

BANGLADESH
ENERGY
TRANSITION
POLICY
2022

(Proposed)



Consumers Association of Bangladesh (CAB)

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Energy Transition Policy, 2022
(Proposed)



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Dedication

To who made sacrifices
for the cause of right to energy

Acknowledgement

The Consumers Association of Bangladesh (CAB) has come up with a proposal titled 'Bangladesh Energy Transformation Policy, 2022' for protection of right to energy and environment. CAB has also drafted an evaluation report on the Bangladesh Energy Regulatory Commission (BERC) Act, 2003 and the role of BERC. CAB formed a national committee with eminent citizens of the country. It also formed three more committees- Drafting Committee, Network Building Committee and Stakeholder Committee.

The convener of the National Committee was Architect Mubassar Hussain, the convener of CAB's national committee for handling consumers' complaints. Dhaka University's Supernumerary Professor Badrul Imam, Dhaka University's Economics Professor M.M. Akash, CAB's Senior Vice President and Energy Advisor Professor M. Shamsul Alam, Rajshahi University's Management Studies Professor Malay Kumar Bhowmik, Bangladesh Environmental Lawyers Association's (BELA) Executive Director Advocate Syeda Rizwana Hasan; CPD's research director Dr. Khandaker Golam Moazzem, and CAB's online news portal Voktakantho editor Kazi Abdul Hannan. Many thanks and deep gratitude for their valuable advice and overall cooperation.

Barrister Jyotirmoy Barua was the convener of the drafting committee. Professor M. Shamsul Alam, Energy Policy Researcher and Writer Manjurul Ahsan, Dhaka University's

Energy Institute Associate Professor Dr. S. M. Nasif Shams, Dhaka University Law Department's Assistant Professor Sharawat Shamin, Supreme Court Advocate A. Al Noman, Austrian Graz University Ph.D. researcher Rafia Zaman and Daffodil University's assistant professor Tasmia Baten. Heartfelt thanks to them for their efforts in preparing the draft policy as well as the evaluation report.

Quazi Abdul Hannan was the convener of the Network Building Committee. CAB Advisor (Consumer Complaints) Engineer AKM Khademul Islam, CAB Organizing Secretary and Daffodil International University Associate Professor Syed Mizanur Rahman, Khulna Initiative for Right View (IRV) Executive Director Khaled Pasha Joy, 'Tourist' Director, Barisal, Towhidur Rahman Shahjada and CAB Publicity Secretary and senior lecturer at Daffodil International University Muhammad Sajidul Islam were on the committee. I sincerely thank and appreciate their cooperation.

Professor Muhammad Tanzimuddin Khan was the convener of the Stakeholder Committee. In addition, Syed Mizanur Rahman, Towhidur Rahman Shahjada, Muhammad Sajidul Islam, Rashed Obaid Ripon, Executive Director of 'Parivartan' in Rajshahi and Liton Chowdhury, Executive Director of 'Sangsaptak' in Chittagong played important roles as members of this committee. Many thanks and gratitude to all of them.

Architect Mubasshar Hussain

Convener, National Committee for Consumer Complaints Handling, CAB

Preface

Consumers Association of Bangladesh (CAB) has been working for establishing consumer's rights to energy. It has been carrying out various activities to ensure energy supply with due quantity and quality to consumers at justifiable and rational price. In the same course, CAB puts forward 'Bangladesh Energy Transition Policy, 2022 (Proposed)'.

As per the constitution of Bangladesh, people own energy resources above and beneath the surface within the territory. Consumers, synonymously people of the country, would get quality energy supplies at least costs if their entitlement on the resources is established.

Energy transition has been a reality in a bid to protect energy rights and to fight environmental disasters. There is no other options but to ensure energy security in line with the said energy transition. At the same time, energy security must be ensured maintaining energy prices within consumers' purchasing power. Therefore, a review report on the Bangladesh Energy Regulatory Commission Act and the commission's has been annexed.

It is expected that the publication will help create more awareness about consumer's right to energy and environment.

Heartiest thanks to all those prepared the document with their intellectual and physical efforts.

Ghulam Rahman

President

Consumers Association of Bangladesh (CAB)

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Ongoing Energy Transition Context and Trend

The government first adopted energy policy in 1995. But since no approved action plan has been adopted for its implementation, there has been no opportunity to get a real idea about the timely amendment and change of this policy. Then in 2004 the energy policy (revised) was finalized. This revised policy has not been approved by the government.

The 1995 Energy Policy was identified with the following weaknesses in energy sector development and management:

1. Lack of financial capacity,
2. Shortage of commercial energy supply,
3. Incompetence in management and administration,
4. Lack of effective measures to ensure energy supply and its best possible use,
5. Rational and consistent energy prices not being determined,
6. Unplanned use of bio-fuels and environmental disasters,
7. Insufficient attention to meet the rural energy

demand, 8. Lack of focus on systematic research activities to promote technical capacity; and 9. Lack of focus on creating quality manpower for overall skill development. In this context, the energy policy 1995 was formulated for the following purposes:

- * To meet energy demand based regional socio-economic classes,
- * To ensure adequate energy supply to achieve sustainable economic growth so that development activities are not interrupted due to energy shortages,
- * To ensure development and rational use of own energy resources,
- * To ensure sustainable management and administration of utilities,
- * To undertake environmentally friendly sustainable energy development activities and
- * To ensure investment of both public and private energy sector management and development.

That energy policy has not been implemented. However, a review of ongoing energy transition activities shows that GDP growth continues to grow in Bangladesh as percapita electricity consumption continues to grow. Life expectancy has increased, infant mortality has declined, and rate of education has increased. The standard of living is improving. The energy used in agriculture is subsidized resulting in the protection of consumer's entitlement to food food security to a

large extent. Despite having more subsidies on energy than food, the consumer's entitlement to energy is not as it was done in case of food. Energy security is in critical condition. On the contrary, due to unjust and irrational increase in the cost of energy supply and lack of control over unbridled corruption, government subsidies and energy prices continue to rise at the consumer level. As a result, consumer rights over energy are in jeopardy and protection of consumer energy rights remains uncertain.

Even if there is adequate supply of food in the market, the consumer's right to food is not guaranteed; food price has to be within the purchasing power of the consumer. Otherwise food security gets endangered. In the same way, availability of energy does not necessarily ensure consumer's right and accessibility to energy; energy price must be within the purchasing power of the consumer. Otherwise the consumer becomes a victim of energy insecurity. It has been well accepted that consumer's entitlement to food ensures food security. However, the protection of consumer's entitlement to energy does not come into consideration in ensuring energy security. Food security was ensured through subsidies but energy security was not ensured in the same way. Rather the entire energy supply system continues to indulge in corruption. Rising prices and subsidies are fueling corruption, and the development and expansion of the carbon contained energy market is becoming more important than the market of carbon free energy. As such, renewable energy development is a

victim of conflicting interests. As a result, the protection of consumer's right to energy is now in jeopardy as energy security and environmental protection are in grave crisis.

The supply of imported liquid fuels, coal and LNG has continued to increase in line with the ever-expanding demand for electricity. Moreover, increasing production, transmission and distribution capacity are not in line and consistent with the actual demand. The cost of energy supply is increasing unjustly and irrationally for above mentioned two reasons. Capabilities at the utility and regulatory levels is in jeopardy as the energy market is uncompetitive. As a result, the energy system is not getting rid of corruption, but growing. Therefore, the use of carbon-saturated fuels in the supply of energy and the increase in corruption are both uncontrolled. In such a situation, on the one hand, the protection of environment is endangered; on the other hand, the values of the state and social institutions engaged in the protection of the environment and consumer right to energy are victim of deterioration. As a result, the protesting character of the society is now more under threats. Therefore, it is equally important for the economy to be free of both carbon and corruption in energy transition to the environment and ecosystem.

According to the Renewable Energy Policy 2008, the target for electricity generation from renewable energy (RE) in 2021 was 10 percent of the electricity supplied. The total amount of

electricity supplied to the grid in the fiscal year 2019-20 is estimated to be about 79 billion units. But then the proportion of renewable electricity in the grid was 0.09%. It was 0.20% in fiscal year 2020-21. Moreover, the market for solar home system as well as solar mini-grid electricity is on the verge of extinction due to high cost (Tk. 60 per unit for mini-grid) of production, and low quality and expensive (around Tk. 80 per unit for solar home system). It became difficult for a consumer to establish entitlement on this RE electricity. In this context, it can be said that the target of renewable power generation and its market development is far away.

The energy market is incompetitive because of the Power and Energy Speedy Supply (Special Provisions) Act, 2010. As a result, consumers are deprived of their rights to energy. Although it was enacted for a period of two years on the pretext of facing the energy crisis, it has been extended several times and is still in force. In the ongoing transition, energy development expenditure is increasing unjustly, irrationally and inconsistently, and consumers are being forced to purchase electricity and primary energy at an exorbitant price. Consumer rights to have access to energy protection agencies are prohibited as they are ineffective organizations, and the laws, rules and regulations in many cases are ineffective.

The country is struggling to build a carbon-free economy. To that end, global carbon contained energy is being replaced by carbon free energy. It

is improving efficiency in energy supply and utilization, and energy conservation. In many countries, energy demand growth has been negative and GDP growth has been positive since 1990, with the goal of creating a 100% carbon-free economy by 2050. The use of energy under various transformations continue to reduce carbon on the one hand, while due to the development of efficiency and conservation, the use or consumption of energy is constantly declining on the other. But the demand for fossil fuel-based electricity in Bangladesh is currently increasing at a rate of more or less 10 percent. As a result, GDP growth averages more than 7 percent. In other words, to achieve 1 percent GDP growth, the use of electricity needs to increase by about 1.4 percent. But in many countries it is around 0.6 percent. In other words, Bangladesh's capability in developing energy efficiency and conservation is yet to reach at a significant level. After overall consideration it transpires that RE development and efficient use of energy are the victims of a hostile situation and vested interests.

There is no quality investment in the existing non-competitive energy market. Development of RE market is a victim of inequality due to subsidy on non-renewable grid electricity. In the off-grid area, consumers purchase renewable electricity at Tk. 30 per unit while depending on the consumers, subsidized grid electricity is sold at Tk. 3.75-11.00. Backward off-grid consumers suffer from price inequality on the one hand, and RE electricity is a victim of unequal market competition on the other. According to the

Sustainable Energy Development Authority (SREDA) Act, 2012, the authority and responsibility of SREDA is not enforceable by law. SREDA is also not responsible for regulating the RE sector. Grid power utilities are vested with the responsibilities of developing renewable power and expanding the market. As a result, the RE electricity market is victim of conflicts of interest. Private entrepreneurs engaged in off-grid RE power generation cannot be considered as entrepreneurs. They are basically contractors of the financial institute IDCOL. They are not independent in planning and design and adoption. Thus, entrepreneurship creation and entrepreneurial capacity development initiatives in the RE sector are absent.

