your endeavor in any other way.

- 1.0 A number of new entities are being created but it is unclear how they will be funded and how conflicts among them will be managed. It may be useful to consider reducing the complexity of the eco-system of organizations being created.
 - 1.1 National Electricity Advisory Council (NEAC)
 - 1.1.1 It has been given a legal persona (can sue and be sued, etc.), which is not essential since all it does is advise the Minister. I currently serve on an advisory council to a Minister established by statute, but which does not have a legal persona.
 - 1.1.2 It will need staff to perform its duties. Unclear how it will be funded. The funding mechanism is the only justification I can see for creating a legal persona.
 - 1.2 NSO
 - 1.2.1 It will be a company that is 100% state owned and holding a license
 - 1.2.2 How is it funded? Can it charge for the services it provides? Best specify how the charges are determined.
 - 1.3 Would it not be simpler to combine the NSO and NTNSP, unless it is intended to have more than one transmission company?
 - 1.4 But, S. 19(3)(b) suggests only ONE NTNSP license will be issued.
 - 1.5 If it is planned to have more than one NTNSP, the NSO can be justified. If so, why not give it the authority to perform the functions of the NEAC? It will have the data needed to give evidence-based advice.
- 2.0 Section 4(11) gives the Minister power to give policy directions to the PUCSL. The PUCSL Act requires policy directions to be given by the Minister through Cabinet. This was intended to ensure that policy directions are formulated without favor and have the benefit of the collective wisdom of Cabinet. It was intended to give comfort to investors. While it may be possible to amend the PUCSL provision, it would not be advisable, if the objective is to create an investment-friendly environment.
- 3.0 Page 29 line 5 envisages the NSO procuring transmission assets. Will the NSO operate them? Or will these assets be operated by the transmission licensees, other than the original licensee? Should be made clear. Otherwise NSO may start operating parts of the grid, resulting in role confusion and conflict of interest.
 - 3.1 Same concern re procuring of generation and storage assets by NSO.

- 4.0 Section 13(2) talks about additional transmission licenses to those with LOIs to construct transmission lines. Does this mean that they will no longer have to hand over the grid connection from the generating location to the NTNSP, but can continue to operate that part of the grid? Does this make sense? Do investors who build solar farms want to operate bits of the grid?
- 5.0 Would it not be simpler to carve out the grid into two and issues licenses for TNSPs (drop the N) so that benchmark regulation is feasible (I have a document from inside CEB which is open to this idea). The N in the proposed license may be used to preclude future grid competition.
- 6.0 What do the references to PPPs in s. 15(1) mean? PPPs just to build or also to operate? Why would an investor jump through the procurement hoops to just build? What is the revenue stream?
- 7.0 Is it not confusing/redundant to specify company memoranda and articles in an Act?
- 8.0 List I (Provincial Council List) of the Ninth Schedule of the Constitution includes as item 34: “Development, conservation and management of sites and facilities in the Province for the generation and promotion of electrical energy (other than hydro-electric power and power generated to feed the national grid).” Admittedly, the language is clumsy and requires an authoritative interpretation. But it does seem that solar and wind generators fall within the purview of the Provincial Councils. The trade in the electricity they generate may fall under the authority of the central government by reason of inter-provincial trade being reserved for the central government--List II (Reserved List), Foreign Trade; Inter province trade and commerce, of the Ninth Schedule of the Constitution. In addition, the Concurrent List (List III of the Ninth Schedule), item 32 states: “Extension of electrification within the Province and the promotion and regulation of the use of electricity within the Province” is a concurrent subject. It may be advisable to get a ruling from the Attorney General on the proposed bill being consistent with the Constitution.

Sincerely,



Rohan Samarajiva, Ph.D.

Founding Chair