**Summary report on**

**Interaction Program on Draft Electricity Bill (2076)**

**Organizer:**

Energy Development Council

**Date:** 26 February, 2020 (14Falgun 2076), Wednesday

**Venue:** Skyline Hall, Hotel Himalaya, Kupondole, Kathmandu

1. **Welcome Remarks and Objectives of the Program**

- *Mr. Ram Hari Dhakal*, Electricity Sector Specialist, Deloitte/USAID-NEPAL-NHDP.

Mr. Ram Hari Dhakal warmly welcomed the all participants from various sectors present in the program. He provided that intent of to conduct the program was to discuss on the Draft Electricity Bill (2076) (the **“Bill”**) among the members of Electricity Regulatory Commission (the “**ERC**”), the Independent Power Producer (the “**IPPs”**), Private Sector Energy Developer and the members of Ministry of Energy, Water Resource and Irrigation (the **“MoEWRI**”). Due to unfavorable reason the members of MoEWRI, however, were unable to attend. Thus, the ERC, IPP and Private Sector Energy Developer had discussed on the Bill.

1. **Presentation on “Key Provisions in the Draft Electricity Bill,2076”**

-*Mr. Hari Prasad Subedi,* Supervisory Consultant, Deloitte, ERC.

Mr. Subedi presented the brief summary on the Bill. He highlighted the provision of the Bill which provides for obtaining of the generation, transmission, distribution and trading license from the different level of the government. The Bill has introduced to few new topics such as energy banking, right of way, etc., which are novel concepts as compared to the subsisting Electricity Act, 2049. This Bill has the hydroelectricity generation license period reduced to 40 years and, entails a 25 years license period for transmission, distribution, trade and customer service. This legislation also accounts that the Government of Nepal will help in the best way possible to acquire the land for the project. The new provision regarding transfer of the project to the Government of Nepal has been introduced. Mr. Subedi also called attention to how regardless of these provisions mentioned in the Bill, it still remains silent in various emerging energy market issues.

1. **Presentation on “Unlocking the power of Sun: Current Regulatory Hurdles & Way Forward”**

-*Mr. Anjal Niraula,* CEO, Gham Power Nepal Pvt. Ltd.

Mr. Niraula emphasized that one of the finest ways of generating the renewable source of energy is solar. The solar energy has been able to penetrate itself to the rural areas of Nepal where transmission lines are still unavailable. In Nepal, despite carrying substantial potential, solar energy has not been promoted and used to its optimum capacity as it should have been. The presenter also shared his perception on the draft Bill. The Bill has addressed various new clauses introduced but still could not address all the necessary remedies for the problem of emerging energy market. He stated that the Bill has recognized “Captive Plant”, however, the definition itself is not precise and clear and, does not seems to be complete. Despite the title of the Bill includes the word “Electricity” but Bill visibly addresses only hydropower electricity in detail and neglects to address all the other sources of electricity. The Bill restricts the generation license and distribution license to be provided to same IPP or the Company. The Bill does not shed enough light on the Power Purchase Agreement tariff (the **“PPA tariff”**) regulation and in regards to the RESCO the Bill remains silent. However, the question regarding who is to be held responsible for energy lost resulting from the delay in the installation of meter boxes remains unanswered. Nonetheless, the Bill acknowledges various loopholes present in the current Electricity Act, and the Bill had an objective to collect all the electricity market fragments in one basket but fails in many areas.

1. **Presentation on “Market Scenario- Hydro Power sectors of Nepal”**

***-****Mr. Sushil Pokharel,* Chairman, Sushmit Energy Ptv. Ltd.

Mr. Pokharel provided that the current market of hydroelectricity does not stand favorable for IPPs. In present scenario, the private sector is generating more electricity than the Nepal Electricity Authority (the **“NEA”**). The competition in regards to generation of the electricity between the IPPs and NEA is a never-ending competition. The issuance of generation license is time consuming and due to this there are lot of projects that are on hold. The other hurdles in the current market is bringing foreign direct investment in hydropower because the shareholding of Nepali IPPs in the hydro company should not be diluted to less than 20%. The policies of the state, nevertheless, should be flexible in case of FDI in hydropower sector. The Government of Nepal has made the tax benefit provision for projects having commercial operation date until 2080 B.S. The ambiguity in regards to the project which will come in operation after 2080 B.S, however, needs to be addressed in the Bill. The Presenter suggested that in the Bill, the subject of royalty should be determined only from the commercial operation date, which will help the IPPs. One of the discouraging factor of Nepal’s hydropower market is the VAT exemption which is allowed in the import of hydro mechanics. However, the law does not provide exemption to the hydro mechanics produced in Nepal, as a result it encourages the developers to import the mechanics but not buy locals. The Bill remains silent regarding compensation to the basket project. Such compensation needs to be provided to the basket project (justified under the condition stipulated under the Bill) by the Government of Nepal. The lease period of the land and the river is determined by the Government of Nepal, where the Bill should have a provision regarding expanding the lease.