Regulatory body SREDA, Bangladesh Standard Testing Institute (BSTI), National Consumer Rights Protection Directorate, BERC, Anti-Corruption Commission (ACC) and Competition Commission are ineffective in protecting consumer rights to energy and consumer dispute settlement. According to sub-section 34 (2) (b) of the BERC Act, the price of energy must be commensurate with the reasonable revenue requirements of the utility. But the revenue requirement is shown to be higher than the actual requirement on the one hand, while, on the other the price of energy is fixed at a price much above the requirement. According to the BERC regulations, minimum cost of extraction, production, transmission/transportation and distribution of energy must be ensured in determining the revenue requirement of utilities. But in reality this

provision of determining revenue requirement is not taken into consideration.

The price of energy is determined by the value of the resources used in the extraction, production, transmission/transportation and distribution of energy. Infrastructural capacity growth is often unbridled compared to actual capacity requirement at different segments of the energy supply chain. As a result, the capacity of various segments of energy production/extraction and supply are partially utilized or sometimes remains unused. It increases the predatory cost of energy supply and then increases the predatory price. The BEREC has the sole authority to fix the price by adjusting the energy supply cost fairly and reasonably. However, ignoring the fairness and rationality established in the public hearing, BEREC increases the price of energy by adjusting the predatory expenses. It deprives consumers of their rights on the one hand, while it protects and encourages unfair business on the other,.

As the price is predatory, there is an additional savings of around Tk. one thousand billion in energy utilities and companies. Again, BPC made a predatory profit of Tk 437 billion by keeping the predatory tariff illegally fixed by the Energy and Mineral Resources Division for a period of more than 7 years. For more than a decade, the Energy and Mineral Resources Division has barred BEREC from fixing LPG prices, allowing licensees to sell LPG at exorbitant prices. According to the NBR's SRO 1993, the IOC's gas was exempted from supplementary duty and VAT, but adjusted it to the revenue requirement, they continued to fix the

predatory gas price until 2018. Accordingly, Petrobangla has amassed predatory resources from consumers amounting to Tk. 700 billion. The money of Gas Development Fund, Energy Security Fund and Electricity Development Fund is used in energy sector as loan with interest instead of grant to reduce the revenue requirements of utilities. This increases the predatory cost of energy supply and raises the predatory energy price. These funds are extracted from consumers' money for investment as a grant to control the rising cost of energy supply. But all those funds are one of the major factors of increasing price and subsidy growth. In this way consumers are robbed and deprived of energy rights.

About 56% of the total electricity supplied is distributed through REB. The REB was established under the Rural Electrification Board Act 1977 with the aim of electrifying the villages as per the constitutional obligation of the state. Under REB, Palli Bidyut Samitis (PBS) were established as electricity distribution utilities in rural areas. Unbundling distribution systems is one of the purposes of ongoing energy transition. However, REB is also expanding beyond the village boundaries to urban areas. Even off-grid RE electricity is destroying the market by expanding grid power distribution network in RE electricity distribution areas. As a result, distribution costs and subsidies are increasing. The crisis of quality power supply is not being resolved.

There will be variations in salaries, allowances, benefits and profit margins of government-owned

utilities under the Companies Act, depending on income-expenditure and performance. While the Power Department has kept uniform the salaries, allowances and benefits among PBSs and also among other utilities out of its jurisdiction and kept profit margins for each utility on the one hand, while on the other hand despite pouring the subsidy, the salaries and allowances continue to increase like a profitable company. Despite the objections of the consumers in the public hearing, BERC increased the distribution/transmission charge adjusting the above mentioned increased cost. As a result, regulatory body BERC has no effective role in improving the efficiency and capacity of utilities.

The review of gas and electricity tariff orders in 2019 suggests that the transmission and distribution charges were fixed on the basis of public hearings. It is only 5.35 percent of the price of gas and 17.39 percent of electricity. It shows how crippled the BERC law is in determining fair and reasonable prices of energy. Additional financial benefits are given to the utilities by charging higher rates than the prescribed revenue requirement. Titas Gas Transmission and Distribution Company's revenue requirement is 5 paisa, gets 25 paisa. In other words, the amount of surplus or unearned or predatory profit is Tk. 1 thousand 400 crore per year. Despite the uncertain source of gas supply, gas distribution pipelines have been constructed in six districts of the south-west region. All the lines are unused and buried under ground. The gas transmission capacity of Bheramara-Khulna and

Bibiana-Dhanua pipelines is used only partially. As a result, the cost of gas transmission and distribution is increasing rapidly. In 2015, the wheeling charge was 15 paisa. In 2019, the charge was fixed at 42.35 paisa, which is almost 3 times the previous charge. All such charges are considered predatory and is one of the prime reasons for the rise in gas prices.

According to the price fixation order of BEREC, the purchase price of gas procured from state-owned company BAPEX was Tk 3.0414. However, the purchase price of gas purchased from IOC is Tk. 2.55. Ignoring BAPEX, foreign companies are allowed to explore and produce onshore gas at higher cost. But the cost would not have been more than Tk. 1.50 if BAPEX was given the responsibility. Even if it had been done under PSC, the cost would have been much lesser. Expenditure is increasing as a result of extraction of gas and coal through foreign companies instead of domestic ones. In spite of that, gas and coal exploration and extraction in line with the country's growing energy demand have been neglected for years. Instead, imports of liquid fuels, coal and LNG have been getting priorities.

The government has already partially moved away from coal-fired power generation. It is now focusing more on increasing LNG imports to meet energy demand. As per the pricing order passed by BEREC in 2020, the amount of LNG in the supplied gas is about 23 percent. The average price of LNG blended gas is Tk. 12.60. 45 percent of the gas with tariff of Tk 4.45 is used to generate grid electricity. Of this, about Tk. 4,650 crore is

subsidized for gas used in electricity generation annually.

In the last fiscal year 2020-21, the subsidy on whole sale electricity was Tk. 7,586 crore and in the fiscal year 2020-21 it was about Tk. 9,000 crore. In other words, the total subsidy is Tk. 13,650 crore. The average cost of power generation (including import cost) is Tk. 7.30. The cost of generating electricity from imported coal, oil, LNG, or nuclear energy will be much higher than this cost. In the fiscal year 2020-21, the cost of importing electricity was Tk. 5.82 per unit. Attempts to import electricity continued towards the end of the last century. As the subsidy increased, that initiative was stopped. But now low cost imported electricity is profitable and a factor of subsidy reduction.

In the fiscal year 2020-21, the average cost of generating electricity in Bangladesh was Tk. 7.30 and the average selling price of electricity was Tk. 5.12. Per unit deficit is Tk. 2.18 (Tk. 13,460 crore). The electricity is sold at 33 kV level to distribution utility: PDB, REB, DESCO, DPDC, WZPDCL, and NESCO at the rate (power ratio) is Tk. 5.9088 (17.55%), 4.3679 (49.89%), 6.4523 (8.05%), 6.4531 (13.57%), 5.3771 (5.16%) and 5.0544 (5.78%) respectively. In other words, 100% electricity is sold more or less at loss depending on the utility. The huge loss is adjusted with government subsidies. Considering the electricity purchased from the private sector at the level of 33 kV, REB disbursed about 56% of the electricity in the last financial year at a subsidy of Tk. 9,578 crore. However, there is no difference in price for urban

and rural consumers. The expansion of REB in other distribution utility areas at the consumer level and the recent transfer of 132 kV level industrial consumers from PDB to REBs in the REB area will increase the fiscal deficit in whole sale electricity, and further increase subsidies. In order to make the ongoing energy transition profitable, the distribution of electricity is being unbundled on the one hand, and on the other hand the losses are increasing by bundling distribution under REB. As a result, the commercialization of electricity initiative was not successful.

For the financial year 2019-20, the cost of per unit grid power generation from Furnace Oil, Diesel, own Coal and Solar is respectively Tk. 14.89, Tk. 176.66, Tk. 6.62 and Tk. 11.82. Expenditure on power generation in foreign coal (excluding carbon tax) is Tk. 10.82. The cost of solar grid power is now much lower than all these costs. In the private sector, solar electricity is sold for less than Tk. 7.00 in Bangladesh and Rs. 3.17 in Indian currency in India. About 35% of electricity is generated from liquid fuels. If these power plants were shut down and solar power could be developed, the cost of power supply would be reduced. The amount of subsidy would have been much minimized. Although the increase in expenditure is predatory, there is no initiative to control.

The Energy and Mineral Resources Division determines the price of domestic coal. In the 2019-20 financial year, this coal was purchased by Barapukuria Thermal Power Station at a price of about 150 US dollar per ton. But the price of

imported coal used in Payra thermal power plant was 100 US dollar. The cost of power generation at Barapukuria and Payra Thermal Power Plants is Tk.6.62 and Tk. 10.82 respectively. Although there are no significant differences in plant factors, such differences in production costs are unusual.

According to Section 6 (17) of the SREDA Act, BERC has the power to prescribe the price of RE electricity on the basis of public hearings. But the Power Division sets the price which is beyond its jurisdiction. It shows that the purchase or sale price of electricity is unreasonably and abnormally determined and according to sub-section 15 (2)(a) (i) of the Competition Act which is against the policy of competition in the market.

Increasing power production, declining the ratio of domestic fuel and continuously increasing ratio of imported fuel in that production, enhanced energy infrastructure development costs as compared to actual costs, as well as increasing ratio of unused production capacity, cause rapidly increasing financial deficit. Price and subsidy both continue to grow to control the deficit. As a result, the economy, on the one hand, and consumer rights to energy, on the other, has been hit hard by the growing deficit.

That capacity is largely unused as production, transmission or distribution capacity did not increase in line with demand. If the revenue requirement had been determined for power production earlier then the cost of electricity supply would have been under control. It would be easy to prevent unfair business or corruption. It is

estimated that in 2024, about 67 percent of the power generation capacity will remain unused. Therefore, it was proposed to announce the COD after 2030 for all production and transmission capacity under development. But the Power Division did not accept the proposal. Instead, they are now active in exporting electricity.

The increase in the size of fiscal deficit will be more prominent as unused power generation, transmission and distribution capacity will continue to grow by 2030. In 2010, a distribution utility's assets amounted to Tk. 4,000 crore. Although the increase in power supply has not doubled in 2018, that resource has increased almost 3.5 times to Tk 14,000 crore. The same statement is applicable to the construction of power transmission line. Energy infrastructure is built at excessive cost as well as in excess of demand. It is to be noted that the cost of construction of transmission line per kilometer is Tk. 98 lakhs in India and a surprisingly higher at 10 crores in Bangladesh. According to the CAB, BERC determined the electricity distribution charge through an order of 2020 by adjusting about Tk. 1,800 crore per annum, more than the fair and reasonable revenue requirement. and BERC also determined the revenue requirement of bulk electricity by adjusting about Tk. 8,000 crore irrational expenses, which is actually predatory cost. Oil, Gas and coal are victims of the same situation.

In public hearing, consumers raised objection to the increase in transmission charge as was not proved an acceptable financial deficit in power

transmission. Despite this, BERC increased the transmission charge by 21% in its order, 2015. As the transmission capacity continues to increase since 2020 without keeping pace with the reasonable expenses, increase in transmission charges immediately will appear abnormal and uncontrollable.