1. **Presentation “Private Sector Participation in Transmission Line”**

-*Mr. Abhitabh Saha*, Deloitte/ USAID-NHDP

The basic question regarding the investment and capacity risk in the transmission line, to be developed by the private sector remains unanswered. The Government may contract out the transmission project where the ownership is of the Government but operation and management will be contracted out to private company and, Private Public Partnership may also be followed where the 100% ownership is of the private company. The transmission tariff policy needs to be uniform. In current context of Nepal, the EPC model in transmission line is prevailing. The other models such as EPC-F, PPP, BOOT, BOT, DBFOT may also be used in transmission line sector. The Bill has tried to liberalize participation of transmission line to some extent. However, present regulatory framework is not enough. Thus, the bidding and procurement process needs to be standardized.

1. **Panel Discussion on “Draft Electricity Bill 2076”**

**Resource Person:**

* *Mr. Ram Prasad Dhital,*Member, Electricity Regulatory Commission
* *Mr. Guru Prasad Neupane***,** Chairperson, Api Power Company Limited
* *Mr. Mahesh Thapa***,** Advocate & Managing Partner, Sinha Verma Law Concern

**Moderator:**

* *Mr. Semanta Dahal*, Advocate & Partner, Abhinawa Law Chambers

Discussion:

* *Mr. Guru Prasad Neupane*

The current Bill could be renamed as “Hydro-electricity Bill, 2076” since it mostly concentrates on the Hydro-electricity excluding other sources of electricity generation and operation. The focus rests on the generation of electricity, whereas the Bill tries to address the transmission, distribution and trading but fails to elaborate it in detail. The Bill has stated that only two companies will be provided with the trading license. However, this will does not set an example of perfect competition in the market but rather emphasizes on the duopoly.

He further stated that the monopoly in the current transmission line sector must end and the Bill needs to open a competitive market in such sector. In the present scenario, even the Investment Board, Nepal (the **"IBN"**) awards license to mega projects under the Public-Private Partnership Act, 2072 (the **"PPP Act**"). However, this Bill has not recognized the IBN or the PPP Act. The Bill has clearly defined the licensing regime for small project and mega project is regulated by the Federal, province and local level, but regardless of any doubt, can the Government provide expertise manpower in the local and province level is a question that needs to be clarified. Further, the Bill has not differentiated between foreign national and Nepali national companies or person and also maintains silence while addressing the national and foreign private sector. Moreover, the Bill should have differentiated the nature of electricity to be either service or commercial. The Bill states regarding forming a commission where the members are high- level officers, as a result of this the commission may fail to sit for a meeting because the high-level officers will not have required amount of time for the meetings. The Bill fails to address many factors such as foreign private investment, high investment, clarity in the capital raise, shareholders loan, the wheeling of one project can be done through the transmission line of the another project and many more.

Effective trading of electricity is not possible without the involvement of private sector. Thus, the amendment in the provision of the Bill is required in this regard. The transfer of project needs to be clarified in the Bill. Though the Bill has introduced the concept of energy banking but the concept of the energy banking is not precise and clear. Furthermore, the Government has promised in the Bill to help the project pertaining to acquisition of land, but further polices and laws are required for the purpose of easing the process of the land acquisition since this process is expensive and time consuming.

One of the problems is regarding the tariff determination. The Nepal Electricity Authority could set up a bench mark for the tariff of generation license and transmission license. And also, this period seems to be the perfect time for the NEA to segregate in very province. In this way NEA could define the role of it’s in the mega projects as well in the other field.

* Mr. Mahesh Thapa

The Bill is regressive and not foresighted. The Bill is not federalism oriented but only tries to reflect that power has been distributed between local, provincial and federal level. The Bill is surprisingly silent regarding the cross-border transmission line. More than addressing the emerging issue, the Bill has removed the existing provision of filing the appeal before the high court in case of cancellation of license or not giving the necessary approvals for the projects without proper reasoning and, the provision regarding the supervision of the project. The provision regarding the cancellation of license in case of failure to pay the tax does not seem reasonable rather than that the tax amount and due should be clearly mentioned in the Bill. The Bill has proposed a provision regarding Government intervention in the project at any time, this provision is present in the banking laws of Nepal and is suitable only in the banking sector not in hydropower sector. The policy of the government distributing the bonus to the employee is illogical. The distribution of bonus to the employee which is higher than their salary is against the concept of equality and equity. The constitution envisions equality and equity in the society As the Foreign Investment and Technology Transfer Act, 2075 has undoubtedly addressed the FDI but the Bill needs to separately address the FDI as FDI highly flows in energy sector. The Bill has missed to recognize both IBN and PPP Act. The Bill has provided that the Government will identify the project and the developer through the bidding process which does not seem to be practical but rather lets the developer identify the site which will encourage IPPs to research on the possible sites. The Bill needs to focus on the optimum utilization of the rivers rather than river segregation. After any developer achieves the project through bidding and then they will sign an agreement with the Government of Nepal. The same developer needs to obtain necessary license and after commercial operation date the developer needs to obtain approval from the concern authorities to generate the energy, there the question arises if the concern authorities denies to provide the approval the remedies are missing. Mr. Thapa also stated that the Bill has ignored the Multi-buyer and Multi-seller concept as a whole.