A review of electricity tariffs at the consumer level shows that the BERC in its order 2020 determined the distribution charges at an adjustment of about Rs. 1,800 crore per annum more than the fair and reasonable revenue requirement. Most of this money is adjusted to the REB's distribution charge. Distribution charges for PDB, REB, DESCO, DPDC, WZPDCL, and NESCO are Tk. 0.92, Tk. 1.43, Tk. 0.82, Tk. 0.87, Tk. 1.08 and Tk. 1.03 respectively. Average power generation cost or purchase price is Tk. 7.30 (excluding subsidy), transmission charge is Tk. 0.2944 and utility wise distribution charge is Tk. 8.5444, 9.0544, 8.4444, 8.4944, 8.6944, and 8.6544 respectively.

The price of electricity varies classwise at the consumer level. While wholesale electricity prices vary from utility to utility, there is no variation in classwise retail prices at the consumer level. A review of retail electricity tariffs shows that the price of electricity used by consumers is Tk. 10.30 in commerce, Tk. 8.55-8.36 at different voltage levels (11, 33 and 132 kV) in industry and Tk. 8.53 in small industries. Small industries and commercial consumers at low voltage level are victims of tariff discrimination. Irrigation and marginal residential consumers get subsidized electricity. Depending

on the utility, it is partially adjusted through cross-subsidy. The rest is paid by the government. The increase in demand for electricity is depressing in the industry, that is productive sectors and worrying in the unproductive sectors.

Consumer satisfaction in electricity services in other distribution utility areas is less than in DESCO and DPDC. Consumers are victims of power outages. Consumer satisfaction is even lower in REB areas than in other utility areas. REB's distribution system is more vulnerable and risky than other utilities. In the last 10 years, 137 power workers have been electrocuted during line repairs. Power outages especially in REB are out of control. Consumer electricity bills are more or less rigged in all utilities and consumers are deceived.

Consumers of 0-50 units electricity per month get the benefit of using electricity at the lowest rate of Tk. 3.75 per unit. If the poor consumer uses a bulb of 20 watt and a bulb of 10 watt for 4 hours per day, then he will have to pay Tk. 23 for each unit of electricity. Although the government provides electricity to marginal consumers at low prices, consumers are deprived of that benefit due to confusion in tariff setting. There are also allegations of unfair business in buying and selling meters and meter reading. All the utilities are more or less charged with those allegations.

CAB's investigation revealed that a supplementary agreement was executed by Summit Power Ltd. with REB for the purchase of electricity from

Summit at 33 kV voltage level, and another supplementary agreement executed with PDB regarding the purchase of electricity from Summit Power Ltd.'s Meghnaghat power plant. Both agreements are Contrary to the original agreement, and illegal. On the basis of these supplementary agreements, BERC raised an objection to the payment of bills for electricity purchased by PDB and Power Division raised objection in case electricity purchased by REB. However, the two supplementary agreements have not yet been canceled. CAB has appealed to BERC to cancel these two agreements. But BERC remains silent.

In addition to the revenue requirements of the utilities, the charges prescribed by BERC for gas development fund, energy security fund and electricity development fund are collected from the consumers along with their gas and electricity bills respectively. Again, the money from those funds are shown as an investment in the form of loan at 3% interest in the revenue requirement. Consumers have objections. The objectives of those funds are to control the increase in expenditure by investing the fund as a grant at the production and import stage, not as a loan, and to reduce prices by reducing the cost of gas, oil, and electricity supply. Consumers want the abolition of this fund as BERC has not complied with that demand.

The allegation of embezzlement of coal from Barapukuria mine was not proved in several investigations of the Petrobangla and Energy and Mineral Resources Division. Their investigation

proved that the coal shortage was due to system loss, not theft or embezzlement. But CAB's investigation did not find any explanation for the shortage of more than 500,000 ton of coal, even after adjusting for the system loss. It turns out, this amount of coal has been tasted like that. The investigation further found that the Barapukuria thermal power plant showed 5 percent more coal consumption in power generation than the actual consumption. The allegation of embezzlement of the coal is now pending in the criminal court.

The High Court has quashed the BAPEX-NIKO joint venture executed in exchange of bribes. Former secretaries of the Energy Division have been accused of being involved in the deal. Those involved in the deal are now on trial in a criminal court for corruption. There are similar allegations regarding the supplementary agreement with Occidental regarding the Magurchhara gas field. The writ petition filed for cancellation of the said agreement is awaiting disposal in the High Court.

The CAB investigation revealed that a supplementary agreement was signed with IOC Santos for the excavation of the Magnama-2 exploration well at the sole initiative of the Energy Secretary, ignoring the objections of the Bapex technical committee, and that the agreement was illegal. The government incurred a loss of about Tk. 262 crore for this illegal agreement. CAB has demanded the cancellation of the deal.

Petrobangla has entered into a similar illegal agreement with Asia Energy for the development of Phulbari coal mine. There are allegations of

involvement of the then energy Secretary in this agreement also. In 2006, in the face of mass protests, the government signed a pledge to cancel the agreement. Attempts to export gas to India stopped in the face of mass movement. Later, in the face of public demand, Tata itself withdrew the project proposal for open coal mining in Barapukuria and export coal and fertilizer to India. National capability to protect national energy resources is revealed through these public movements. But initiatives for national capacity development aimed at using those resources in the public interest are totally absent.

In violation of Constitution, state-owned profitable utilities are being left to the private sector. Ultimately, loss-making utilities will remain with the government and subsidies will increase. Some shares of power and gas transmission and distribution utilities have already been transferred to the private sector. Unplanned power production capacity development against capacity charge under unsolicited private investment unusually increased power production cost and expanded the unfair business. The questionable power purchase agreement of Rental and Quick Rental Power and its contract period extensions, and the periodic increase in the term of Power and Energy Speedy Supply (Special Provisions) Act, 2010 bear the testimony of the said situation.

Although it was a violation of constitution, the government conducts joint ventures with the private sector under the Private Public Partnership Policy. The Asiatic Oil Company Lt.

was established under this policy. The Energy and Mineral Resources Division did not dispose of the embezzlement charges against the MD of the company and the director of the private side of the board. There was no cure. Because an additional secretary of that Division is the chairman of this company Board. Thus the Energy and Mineral Resources Division is in conflict of interest.

The owner of the LPG company, OMERA, co-founder of a mobile company called MJL, a joint venture with the government. He is the President of LPG Business Association LOAB. OMERA is another company under that mobile company. Therefore, the price of LPG is fixed by the licensees including OMERA, the provision of LOAB membership to be an LPG licensee, formulation of various policies by the of Energy Division to protect the interest of LPG licensees, non-implementation of LPG price prescribed by BEREC under the direction of High Court- in all cases, Energy Division and BEREC are in conflict of interests. As a result, there is no competition in the energy market.

According to Section 34 of the BEREC Act, BEREC is the sole pricing authority of LPG. However, over the past decade or so, LPG licensees have been fixing the price, making predatory profits and deceiving consumers. BEREC has remained non-responsive to it.. Although the price was fixed by BEREC as per the court order, BEREC was not able to implement it. According to sections 42 and 43 of the BEREC Act, violation of BEREC Act and its orders is a punishable offense. According to Section 47 of the BEREC Act, CAB has sought justice

for both the offenses. But BEREC did not respond..

BPC is a licensee of BEREC under sub-section 27 (2) of the BEREC Act. According to sub-section 34 (6) of the BEREC Act, BPC has to submit a proposal to BEREC to change the fuel price. According to sub-section 34(4) of the said Act, BEREC is sole authority to set the price of liquid fuel. In violation of the Act, BPC submitted a proposal to the Energy and Mineral Resources Division to increase the price of diesel and kerosene. As the division bypassed the BEREC and illegally fixed the price of the fuels in violation of the BEREC Act, the CAB sought justice for the BPC and the concerned officials of the Energy Division for violating the BEREC Act under Section 47 of the Act. But BEREC did not respond.

BEREC was established to bring transparency in pricing, protect consumer interests, and create a competitive energy market. Under sub-sections 34 (2) (b), (c), and (d) of the BEREC Act, it is the responsibility of the BEREC to ensure that prices are consistent with energy supply costs, efficiency, minimum cost, good service delivery and good investment, and protection of consumer interests. According to sub-section 15 (2) (a) (i) of the Competition Act, BEREC remained silent even when the purchase or sale price of energy is abnormally fixed to be against the competition in the market.

Chairman and several Directors of the Board of Directors of public and PPP companies are bureaucrats including secretaries. All of these companies are licensees of BEREC. BEREC is the

downstream regulator of all companies. The ministry is now active as a player in the energy sector and inactive as an upstream regulator as the ministry officials have the administrative power over those licensees. As a downstream regulator, BERC fails to protect consumer interests and rights. There is neither regulation nor competition in energy market. As a result, either oligopoly or monopoly was established in energy market. Utilities are in dire need of good governance.

To stop the export of coal and gas, people had to take the streets, marched hundreds of kilometers, and even sacrificed their lives. At last even though exports were stopped, those resources were not of any use or benefit to the consumers. Barapukuria Coal Mining Company has not been able to acquire own capacity in coal extraction even after 25 years of operation. Despite the fact that domestic companies have 100% capacity, the government allows extracting onshore gas at high cost involving foreign companies and is unwilling to explore with the nation's own capacity. We are more interested in creating a market for imported coal, fuel oil and LNG. It has no attention on creating a market for renewable energy as it is more focused on expanding the market for grid electricity generated from fossil fuels. In order to create and expand the market for LPG in the private sector, the government created artificial gas crisis for residential consumers' uses and transports and abnormally increased the price of gas. Capacity development of state-owned companies supplying petroleum products including LPG, did not get importance. In all these

reviews, it is revealed that power and primary energy development are victim of conflict of interests. Renewable energy is more of a victim in that conflict of interest. Otherwise, the cost of renewable power generation would not be Tk. 80 in solar home system and Tk. 60 in mini grid.

There is an ongoing movement called 'energy transition' under the Paris Agreement aimed at protecting the environment, there is a global movement to build a worldwide carbon free economy. The non-renewable energy is now transitional energy. The market for renewable energy will expand and prosper during this transition period. The market for non-renewable energy will be non-existent in most of the countries. There is no alternative to own capacity building to cope with the changed situation. Whatever it is named, renewable or non-renewable energy, no attention has been paid to develop the country's own energy capacity.

No competition in the energy sector but oligopoly has been established as the market and regulatory system is ineffective. Government itself is the entrepreneur. Government-owned companies are the victims of monopoly. The top officials of the ministry are the owners of these companies on behalf of the government and they are the chairman and directors of the board of directors. As a result, the ministry, as the upstream regulator of the energy sector, is in conflict of interest, and is ineffective. In such a situation, the licensees of both public and private sectors are getting more and more predatory profits and the consumers are deprived of their rights to energy.

Energy supply is disrupted and uncertain due to shortfall in demand. Middle-income countries consume 2 tons OE (oil equivalent) energy per capita per year to ensuring energy security. In America, 8 ton OE energy percapita is used per year. In the fiscal year 2019-20, it was 0.52 tons OE in Bangladesh. If the city-state countries are not taken into consideration, Bangladesh is the most densely populated country in the world with more than 1000 people per square kilometer. The natural resources of this country are very limited. Energy resources are also much less than the existing demand. Therefore, this is not a conducive situation to meet the current and future energy demand of the country. As a result, energy transition policy is needed to build a sustainable energy sector with sound and proper strategic plan to protect consumer rights to energy and environment.

The nation had been aspiring to become a low-middle income country by 2021 with a per capita national income of USD 1,036 by improving the economic condition. It had however achieved the goal much earlier. In 2021, the country's per capita national income stood at 2,226 US dollars. Now its goal is to become a high middle income country by 2031, raising that income to USD 4,046. Achieving this economic goal is possible through the adoption and implementation of sound energy policies, ensuring sustainable energy security and protecting consumer rights to energy and environment. It requires changes in ongoing energy transition policies and strategies.

BANGLADESH
ENERGY
TRANSITION
POLICY
2022

Definition

- 1 “Constitution” means constitution of People’s Republic of Bangladesh.
- 2 “Vision” means national expectations about energy. Wielding of authority Illegal and beyond jurisdiction by the administrative authorities, inactivity and inefficiency of regulatory bodies, crisis of good governance, and neglected energy rights and environmental protection are major barriers to energy development in Bangladesh. The national expectation is to build a consumer movement for the protection of energy rights and environment by removing all these barriers.
- 3 “Energy Transition” means the roadmap for multi-faceted changes in the energy sector following short, medium and long term plans in the implementation of the vision stated in this policy;
- 4 “Right to Energy” means the consumer has the right to receive uninterrupted energy at a fair and reasonable price according to demand;
- 5 “Entitlement” Means the consumer’s right of ownership over any product or service;
- 6 “Capability” means the collective ability to do what is necessary in the public interest;
- 7 “Energy Security” means uninterrupted affordable energy supply;
- 8 “Consumer” means a person who receives energy supplied by licensee in the premises or installation, owned or possessed by him, under relevant laws, rules, regulations, bylaws or any document which has the force of law;

- 9 “Quality of Living” means the cost and purchasing power of the consumer’s livelihood;
- 10 “Ministry” means the Ministry of Power, Energy and Mineral Resources;
- 11 “Regulatory Body” means a controlling government institution regulating price, quantity and quality of energy,
- 12 “Licensee” means an individual, a company or an organization who has received a licensee under this Act for generation of electricity, transmission, marketing, distribution, storage and supply of energy;
- 13 “Company” means any company formed and registered under the Company Act 1994 (Act No. 18 of 1994);
- 14 “Energy” means coal, nuclear energy, renewable energy, biomass, gas and petroleum products;
- 15 “Primary Energy” means coal, nuclear energy, renewable energy, biomass, gas and petroleum products;
- 16 “Gas” means natural gas, natural liquid gas (NLG), liquefied natural gas (LNG), compressed natural gas (CNG), synthetic natural gas, or such mixture of natural hydrocarbon, which transforms into gaseous elements at ambient pressure and heat;
- 17 “Natural Gas” means hydrocarbon or hydrocarbon mix found in natural state, or in liquid, vaporous or gaseous condition or found in combination of these states.
- 18 “LNG” means liquid state of natural gas under cryogenic process for transportation and storage;

- 19 "CNG" means compressed natural gas under certain pressure and temperature;
- 20 "Gas Field" means the sum of any natural gas reserves or natural gas reserves that are included in a given geological structure or properties;
- 21 "Pipeline" means pipelines approved for gas supply including compressors, communication instrument, meters, pressure controllers, pumps, valves and other appliances required to operate those pipelines;
- 22 "LPG" means gas preserved in liquid form by pressure in closed containers which is predominant in propane or butane and a mixture of one or both;
- 23 "Petroleum Product" means processed or unprocessed liquid or mixture of solid hydrocarbon and petroleum byproducts such as lubricant and petroleum solvent and shall not include natural gas;
- 24 "Capacity" means ability to explore/produce, transmit /transport and distribute energy;
- 25 "Tariff" means the schedule of rates for energy supply and special services connected therewith;
- 26 "Prescribed" means prescribed by rules or regulations;
- 27 "Least Cost" means lowest cost;
- 28 "Regulation" means regulations framed under BERC Act.
- 29 "Law" includes rules, regulations, by-laws, orders, and notifications having the force of Bangladesh law.

- 30 “Methodology” meaning the method of fixing the price of energy as described in section 34 of the BERC Act and in the schedule of regulations made under that Act;
- 31 “Bill” means a description of the amount of energy sold, including the sale price and charges, and the amount charged for the service or performance;
- 32 “Whiling Charge” means charges for the use of transfer systems to transmission of gas and electricity.;
- 33 “Predatory Price” means more than the prescribed proper price;
- 34 “Corruption” means an offense punishable under section 47 of the BERC Act;
- 35 “Competition” means the desire and ability of a licensee to improve its own management skills and the quality of its products or services as compared to other licenses;
- 36 “Monopoly” means a condition when an individual or an organization is in absolute control of the market for a product or service;
- 37 “Oligopoly” means a condition in which a certain number of individuals or organizations control the market for a product or service;
- 38 “Energy Marketing” means: (a) the market for the exchangeable or convertible fuel by the consumer on the basis of the characteristics of the fuel and the desire to use it
- And (b) a market consisting of an area in which the terms of competition for fuel supply or supply or energy demand are the same and differ from consumer to consumer;

- 39 "Marketing" means marketing of energy
- 40 "Public-Private Partnership" means finance agreements executed between two or more public and private sectors aiming at increasing private investment in government projects.
- 41 "Transmission" Means transporting electricity or gas under high voltage or pressure;
- 42 "Distribution" means the supply of electricity to consumer's residences or establishments through low-voltage distribution lines or the supply of gas or petroleum or compressed natural gas (CNG) to consumers through low pressure pipes in case of natural gas or petroleum products or any other distribution method;
- 43 "Captive Power" means the power generation capacity at a small scale to be used by a consumer to meet individual needs;
- 44 "Capacity Factor" means the ratio of the net power generation of a plant at a given time and the ratio of the amount of electricity generated when the plant runy at a full capacity at that given time;
- 45 "Power Generation" means the process of generating electrical energy from primary energy;
- 46 "People" means residents of Bangladesh by birth, and also includes those who were conderred Bangladeshi citizenship.
- 47 "The Republic" means Parliament, government and statutory government authorities and
- 48 "Government" means an authority, body or organization whose functions are vested in the constitution, laws, ordinances, orders or documents authorized by law in Bangladesh.

Preamble

Article 143 of the Constitution confers the Republic ownership of all the energy and mineral resources within the land and sea. According to Article 7, the people own the republic. Therefore, the right to energy is one of rights on which the people have proprietary right. According to Article 13, the people shall own the energy generating machinery, its production and distribution system. To that end, the state-owned public sector will be created and the state will supply energy and energy products to meet the basic needs of the people and ensure equitable distribution in accordance with Article 19. According to Article 21, it is the responsibility of all citizens to protect energy and national resources. Therefore, any citizen can apply to the Supreme Court in under Article 102 if necessary to protect this property. Moreover, if life is endangered/ threatened due to lack of energy security, the fundamental rights to life as ensured in Article 32 of the Constitution will be curtailed. Since energy production, supply, distribution and development are ensured under the ownership of the people, if development of energy exploration, and production, supply, distribution, and distribution of energy and energy products can be ensured under the authority of the people, then availability of energy with affordable price can be ensured. It makes energy entitlement common consumers .easier.

Capability to alleviate poverty and improve the quality of life of the people is essential. Capability depends largely on the extent of entitlement the people over electricity and primary energy.

Sustainable national energy security is ensured, if that entitlement exists in reality. As a result, per capita energy demand and energy flow growth continue to increase. It ensures continuous economic development and progress of the people. In order to achieve it, a national energy policy is essential.

The government adopted the national energy policy in 1995. Although the policy was amended in 2004, it was not approved. The basic objective of the energy policy was to ensure national energy security. Although there is a need for attracting foreign investment in the development of the energy sector, the reform/transformation of this sector is underway but it remains a perennial victim of confusions. As a result, there is uncertainty in the national energy security. The policy position of the government in the development and management of the energy sector appears to be not only inconsistent with the constitution and in some cases it is also contradictory.

The cheapest and sustainable strategy to ensure sustainable national energy security is to have ownership over energy production and its usages.

In order to ensure energy security for the consumers based on this strategy, the Consumers Association of Bangladesh (CAB) formulated a proposal for national integrated energy policy in 2011.

The amount of carbon is continuously increasing in the ongoing carbon aided energy supply. At the same time, the development of energy efficiency and conservation is not notable. Renewable energy

production and market could not be created. Again, subsidies and energy prices continue to rise at the consumer level due to unfair and unreasonable increase in transmission and supply costs. As a result, it has become difficult for consumers to acquire or retain entitlement of energy. On the one hand consumers are deprived of their energy rights as they do not get energy at the proper price, quality and measurement, on the other hand most of the consumers' energy security is endangered as energy expenditure exceeds their income. It is difficult to protect consumer's life unless energy security is ensured. Moreover, with the continued use of carbon-saturated fuels, the risk to environment protection is increasing.

All consumers have the right to use quality energy at the lowest possible price. The state has ensured that entitlement through institutions established by law. Ensuring open competition in energy market leads to maximization of satisfaction of producers, sellers and buyers. Once the proper use of advanced technology is ensured, the cost of energy supply remains under control. Due to the changes or transformations that have been made, and are being made and planned in the ongoing transition in energy sector, predatory costs in energy exploration/production, transportation/ transmission and distribution are increasing rapidly and excessively. While the consumer's right to energy gets endangered, the consumer's right to life is also endangered as the consumer's energy security is threatened alongside environmental protection.

The air we breathe in, the water we drink, the world of germs we live in, the soil that grows food affect

3. Policy Structure and Conversion

This policy with a vision is arranged in the form of a pyramid, with 14 objectives and 104 strategic issues, and more or less 400 tasks i.e. action plan will be added later. The vision and purpose have been aligned with the national philosophy and goals. Strategic issues have been identified in line with the larger objectives, the benefits of which will be achieved in the overall development of the energy and financial sector through the implementation of policy. The following period has been considered for the implementation of the things to be done:

- Short term (18 months or less),
- Medium term (5 years or less) and
- Long term (20 years or less).

However, the tasks that may take relatively a longer time to implement are recommended for long term implementation. Conventional ideas about concepts, objectives, strategic issues, etc., vary greatly depending on the individual and the field. In the case of this policy, the following definitions have been specified:

Objective: Some of the interrelated goals for achieving the vision.

Strategic Theme: Extensive recommendations for the development and implementation of certain actions to be taken to achieve the goals.

Action Plan: The implementation of these recommendations followed by a series of strategic

discussions, the outcome, timeline and implementation of which will be specified in course of time..

4. Policy Ownership, Monitoring and Review

All stakeholders involved in the implementation of this policy in national level will be the owners of this policy. This ownership must also be ensured at the government level. In this regard, the following rights of this policy have been considered:

The Minister in charge of the Ministry of Commerce, President of the National Consumer Rights Protection Council, will oversee and coordinate this policy. On the other hand, BERC, Competition Commission, BSTI, and the National Department of Consumer Right Protection will assist in the implementation of the action plan. All concerned Ministries/Departments, Agencies, Utilities and Government, Semi-Government and Autonomous Institutions and various levels of Consumer and Consumer Organizations should ensure implementation of this policy in their respective fields. In case of any deviation, the instructions of National Energy Task Force will be followed. The National Energy Task Force will play a supervisory role in the implementation of this policy. The National Energy Task Force will be formed by CAB.