* *Mr. Ram Prasad Dhital*

It has been around 10 months from date since the Electricity Regulatory Commission has been established. The objective of ERC is to regulate the project which has already received the generation, transmission, distribution or trading license. The Bill is not final draft and the comments should be entertained and reviewed. This bill tries to bring competitive model in the electricity production, generation and distribution. In earlier days, the authorities used to practice first come, first service mechanism for issuing the generation, distribution, transmission and trading license. This bill in some extent has envisioned the open access in the transmission sector and other sector as well. To regulate open excess in the energy field, there needs to be more guidelines and policies. The Government of Nepal and its Ministries is currently moving and working with the help of systematic operational technologies. Electricity is an essential service, and at the same time tradeable commodity. The bill to some extent has tried to incorporate electricity as essential service and tradeable commodity. The bill has included generation, transmission, distribution and trade within the licensing regime. The proposed electricity bill and ERC Act to some extent has made overlapping function of the ERC. The ERC has submitted this to the concerned authority. We need to clarify the overlapping function within the proposed bill. Globally, the licensing mechanism is regulated by the independent regulator. Seeing the global perspective, the licensing mechanism has to be given to the independent regulator. Regulation has to be done by the independent regulator. The government makes the legal framework and policy which creates investment friendly environment and protects the investment. The regulator has to support in the protection of investment.

**Comments and Suggestions from the floor:**

* *Mr. Krishna Prasad Bhandari* – Advocate

Considering the example of project of Arun 3, where huge investment has been made by the foreign investor, why is not Government of Nepal capable enough to make such huge investments by themselves? The Bill remains silent relating to investment and the transfer of the project to Government of Nepal. Such provision would have made Bill more robust.

* *Mr. Kedar Karki* – Small Project Developer and Advocate

The Bill left few questions unanswered such as most of the Hydropower Project are of public company having public shareholder, then why is the license issuance time decrease to 40years, what will be the position of the public shareholder after the project assets have been transferred to the Government? As practice in Australia, the Government needs to have a clause in the agreement and the Bill that if the project is FDI then the project assets needs to be transferred and the local project having public shareholder will not be mandatorily transferred.

While obtaining the necessary approvals the producer in the IBN and Development of Electricity Department needs to be more ease. The fine charged by such authorities needs to have some base because in most of the cases the fine is the maximum limit i.e. NPR. 5 Lakhs.

Before the banks were made mandatory to finance in the hydropower sector but the Bill has removed such provision.

* *Mr. Sushil Pokharel* -Chairman, Sushmit Energy Ptv. Ltd.

Will the ERC provide the trading license to the generation company within couple of days?

* *Mr.Uday -* Secretariat Member, Parliamentary Committee

This program had participants from various sector and gave feedbacks and suggestions, which shall definitely be taken into consideration by the concern authority.

* *Mr. Laxman Beogi*

What will be the scenario after the transfer of the project to the Government after completion of the license period? And the suggestion was addressed that the Government must look into the international practice before starting the process of the transfer of projects.

* *Mr. Dinesh Dulal*- NMB Bank

The Bill has addressed various provision regarding the energy sector but have tremendously failed to provide even a single section that will encourages banks and financial institution to further invest or help financially to the energy projects. The process and outcome of the transfer of the project remains unknown to any shareholder, developer or banking institution. Thus, banking institutions are not encouraged to financially help the hydropower projects.

**The Panel response to the floor:**

* *Mr. Ram Prasad Dhital*

In response to the question, Mr. Dhital provided the ERC works as a regulator not as license issuing body. Thus, if Sushmit Energy Ptv. Ltd has obtained necessary license then ERC shall will be in full support to help to regulate it. All the generation, distribution, transmission and trading license are not issued by ERC, rather ERC regulates it. Though in international practice, the regulator issues the license but in case of Nepal it is not the same. While responding to the question from Mr. Kedar Karki, ERC is not clear on the ground why the license period has been decreased to 40 years. Stating about the transfer of the project, till date the Government and the concern authorities are not so capable and have enough budget to handle all the projects, thus, the government will take over sick project or fully fund the sick project. All the queries and comments relating to Bill can be submitted in the website of the MoEWRI.

* *Mr. Mahesh Thapa*

The Bill is in preliminary stage and improving in phases addressing the comments of the individuals. In present, the hydropower is at high risk, thus, the banks are in dilemma to invest and financially help to the project.

* *Mr. Guru Prasad Neupane*

There is no proper process and place to complain and for grievances. The NEA cannot develop only through hydropower sector, whereas the NEA needs to promote energy mixing and also electric vehicles charging station. The suggestion to the organizer is to distribute the final report of this program to the participates.