In order to verify the implementation status of the action plan outlined in the policy and to bring about changes in the activities and to specify the priorities, it will undergo yearly review. The strategic

aspects of the policy will be reviewed every 3 years to redefine the specific targets in a constantly changing manner. In addition, the full policy will be reviewed every 6 years to coordinate the long-term issues based on the success and failure of the policy implementation.

If the vision and objectives of this policy are successfully implemented, the next generation Bangladesh will be financially and socially self-sufficient and prosperous.

5. Vision

Ensuring sustainable national energy security by ensuring uninterrupted supply of environmentally friendly primary energy and electricity at fair and reasonable price with a view to becoming an upper middle income country by 2031.

6. Objectives

The objectives adopted for the purpose of energy transition for the implementation of the stated vision:

- 6.1 To ensure people's ownership and entitlement on energy
- 6.2 To ensure fairness and equality at all stages of energy development
- 6.3 To determine energy development strategies,
- 6.4 To determine renewable energy research and development strategies in local technology
- 6.5 To adopt consumer friendly energy pricing policy

- 6.6 To determine consumer friendly energy transition strategies
- 6.7 To determine the regulatory system development strategies
- 6.8 To determine the consumer friendly investment strategies for energy development
- 6.9 To determine the efficiency and capacity development strategies of different segments of energy supply chain
- 6.10 To determine energy efficiency and conservation improvement strategies
- 6.11 To determine the human resource development strategies employed at different segments of energy supply chain
- 6.12 To determine energy development plan and implementation strategy
- 6.13 To determine strategies for protection of environment and climate and also to specify the legal strategy for the protection of environment and ecology in energy development

7. Strategic Themes

7.1. Ownership/Copyright

7.1.1. According to Article 143 of the Constitution of the Republic, since the people own the energy resources under the land and the sea, their ownership of these resources must be ensured

7.1.2. According to Article 13, the ownership or ownership of energy and energy products such as

fertilizer, cement, steel, etc. must be ensured by the people as the owners or regulators of the production system and production machinery and distribution of manufactured goods.

7.1.3. According to Article 16, in order to continuously eliminate the disparity in the quality of life between urban and rural areas, the rural transformation must be achieved through the development of agricultural revolution, rural electrification, development of cottage industries and other industries and development of education, communication and public health.

7.1.4. Article 18 (1) ensures protection and development of environment and protection and security of ecosystems for present and future citizens.

7.1.5. According to Article 7, the constitution of the republic as the ultimate expression of the will of people is the supreme law of the country, the people are the owners of the republic. Therefore, reflection of the mentioned expressions must be ensured in the ongoing energy transition.

7.2. Fairness, Equality and Transparency

7.2.1. The management and strategic policy of public and private utilities engaged in energy production, distribution and distribution shall be based on equity.

7.2.2. Transparency and accountability shall be ensured at all levels, including production,

operation, distribution, and marketing, so that consumers get quality energy services at a fair and reasonable price.

7.2.3. Equitable opportunities in the use of energy resources shall be ensured for people of all levels.

7.2.4. Protection of consumer right to energy and environment shall be the goal and objective of ongoing energy transition.

7.2.5. In order to improve the quality of life of the marginal people deprived of energy, their entitlement on energy shall be ensured.

7.3. Energy Development Strategies

7.3.1. Additional electricity demand shall be met by increasing the supply of renewable electricity.

7.3.2. The reserve margin should be determined in the plan to increase the power production capacity considering the import commitments.

7.3.3. Fixed cost shall be excluded in the purchase of electricity from expired power plants and the price shall be determined by BERC.

7.3.4. Inequality in primary energy supply needs to be eliminated in domestic-foreign and public-private owned power generation.

7.3.5. Use of renewable electricity as captive/alternative power for industrial, commercial and residential establishments shall be ensured. for energy efficiency and conservation in the production of goods and services.

7.3.6. Supply of energy at commercial rate fixed by BERC for export-oriented foreign-owned fertilizer, cement and steel mills shall be ensured.

7.3.7. In the short and medium term, the use of electricity in place of liquid fuel, CNG and LPG as fuel for transportation should be ensured. In long-term plan, 100% use of electricity in those sectors shall be a must.

7.3.8. In medium term plan, the use of 100%.solar electricity in all rural transport such as rickshaws, vans, auto-rickshaws, motor-cycles shall be ensured.

7.3.9. In the medium term plan, the use of solar electricity instead of diesel in tillage operation, and diesel and grid power in irrigation shall be increased and in long term plan, the use of cent percent solar electricity should be ensured.

7.3.10. Areas not viable for grid power supply shall be identified and in the medium term plan cent percent of those areas shall be electrified with off grid renewable electricity.

7.3.11. In the medium term plan, 100% IPS charge on solar power instead of grid power shall be ensured.

7.3.12. There shall be continuous increase in the use of solar power in street lighting in municipal areas.

7.3.13. The ratio of coal and liquid fuel shall be reduced in the short and medium term plan of the primary energy mix.

7.3.14. The traditional biomass energy development plan shall be adopted and implemented in the

medium term plan. The role of biomass fuels shall be important in the development of RE in long term planning.

7.3.15. Ongoing energy transition shall be consistent with the Paris Agreement and the revolution of energy through energy development shall be ensured in the long-term plan.

7.3.16. There shall be continuous research to ensure energy supply at least cost and maximum efficiency.

7.4. RE Development in Local Technology

7.4.1. In order to develop RE, there shall be financial support and incentives for local technology development and innovation.

7.4.2. Energy pricing strategies shall have special emphasis on local technology in developing and expanding the RE market.

7.4.3. There shall be uninterrupted research to ensure energy supply at least cost and maximum efficiency.

7.4.4. RE Division shall be established in the Ministry.

7.5. Pricing Strategy

7.5.1. In order to protect consumer rights to energy, the existing pricing methodology i.e. Regulation shall be amended.

7.5.2. Bulk price of supplied energy from public and private sector shall be prescribed by BERC under the Regulations.

7.5.3. In order to eliminate existing price inequality, there shall be a review of existing pricing methodology for small and cottage industries, agricultural, religious and social institutions and marginal residential and commercial consumer energy services.

7.5.4. In case of commerce and industry, the energy tariff shall be prescribed on the basis of cost plus policy. However, it shall be ensured that the financial incentives available to them are consistent with the incentives received by the foreign company.

7.5.5. The existing inequality in the quality and price of gas used in domestic and export oriented foreign industries shall be addressed.

7.5.6. The price of energy used for various entertainments, and luxurious living including AC residential consumers shall be charged at commercial rates.

7.5.7. The prescribed price of fuel used in public transport and private vehicles shall be different.

7.5.8. In the case of marginal consumers, the price of LPG and gas used in cooking shall be commensurate with the purchasing power of the consumer as in case of electricity.

7.6. Energy Transition Strategy

7.6.1. Ongoing energy transition activities need to be evaluated so that the transition process protects consumer interests and complies with the Paris Agreement.

7.6.2. Agriculture, industry and transport sectors need to be brought under energy transition activities.

7.6.3. Salary-allowances, promotion, profit margin in utilities shall be ensured on the basis of performance efficiency and capability.

7.6.4. Cent percent ownership of the people. shall be ensured in energy production and supply

7.6.5. Energy development under PPP policy shall discontinue.

7.6.6. Transfer of shares of state-owned utility to private sector shall be prohibited. Cent percent ownership shall be ensured by the people.

7.6.7. The energy sector needs to be transformed into a level playing field by establishing fair competition.

7.6.8. Energy services shall be free from conflicts of interest.

7.7. Regulatory Development Strategies

7.7.1. Coal, renewable energy and biomass shall be brought under regulatory jurisdiction.

7.7.2. Oil, gas and coal exploration and production in both public and private sectors, power generation, and energy import shall be brought under the regulatory jurisdiction.

7.7.3. The participation and empowerment of stakeholders in regulatory decision and policy making, laws and regulations making shall be enforced by law.

7.7.4. The public sector as well as the private sector shall be included in the regulatory system.

7.7.5 As an upstream regulator, the Ministry shall be confined in formulating policies and rules, and administrative oversight on enforcement of laws, rules and regulations.

7.7.6. Utilities are independently run by their own technical professional manpower, shall be ensured.

7.7.7. The independence and the impartiality and the development of capacity and skills of the regulatory bodies shall be ensured.

7.8. Investment Strategy

7.8.1. Private sector investment and involvement in government-sponsored energy development may be encouraged and expanded, but not in exchange for ownership.

7.8.2. The Gas Development Fund, the Energy Security Fund, and the Power Development Fund shall be equity investments in grants from consumers for energy exploration / production / import.

7.8.3. Coordination and equilibrium among respective segment investments in energy production, transmission/transportation and distribution system development shall be ensured.

7.8.4. The type and nature of investment in the public and private sectors shall be prescribed.

7.8.5. One hundred percent onshore gas field development shall be ensured only by domestic companies.

7.8.6. The ratio of gas used electricity, fertilizer, cement and steel production in public and private sectors and return to investment ratios for each of those products shall be prescribed.

7.8.7. To reduce government investment and increase private sector investment in energy development, the energy supply cost needs to be optimized.

7.8.8. In order to control carbon emissions and production costs, the ratio of source wise fuels to primary energy supply needs to be determined.

7.8.9. The direct participation and capacity development of domestic companies in offshore gas field development shall be ensured.

7.8.10. Consumer participation and empowerment in management of gas development fund, electricity development fund and energy security fund and control over the funds free from ministry shall be ensured.

7.8.11. In the case of oil/gas extraction under PSC, it would be mandatory for the government to purchase all the oil/gas from the IOC.

7.8.12. Government investment in RE development shall be ensured.

7.8.13. Energy sector development under commercial loan on BOOT basis shall be prohibited.

7.8.14. In the energy sector, the government shall ensure that it does not engage in joint ventures with the private sector and that shares of any state-owned company are not transferred to the private sector.

7.9. Institutional Skills and Capacity Building Strategies

7.9.1. The three domestic companies engaged in oil and gas exploration and production shall be merged to form a national company.

7.9.2. SREDA, similar to Petrobangla/BPDB, needs to become an autonomous body for the development of RE. In the development of RE, small individual initiatives shall be encouraged and there shall be initiatives to create capable entrepreneurs.

7.9.3. In order to develop power sector, the formation/restructuring of power utilities similar to the gas sector under PDB shall be completed.

7.9.4. Management Boards of liquid fuel, oil, gas, coal and power utilities shall be independent and free from administrative control of the ministry or regulatory body (BPC, Petrobangla, or BPDB).

7.9.5. Hydro-carbon units, power cells and petroleum institute should be merged into their own respective organizations to be able and empowered in research and planning for energy development. They can coordinate the research, planning, and training and human resource development activities under universities, agencies, governments and the industrial and commercial sectors. EPRC shall be free from bureaucrats and led by researchers.

7.9.6. The role of the Cabinet and the Planning Commission in formulating and implementing policies and plans shall be more meaningful.

7.9.7. The executive authority of the Ministry shall be abolished in all types of procurement and implementation process of development projects.

7.9.8. The service charge of the utilities shall be prescribed by BERC and manpower recruitment and promotion shall be done by organization free from conflict of interests.

7.9.9. On behalf of the citizen, the National Energy Task Force will play watchdog.

7.10. Energy Conservation and Skills Development Strategies

7.10.1. Energy saving strategies for fuel supply and use shall be enforced by law.

7.10.2. The use of highly efficient equipment in the production and energy use shall be ensured by law and incentives if required.

7.10.3. The various strategies adopted, including financial incentives, shall be enforceable by the law to achieve the targets set for energy conservation and efficiency development.

7.11. Human Resource Development Strategy

7.11.1. In order to meet the shortage of technically skilled manpower in energy sector, there shall be a provision for incentives and promotions on the basis of performance. Skill development shall be ensured on the basis of continuous intensive technical training.

7.11.2. There shall be an institutional procedures and uninterrupted process for verification and development of professional skills.

7.11.3. Regular research and study on the impact of energy transition shall also be practiced at the consumer, utility, regulatory, policy and planning levels.

7.11.4. There shall be coordination among energy and environmental research activities in public and private sector as well as in universities. CAB and EPRC can play an important role in this regard.

7.11.5. It has to be ensured that instead of sending the trainees abroad for training, training in the country shall be imparted by foreign specialized trainers.

7.11.6. Industrial as well as factories and various training based institutes/centers shall be brought under energy transition activities and their capacity shall be developed. All these institutions will develop the necessary quality manpower in the industrial sector to achieve the goals of the 4th Industrial Revolution. These institutions shall be used as outsourcing for practical courses of universities and cent percent utilization of the resources shall be ensured.

7.11.7. The curriculum at all levels shall include right to energy and environment protection.

7.11.8. A universal course on the above mentioned subject shall be introduced at the undergraduate and postgraduate levels. The development of education, training and research shall be a significant part of energy transition.

7.11.9. The development of specialized energy educated human resources shall be continued in an uninterrupted manner.

7.11.10. Technical and vocational education shall include courses and training on rights to energy and environment protection.

7.12. Planning and Implementation Strategies

7.12.1. The existing perspective plan of the energy sector should be reviewed keeping in view the vision of this policy. On the basis of this proposed energy transition policy, perspective plans, master plans and five-year plans need to be revised.

7.12.3. In the action plan adopted in the five-year plan, public sector investment in energy shall be a high priority as it is done in agriculture.

7.12.4. The energy development budget shall include both public and private investment.

7.12.5. Exploration/production, operation/transportation, distribution capacity development plan, shall have to be in line with demand. The allocation in the budget shall also match the requirement.

7.12.6. The quarterly progress of development projects shall be made public by the Planning Commission for information of the general public. The Energy Task Force will provide monitoring reports to all the concerns involved in the implementation of the project.

7.12.7. Energy transition shall be in line with protection of consumer rights to energy and the

Paris Agreement and with that aim, changes in relevant laws, rules, regulations, and policies, strategies and plans shall be made.

7.13. Environment and Climate Protection Strategies

7.13.1. Environmental protection shall be ensured in the implementation of activities undertaken for energy development

7.13.2. The State ensures right to life as a fundamental right in Article 32 of the Constitution, it has to be confirmed that this right is not jeopardized due to environmental degradation in the process of energy development: the State ensures environment and eco-systems protection and development, and security for present and future citizens in Article 18(1), that demands creation of awareness among students and consumers.

7.13.3. There shall be CAB-capacity development in order to build a capable green society of carbon free economy and improved quality of consumers' life.

7.13.4. In this respect, a balanced strategic relationship between legal, commercial, energy rights and politics shall be ensured.

7.13.5. The management of the energy sector shall ensure the safe management of wastes and emissions and adoption and implementation of effective plans to mitigate carbon-dioxide emissions.

7.13.6. There shall be a rich database of various victims and details of losses due to climate change and it shall be updated regularly.

7.13.7. Recovery of compensation shall be ensured, not as loans for such losses, from climate fund and other sources, and that compensation shall be invested for the capacity development of victims, which shall be enforced by law.

7.13.8. Public and private initiatives are funded from within and outside the country for environment and climate protection and climate change mitigation activities, coordination of those activities and its results shall be used nationally to establish right to energy and environment protection.

7.14. Legal Strategy

7.14.1. On examination of existing policies, laws, rules and regulations necessary amendments shall be made, if needed for better management and development of the energy sector are in line with the protection of consumer energy rights and interests.

7.14.2. It is necessary to examine whether the agreements in energy sector executed with the domestic and foreign investors are against the rights to energy and publish the results for consumer's information and awareness.

7.14.3. For entering into agreements on the energy development the state shall have a prescribed model agreements aimed at transparent execution in the statutory process.

7.14.4. In order to ensure transparency and accountability in the implementation of the action plan, the National Energy Task Force shall be formed by CAB comprising the citizens who are not involved in conflicts of interests with energy.

8. Action Plan and Funding

The tasks to be included in the action plan are the actual reflection of the energy policy, which will ultimately measure the success and failure of the policy. About 400 tasks will be included in the action plan. Even then it will remain incomplete. Some of the tasks to be completed will be star marked as more important than the other tasks and will be treated urgently..

The above mentioned objectives and strategic issues will be the driving factors of the action plan. The issues to be addressed on the basis of the main objective will first be generally grouped together. Then they will be classified according to the strategic importance. All the objectives and tasks will be arranged in a table in proper order.

Short, medium and long term implementation timeframe will be shown against each task. Short term means 18 months or less, medium term more than 18 months but less than 5 years and long term would be 5 years and not more than 20 years. Energy is a transitional sector. Perception of possible transformations of this sector in future is a matter of enough forensic analysis. Short-term tasks will be specified according to current needs. On the other hand, the middle and long term issues need to be reconsidered every year in the context of realities and development in energy sector.

In order to implement the tasks mentioned, it will be necessary to have a separate allocation in the national budget. Apart from the budgetary allocation formation of a separate fund would be necessary.

the quality of our life. Adequate livelihood opportunities depend on a number of factors. Environmental health is one of them. Environment and development are interdependent and complementary, not conflicting. Therefore, the development of capability and quality of life cannot be considered in isolation from environment and ecology. Such considerations are still missing in our policies and plans. As a result, we have not yet been able to face climate changes.

Under the Paris Agreement aimed at protecting the environment, the countries of the world signed the agreement in 2015 in a bid to address the challenges of climate change and increase investment and efforts for a low-carbon, sustainable future. Bangladesh is one of the signatories to this agreement. But in the light of the agreement, it is not possible to ensure environmental protection and energy security in Bangladesh and address climate change without corruption and predatory cost. Keeping this in mind, the Consumers Association of Bangladesh has formulated an updated draft of the proposed 'National Integrated Energy Policy, 2011', 'Bangladesh Energy Transformation Policy, 2022', aimed at developing national capacity for energy rights and environment protection. The draft was published with the aim of finalizing it on the basis of public opinion.

Through the successful implementation of the vision and objectives proposed in this policy, by 2031 Bangladesh will be able to protect energy rights and environment and eliminate poverty and corruption, and become a non-discriminatory upper-middle income economy.

1. Short Title

This policy shall be called Bangladesh Energy Transition Policy 2022.

2. Rationale of the Policy

The constitution underlines the importance of the establishment of social power. This 'Energy transition policy' can play an effective role in implementing the state's commitment by ensuring the efficient use of the country's limited natural and abundant human resources. Article 19 of the Constitution directs the following:

"19(1) The state shall endeavor to ensure equality of opportunity for all citizens.

2. The State shall adopt effective measures to remove social and economic inequality between man and man and to ensure equitable distribution of wealth among the citizen, and opportunities in order to attain a uniform level of economic development throughout the Republic."

This policy is a guideline for all parties to follow. At the same time, it is a special initiative on the part of the consumer for the development of the public as well as the private sectors and for making its contribution meaningful to the overall development of the energy sector.

Annex 1

Review of
The Bangladesh Energy Regulatory
Commission (BERC) Act
&
BERC's Role

*Review of the Bangladesh Energy Regulatory
Commission (BERC) Act & BERC's Role*

Introduction

In order to ensure consumer rights in energy, create a conducive environment for private investment in power generation and ensure transparency in transportation, marketing and management of gas and petroleum productsm The Bangladesh Energy Regulatory Commission Act, 2003 was enacted with a view to determine operations and pricing, protect consumer interests and create a competitive market. The Act established BERC as the sole regulatory body in the energy sector. The power to determine the prices of electricity, gas and petroleum products is vested upon BERC. But contrary to the Act BERC plays its role as a regulatory body to a limited extent. The Act empowers the BERC to take action

against anyone who violates any provision of the BERC Act, Rules or Regulations, or any Order issued by BERC. But the Consumers Association of Bangladesh (CAB) has observed through its mandated regular observations that BERC, as the regulatory body, has failed to ensure competitive market or establish fair and reasonable pricing of electricity and primary energy. It also failed to implement LPG tariff determined by BERC itself. Although BERC has been authorised to fix the price of petroleum products, the Energy and Mineral Resources Division of the Ministry illegally fixes the tariff of the petroleum products. BERC fails to remedy and prevent such offences of violations of BERC Act. Again, the lack of accountability of BERC is a big hurdle in protecting consumer rights. The imbalance of power between the BERC and the Ministry is a major obstacle to achieving the goals and objectives of the BERC Act. CAB is engaged in strengthening BERC to protect consumer rights and interests. The recommendations outlined in this report are based on more than a decade of experience to protect the energy rights of consumers and CAB's practices aiming at finding out the root causes of BERC's failure. Relevant provisions cited in similar documents of Malaysia, Singapore, Turkey, Brazil and Bhutan have been discussed to examine the potentials of the BERC Act.

Analysis

*Different Sections & Sub-sections of the Bangladesh Energy
Regulatory Commission Act*

7(1)

Qualifications and requirements are often being overlooked in the appointments of Commission members or Chairman..

It is recommended that the set qualifications and appropriateness are to be strictly met to form an effective Commission.

7(2-4)

Persons with unsound and injudicious mind shall not be qualified for appointment as a Member or Chairman.

For example, Subsection. 10(b)(e) of the Energy Commission Act 2001 of Malaysia.

Institutional or personal conflicts of interest must be taken into consideration before appointing/ sending anyone on deputation to BERC.

8(1)

As the Ministry is often the authority in energy decision making, the provision of reappointment of the BEREC Chairman and Members for an additional term may result in compromises, and therefore may raise sheer conflict of interest between the Ministry and the Commission.

Not only that, when the control of both the BEREC and the Licensees lies at the hands of the Ministry, BEREC's independence and accountability are severely compromised. As a result, the consumer interests remain overlooked. There are evidences of such naked compromises drawn from the past tariff data and hearings of the BEREC.

To ensure an independent Commission, the overall formation procedure and appointments must be reframed, and the executive powerplays in the licensees' Board of Directors should be regulated by the Commission itself to ensure consumer interest protection.

11(2)

Terms like "activities which are detrimental to the Commission" or "conducts him/herself in such a way or misuses his position which is detrimental to the objective of this Act or hampers public interest" have not been clearly elaborated in the law. Neither there has been any interpretation given from the court of law. This creates confusion.

It is stated that there are many instances of detrimental activities committed by the members

are evident over the years, some are pending trial in the Supreme Court— yet not a single member till date. has been seen to be removed or warned.

Accountability and transparency of the BERC members must be ensured. Inclusion of internal accountability measures in the Act is highly recommended— so that a bridge of communication between the Commission and the President could be established.

Procedure of the removal seems ambiguous, which needs to be put with better clarification and detailing of the intermediate processes.

It is also important to sign a declaration by the Chairman and the Members of the BERC before their respective appointment regarding conflicts of interests. Such legal provisions are available in S. 11 of the Energy Commission Act 2001 of Malaysia which reads as:

Section 11. Statutory declaration by members of Commission:

(1) No person shall be appointed as a member of the Commission unless before such appointment such person makes a statutory declaration whether he has any interest, financial or otherwise, in any undertaking involving energy supply activities.

(2) If a member of the Commission acquires any interest, financial or otherwise, in any undertaking involving energy supply activities he shall, within one month after such acquisition, give notice in writing to the Minister specifying

the interest acquired, and the Minister may, after taking the matter into consideration, if he thinks fit, declare that the person has vacated his office.

14

The above mentioned legal provision for constituting Commission could have been elaborate to serve its own purposes. For example, Section 12 of the Energy Commission Act 2001 of Malaysia reads as follows:

Section 12. Commission may establish committee

(1) The Commission may establish any committee as it considers necessary or expedient to assist it in the performance of its functions under the energy supply laws.

(2) The Commission may elect any of its members to be the chairman of a committee.

(3) The Commission may appoint any person to a committee.

(4) A member of a committee shall hold office for such term as may be specified in his letter of appointment and is eligible for reappointment.

(5) The Commission may revoke the appointment of any member of a committee without assigning any reason for the revocation.

(6) A member of a committee may, at any time, resign by giving a notice in writing to the chairman of the committee.

(7) The Commission may, at any time, discontinue or alter the constitution of a committee.

(8) A committee may regulate its own procedure.

(9) A committee shall be subject to, and act in accordance with, any direction given to it by the Commission.

(10) The meetings of a committee shall be held at such times and places as the chairman of the committee may determine.

(11) A committee may invite any person to attend any of its meetings for the purpose of advising it on any matter under discussion, but that person shall not be entitled to vote at the meeting.

(12) The members of a committee and any person invited under subsection shall be paid such allowances and other expenses as the Commission may determine.

22

BERC has no advisory role to play to the Government regarding energy policy as it is the case in Energy Commission Act 2001 of Malaysia.

BERC has not been effective in discharging most of its functions as per requirements of the BERC Act. For example, energy efficiency enhancement, ensuring efficient use of energy, ensuring competitive market, providing recommendations to the government, dispute settlement and Arbitration or preventing monopoly in the market – none of these has ever been initiated BERC.

BERC needs to function more effectively and give the government timely recommendations to

ensure people's access to energy. If BERC could act prudently and take appropriate measures to enhance energy efficiency the overall energy security could be achieved and consumer's right to energy could be well secured.

BERC has not been effective in ensuring appropriate remedy for consumer disputes, dishonest business practices or monopoly.

There are a few other functions which could have been included in the functions of BERC such as,

to promote the use of renewable energy and the conservation of non-renewable energy. For example, included in Renewable Energy Law 2005 of Turkey; Energy Commission Act 2001 of Malaysia, etc.

to promote research into, and the development and the use of, new techniques relating to all types of energy. For example, Energy Commission Act 2001 of Malaysia.

To review the energy laws and to make the necessary recommendations to the Government. For example, Energy Commission Act 2001 of Malaysia.

To develop energy conservation policies. For example, Energy Conservation Act 2001 of India, Energy Conservation Act 2013 of Singapore, etc.

To develop energy trading policies. For example, Electricity Act 2003 of India, Electricity Market Law 2013 of Turkey, etc.

To develop energy auction policies. For example, Law No 8,987/1995 (Concessions Law) and Law No 9,074/1995 (Power Concessions Law of Brazil).

23(1-8)

Despite having required power to investigate and take punitive action BERC has never resorted to exercise those powers due to power imbalance and conflict of interest.

A major concern remains plaining a proactive role to regulate tariff in its true perspective.

24(1-3)

BERC Act confers ample power on the Government instead of empowering itself. Having said that when a Statutory Commission is empowered by law to take decisions independently then Government control to regulate the energy market should have been reduced immensely. But due to conflict of interest and political influence Government had been retaining and exercising powers which had not been conferred upon it.

BERC has no advisory role to play to the Government regarding energy policy as it is the case in Energy Commission Act 2001 of Malaysia. Such power could have made the BERC to act as a strong regulator in the energy market.

BERC is only a policy taker. It does not even have a right to consultation on its own right. Its consultation is required only and only if the Government feels the necessity at all, otherwise it's a redundant entity.

BERC has no mandate to deal with the issues of energy conservation. A vital provision in the backdrop of current production surplus, if any, needs to be prioritized to ensure intra and inter-generational equity in terms of energy security.

25

No right of consultancy has been given to BERC in energy emergency situation. BERC is handicapped to exercise its power to coordinate with other stakeholders in such situation.

As the energy sector regulator BERC is expected to have firsthand information about the energy market and to have the capacity to feel the pulse of the market. However, in energy emergency situation BERC is completely ousted from decision making process.

27(1-2), 28

Though BPC is a licensee under the BERC Act, they have not acted as a Licensee because of the Government's direct involvement in tariff fixation of petroleum and petroleum products except LPG without having any lawful authority to do so.

29(1-3)

This is an ambiguous provision and is vulnerable to be politically misused. Conditions for exemptions should be made clear as much as possible as laid down in the BERC Act itself. Otherwise, the exemption clause may be subject to arbitrary use of the regulators.

As an example of the exemption clause, one can refer to S. 19 of the Electricity Act 2001 of Bhutan, which reads as:

Section 19 Exemptions

19.1 The Authority may exempt any person from the requirement to obtain a licence under section 18 where such exemption may include, but is not limited to, the generation of electricity below 500 kilowatt.

19.2 An exemption may be of general or specific application.

19.3 An exemption is subject to such terms, conditions and limitations as are specified by the Authority.'

34(1)

BERC has been seen somewhat active in tariffing. However, multiple tariffing in one fiscal year, ignorance of people's affordability vis-à-vis energy demand and ignoring the consumer interests made the whole process corporation friendly in contrast to common people.

Tariffing of the petroleum products willfully kept out of the jurisdiction of BERC though law empowers BERC to deal with it.

34(2)

BERC has miserably failed to harmonize the tariff with the cost of production, transmission, marketing, distribution, supply and storage of energy. For example, in 2019 DESCO tariff for distribution and wheeling charge was determined

at an exorbitantly higher rate. Similarly, in 2020 TITAS was given more than its requirement as its distribution charge. In the same year, gas tariff was not logically supported by the BAPEX production cost. Further, tariffs for diesel, kerosene and furnace oil have never been harmonized as required under the BERC Act.

BERC was supposed to fix tariff as per revenue requirement and to supply energy at a minimum cost to the consumers but on every occasion BERC had not taken demands or suggestions given by the stakeholder during public hearing and rather passed through the proposals from the Licensees. This is a gross violation of the Section 34(2)(b) of the BERC Act and against the objective of the BERC Act.

34(3)

BERC since 2012 prepared a few regulations, some had received assent of the Government and published as SRO, but some have been kept hanging to date. There must be a time limit on the Government to provide their comments or objections to any regulation prepared by BERC (may be within 45 days) and if Government fails to provide their assent or objections within that time then BERC should have the authority to publish the regulation through Gazette Notification.

34(4,6)

There have been frequent violations of these provisions. For example, the latest diesel and kerosene tariff has been determined without there being any application to BERC or public

hearing at the BERC. BPC violated the BERC Act, but no action was taken against them.

Moreover, when no Licensee comes forward with a proposal to fix or review the tariff of any energy, BERC remains silent on the ground that they do not have the authority to hold public hearing on their own motion. There was an exception in 2020 when Covid-19 broke out and most of the Licenses charged ghost electricity bills, BERC passed tariff order on their own motion.

In fixing tariff BERC does not follow its own law and rather allow predatory price exaction by the Licencees. BERC is supposed to ensure competitive energy market, but it is persistently failing to do so. The Licencees in the name of capacity building are creating assets in transmission and distribution which remains unutilized contributing to corruption and waste of public money. BERC should be in the first line of defence against this corruption and preventing predatory cost imposition on the consumers, but BERC has failed to act in accordance with its own law as stated in Sub-section 22 (ja, ta, da).

35-37

BERC must be made accountable if it does not or fails to exercise power to ensure Consumers' interest. Since 2008, BERC never exercised this power.

39(1)

What is meant by "secret information" has not been defined in the BERC Act. The provision is ambiguous.

Such provision also hinders and contradicts people's right to information. It, in the long run, empowers the corrupt vested interests and weakens accountability and good governance.

42

BERC remains reluctant in imposing penalty for violation of the BERC Act. This makes BERC a weak enforcer of law. For example, diesel and kerosene tariff have been determined ignoring BERC which is an offence under Section 42 of the Act. Such non-compliance demands penalty under the BERC Act. However, BERC became an ineffective organization for its failure to implement penal provisions of the BERC Act.

43

BERC has also been reluctant in imposing penalty and fine upon the licensees for violation of its order. For example, BERC has failed to impose penalty upon LPG licensees when they were recently found to have violated the BERC determined tariff rate. Tariff Order passed in 2009 and all subsequent Orders passed since January 2021 have not been implemented by the Licensees but BERC has not taken any action against them.

44

Electricity Act 1910 has been repealed by the Electricity Act 2018. New law may be substituted under section 44 of the BERC Act.

47

This provision restricts any aggrieved person's right to seek legal and judicial assistance, which is discriminatory and unconstitutional.

The decision of the BERC might get politically influenced by the powerful quarters.

54(1-6)

BERC has never taken any initiative to settle disputes that caused commotion of the consumers. A few complaints lodged by the Consumer Association of Bangladesh did not receive any consideration and they had to submit before the Supreme Court to obtain decisions and remedy. On some occasions, the Supreme Court reprimanded the inaction of BERC and declared it illegal. BERC is very much active in settling disputes between Licencees and serving purpose of the Licencees since long.

59(1)

Though BERC has power to make regulations, provisions to consult with Government remain a major hurdle when Government remains non-responsive for years together.

Bangladesh Energy Regulatory Commission Act

Observation and Recommendations

Observation

(a) Qualification requirements of the appointment of the chairman and members mentioned in S. 7(1) of the BEREC Act are often being overlooked during appointment.

Recommendations

(b) It is recommended that the qualifications to be strictly met for forming a more effective Commission.

Observation

(a) As the Ministry is often the authority in energy decision making, the provision of reappointment of the BERC Chairman and Members for an additional term may result in compromises, and therefore may raise sheer conflict of interest between the Ministry and the Commission.

(b) Not only that, when the control of both the BERC and the Licensees lies at the hands of the Ministry, BERC's independence and accountability are severely compromised. As a result, the consumer interests remain overlooked. There are evidences of such naked compromises drawn from the past tariff data and hearings of the BERC.

Recommendations

(a) To ensure an independent Commission, the overall formation procedure and appointments must be reframed, and the executive powerplays in the licensees' Board of Directors should be regulated by the Commission itself to ensure consumer interest protection.

(b) The officers of power and energy divisions should be removed from the board of the licenses.

Observation

(a) Terms like "activities which are detrimental to the Commission" or "conducts him/herself in such a way or misuses his position which is detrimental to the objective of this Act or hampers public

interest” have not been clearly elaborated in the law. Neither there has been any interpretation given from the court of law. This creates confusion.

It is stated that there are many instances of detrimental activities committed by the members are evident over the years, some are pending trial in the Supreme Court— yet not a single member till date. has been seen to be removed or warned.

Accountability and transparency of the BERC members must be ensured. Inclusion of internal accountability measures in the Act is highly recommended— so that a bridge of communication between the Commission and the President could be established.

Recommendations

(a) Procedure of the removal seems ambiguous, which needs to be put with better clarification and detailing of the intermediate processes.

(b) Accountability and transparency of the BERC members must be ensured. Inclusion of internal accountability measures in the Act is highly recommended— so that a bridge of communication between the Commission and the President could be established.

(c) It is also important to sign a declaration by the Chairman and the Members of the BERC before their respective appointment.

Observation

(a) BERC has no advisory role to play to the Government regarding energy policy.

(b) BERC has not been effective in discharging most of its functions as per requirements of the BERC Act. For example, energy efficiency enhancement, ensuring efficient use of energy, ensuring competitive market, providing recommendations to the government, dispute settlement and Arbitration or preventing monopoly in the market – none of these has ever been initiated BERC.

(c) BERC has not been effective in ensuring appropriate remedy for consumer disputes, dishonest business practices or monopoly.

Recommendations

(a) BERC needs to function more effectively and give the government timely recommendation to ensure people's access to energy. The overall energy security could be achieved and citizen's right to energy could be secured only if BERC act prudently and take measures to enhance the energy efficiency.

(b) There are several other functions which could have been included in the BERC Act. Such as,

- To promote the use of renewable energy and the conservation of non-renewable energy
- To promote research into, and the development and the use of, new techniques relating to all types of energy

- To review the energy laws and to make the necessary recommendations to the Government
- To develop energy conservation policies
- To develop energy trading policies
- To develop energy auction policies

Observation

(a) Information is unknown as to how far BERC has exercised its investigation power in the energy market.

(b) Information is unknown as to whether BERC has ever carried on proceedings similar to a Civil Court at the time of trial under the Code of Civil Procedure, such as: (a) summoning a witness and ensure his presence and examination of the witness on oath; (b) evaluating a document or evidence; (c) collecting evidence through an affidavit; (d) calling for public record from any court or office; (e) conducting or adjourning a hearing; (f) ensuring presence and absence of the parties; or (g) reviewing BERC's own decisions, directives or orders.

(c) Information is unknown as to whether BERC has ever passed any interim order relating to any proceeding or hearing conducted before it.

Recommendations

(a) There should be an option to make the BERC accountable if it fails to perform its duty.

Observation

(a) BERC is only a policy taker. It does not even have a right to consultation on its own right. Its consultation is required only and only if the Government feels the necessity at all, otherwise it's a redundant entity.

Recommendations

(a) BERC should have a right of consultation with the Government in policy making.

Observation

(a) No right of consultancy has been given to BERC in energy emergency situation. BERC is handicapped to exercise its power to coordinate with other stakeholders in such situation.

Recommendations

(a) BERC should have a right of consultation with the Government in energy emergency.

Observation

(a) Licensing provisions under the BERC Act are not strictly enforced.

Recommendations

(a) Licensing provisions should be strictly enforced.

Observation

(a) Provisions for exemption from the requirement of license are ambiguous and are vulnerable to be politically misused.

Recommendations

(a) Conditions for exemptions should be made clear as much as possible in the BEREC Act itself. Otherwise, the exemption clause may be subject to arbitrary use of the regulators.

Observation

(a) BEREC has been seen somewhat active in tariffing. However, BEREC remains inactive unless it receives a proposal from the licensees to change the energy price. Protection of consumer interests and rights is not taken into its consideration.

(b) However, multiple tariffing in one fiscal year, ignorance of people's affordability vis-à-vis energy demand and ignoring the consumer interests made the whole process corporation friendly in contrast to common people.

(c) Tariffing of the petroleum products is not being dealt with BEREC. But it is in BEREC's jurisdiction. The Energy and mineral resources division determines the said tariff out of their jurisdiction. BEREC's licensee BPC sets the tariff for some of the petroleum products. But BEREC is inactive.

Recommendations

(a) Multiple tariffing within a year should be avoided as much as possible. It should be an exception not regular practice to review tariff more than once in one year.

(b) Tariff procedure should be made consumer-friendly.

Observation

(a) BEREC has miserably failed to harmonize the tariff with the cost of production, transmission, marketing, distribution, supply and storage of energy.

Recommendations

(a) BEREC must follow the best practice to harmonize the tariff with the cost of production, transmission, marketing, distribution, supply and storage of energy.

Observation

(a) It is against the public interest to and violation of Competitive Act to provide gas with subsidized priced to KAFCO and LAFARGE to produce fertilizer and cement.

(b) There was a provision to fix the price of LPG at the consumer level by adjusting the price of the previous month in the import market. By changing this provision, BEREC has increased the current monthly price of LPG at the consumer level in the domestic market by adjusting the current month's price in the import market, which is completely unfair and out of jurisdiction.

(c) BEREC's failure to comply with CAB's proposal to establish ownership of marginal consumers over affordable LPG owned by the state-owned company LPGCL is tantamount to depriving marginalized people of their right to energy.

Recommendations

- (a) The price of gas used by LAFARGE and KAFCO needs to be fixed while maintaining parity with the price of gas used in the domestic industry.
- (b) In the interest of the consumer, the prior provision for fixing the price of LPG at the consumer level in the domestic market by adjusting the previous month's price in the import market should be enforced.
- (c) In order to establish the right of marginalized people to all kinds of essential fuels including LPG similar to electricity, access to affordable energy must be ensured.

Observation

- (a) BERC has failed to make Regulations for determination of tariff under S. 59 of BERC Act.

Recommendations

- (a) BERC should play a pro-active role in making Regulations for determination of tariff.

Observation

- (a) There have been frequent violations of the BERC Act in determining tariff after giving hearing to licencees and others who have interest in it has turned into a farce.

Recommendations

- (a) BERC's impartiality and independence in pricing must be ensured. Otherwise action must be taken against BERC.

(b) In the interest of the consumer, the BERC will have to reconsider the price on the basis of a public hearing if the licensees do not propose a change in the price.

Observation

(a) BERC is reluctant and inactive to take action against violators of BERC orders.

Recommendations

(a) The BERC will have to take action against the violators of the BERC order. Otherwise, action must be taken against BERC for violating the BERC Act.

Observation

(a) What is meant by “secret information” has not been defined in the BERC Act. The provision is ambiguous.

(b) Such provision also hinders and contradicts people’s right to information. It, in the long run, empowers the corrupt vested interests and weakens accountability and good governance.

Recommendations

(a) The term “secret information” should be defined in the BERC Act.

(b) When there is an allegation of subverting the interest of consumers then there should not be any reservation to disclose relevant information.

Observation

(a) BERC has been reluctant in imposing penalty for violation of the BERC Act.

Recommendations

(a) BERC should play a more pro-active role in imposing penalty for violation of the BERC Act.

Observation

(a) Penalty for stealing energy is made under the Electricity Act 1910.

Recommendations

(a) Since the Electricity Act 1910 has been repealed by the Electricity Act 2018, the BERC Act should be amended accordingly.

Observation

(a) BERC Act (S. 47) restricts any aggrieved person's right to seek legal and judicial assistance, which is discriminatory and unconstitutional.

Recommendations

(a) Appropriate amendment must be brought in this regard. BERC must take consumer's allegation into cognizance and go to court in support of the affected consumer.

Observation

(a) BERC has been found to have been quite inactive in resolving consumer disputes. Even though S. 54(5) and S. 54(6) of the BERC Act empowers BERC to get involved in resolving consumer disputes, BERC's silence has deprived consumers of their rights.

Recommendations

(a) BERC is accused of violating BERC Act by not resolving consumer disputes. Action must be taken against BERC under the BERC Act for this allegation.

(b) BERC has in the past drafted a consumer dispute settlement resolution regulation, but its non-implementation is the proof of BERC's inaction. Therefore, BERC must play an active role.

Observation

(a) BERC has power to make regulations under S. 59 of the BERC Act, It is either incapable of doing so or is restricted by the vested corners to do so.

Recommendations

(a) Failure to enact regulations is an inability and a violation of BERC Act. As a result, action must be taken against BERC for violating the Act.

Annex 2

A Decade of Energy Price Hike

Electricity

Price (Tk/Unit)

Consumer Category	Before 1 March 2010	27 February 2020	% Hike
Domestic (Unit/Month)			
1-50 (Lifeline)	2.50 (1-100 Unit)	3.75	50%
1-75		4.19	68%
76-200		5.72	82%-129%
201-300	3.15 (101-400 Units)	6.00	91%
301-400		6.34	101%
401-600	5.25 (400+ Units)	9.94	89%
600+		11.46	118%
Irrigation Pump	1.93	4.14	116%
Flat Rate			
Commercial & Office Space	5.30	10.30	94%
Small Industry	4.02	8.53	112%
Large Industry			
Medium Voltage (11kV)	3.80	8.55	125%
High Voltage (33kV)	2.39-2.53	8.45	Up to 254%
Very High Voltage (132kV)	2.34	8.36	257%
Very High Voltage (230kV)	bvB	8.31	
Average Bulk Price	2.37	5.17	118%
Average Retail Price	3.76	7.13	89.63%

Natural Gas

Price (Tk/Cubic Meter)

Consumer Category	Before 31 July 2009	1 July 2019	% Hike
Domestic			
Meter Based	3.68	12.60	242.39%
Single Burner	350	925	164.29%
Double Burner	400	975	143.75%
Others			
Power Plant	2.10	4.45	111.90%
Captive Power Plant	3.00	13.85	361.67%
Commercial	6.60	23.00	248.48%
CNG	16.75	43	156.72%
Fertilizer	1.80	4.45	147.22%
Industrial Boiler	4.19	10.70	155.37%
Average	4.34	9.96	129.49%

Fuel Oil

Price (Tk/Liter)

Fuel Oil	Until 23 January 2011	24 January 2011	4 January 2013	25 March 2016	25 April 2016	% Hike
Diesel/ Kerosene	42	44	68	68	65	54.76%
Furnace Oil	26	35	60	42	42	61.54%
Petrol	72	74	96	96	86	19.44%
Octane	75	77	99	99	89	18.67%

