

Reflections on SAARC Framework Agreement for Energy Cooperation (Electricity) Vis-a-vis India's "Guidelines on Cross Border Trade of Electricity"

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Abstracts: Despite the *Indo-Nepal Electric Power Trade, Cross Border Transmission and Grid Connectivity Agreement* of October 2014 and despite the *SAARC Framework Agreement on Energy Cooperation (Electricity)* of November 2014, the Government of India issued the discriminatory *Guidelines on Cross Border Trade of Electricity* on December 5, 2016. The Guidelines provide preferential *one-time* approval for all entities with 51% or more Indian ownership wishing to export electricity from Nepal to India. All other entities, the Guidelines stated, had to undergo the case-to-case basis. Historically, such unilateral actions have always been the *modus operandi* of India. Despite the regular regional cooperation preaching by India, Nepal will have to, like the Tanakpur and Laxmanpur barrages, BUT accept India's discriminatory December 2016 Guidelines as her *fait accompli*!

Keywords: Indo-Nepal Electric Power Trade, Cross Border Transmission and Grid Connectivity Agreement, SAARC Framework Agreement on Energy Cooperation (Electricity), Guidelines on Cross Border Trade of Electricity

SAARC Framework Agreement for Energy Cooperation (Electricity) – November 27, 2014

In the immediate aftermath of the October 21, 2014 *Indo-Nepal Electric Power Trade, Cross Border Transmission and Grid Connectivity Agreement*, the eight SAARC member countries (Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka) signed the *SAARC Framework Agreement for Energy Cooperation (Electricity)* in Kathmandu on November 27, 2014. The preamble of the SAARC Framework Agreement stated:

*Recognizing the importance of electricity in promoting economic growth and improving the quality of life; Realizing the common benefits of **cross border electricity exchanges and trade among the SAARC Member States** leading to optimal utilization of regional electricity generating resources, enhanced grid security, and electricity trade arising from diversity in peak demand and seasonal variations;*

The SAARC Framework Agreement explained the concepts of buying and selling, transmission access and the facilitation of cross-border electricity trading. The related articles of the Framework Agreement are:

Article 1

Buying and Selling Entities

Buying and Selling Entities means any authorized public or private power producer, power utility, trading company, transmission utility, distribution company, or any other institution established and registered under the laws of any one of the Member States having permission of buying and selling of electricity within and outside the country in which it is registered.

Article 12

Transmission Access

Member States shall, for the purpose of cross-border

*trade, enable **non-discriminatory access** to the respective transmission grids as per the applicable laws, rules, regulations and applicable inter-governmental bilateral trade agreements.*

Article 13

Facilitating Buying and Selling Entities

*Member States shall enable Buying and Selling Entities to **engage in cross border electricity trading** subject to the laws and regulations of the concerned Member States.*

On paper, the SAARC Framework Agreement provided non-discriminatory access to Member States while engaging in cross border trade of electricity. However, access is discriminatory in practice as evidenced by India's 'one-time and case to case basis' approvals outlined in the Guidelines.

India's Guidelines on Cross Border Trade of Electricity – December 5, 2016

Despite the SAARC Framework Agreement on Energy Cooperation (*Electricity*) of November 2014, India suffered no qualms in issuing the "*Guidelines on Cross Border Trade of Electricity*" on December 5, 2016. The principal argument of the Government of India was that electricity trade involved "**issues of strategic, national and economic importance**". The following are some of the more salient clauses of that Guideline:

5.2.1 *Considering that electricity trade shall be involving **issues of strategic, national and economic importance**, participating entities (Participating Entity(ies)) complying with following conditions shall be eligible to participate in cross border trade of electricity after obtaining one-time approval from the Designated Authority:*

a) *Imports of electricity by Indian entities from*

Generation projects located outside India and owned or funded by Government of India or by Indian Public Sector Units or by private companies with 51% or more Indian entity (entities) ownership;

- b) *Import of electricity by Indian entities from projects having 100% equity by Indian entity and/or the Government/Government owned or controlled company(ies) of neighbouring country.*
- c) *Import of electricity by Indian entities from licensed traders of neighbouring countries having more than 51% Indian entity(ies) ownership.....*

5.2.2 Any other participating entity shall be eligible to participate in cross border trade of electricity after obtaining approval of the Designated Authority on case to case basis.

The discriminatory element in the Guideline is that, while all private companies with 51% or more Indian ownership are granted a *one-time approval* for import of electricity into India, all other entities participating in cross border trade of electricity are dealt on case to case basis. In the case of Nepal, such '**one time and case to case basis**' clearly sends the message that all developers with 51% or more Indian ownership developing hydropower in Nepal will have unhindered access to markets in India. But for all other participating entities, the '*case to case basis*' will invariably translate into that bureaucratic red-tapism of India's unfathomable world of *babudom!* The Guideline is clearly targeted to the swarms of financially muscular Chinese companies working in Nepal's infrastructure including hydropower. The Guidelines send the loud and clear message: '*Achtung! You are trespassing over private property!*'

Bangladesh, Bhutan and Nepal – On Cross Border Trade of Electricity with India

Clearly, the Government of India has done thorough homework on the Guidelines. The SAARC member countries like Afghanistan, Maldives and Sri Lanka have no cross border trade of electricity with India. They will, thus, not raise the issue of India's Guidelines. Neither will the energy hungry Pakistan that, despite the perpetual loggerheads with India, plans to import 500 MW of Indian power. Bangladesh, Bhutan and Nepal do have cross border trade of electricity with India. The following is a brief note about India's cross border trade of electricity with those three countries:

Bangladesh: Though Bangladesh has plenty of gas reserves⁴, she shrewdly decided to use this non-renewable energy resource judiciously. A number of large American multinationals like Unocal (now Chevron) did put pressure on Bangladesh in the late 1990s to permit them to exploit her gas reserves for export purposes, primarily to India. But Bangladesh stuck to her decision and wisely decided to use this non-renewable resource for

her own domestic purpose only. Bangladesh presently imports² 600 MW of electricity from India and she is not expected to be an immediate exporter of electricity. But Bangladesh does have her own strategic plans. She is planning to invest in the development of the 1,110 MW Sunkoshi II and 536 MW Sunkoshi III hydropower projects³ in Nepal. Hence, though India's Guidelines will not impact Bangladesh immediately, it will on the longer term. With plans to invest in Nepal's 1,646 MW Sunkoshi hydropower projects, Bangladesh did in April 2017 officially request India to '*facilitate*' the Bangladesh-Nepal electricity trade corridor over India's 18 km stretch. This has placed India in a delicate predicament because, like in Bhutan, India wants to curtail third party players in Nepal's hydropower. India has, so far, remained ominously silent on this request.

Bhutan: In contrast, Bhutan has always been a net exporter of electricity to India ever since India constructed the 336 MW Chukha in 1988 and the 1,020 MW Tala in 2006. Bhutan presently exports around 1,500 MW of hydropower to India totaling 5,585 million units during the fiscal year 2016/'017. In fact, according to India's Central Electricity Authority, India has, for the first time, turned around from the net importer to net exporter of electricity by selling 5,798 million units to Nepal, Bangladesh and Myanmar in 2016/'017. To be noted is that India buys Bhutanese power at around ICRs 2/- per unit and sells to power hungry Nepal and Bangladesh at an average rate of ICRs 5/- per unit. Thus, with Bhutan's lucrative hydropower, India wants to continue maintaining her paramount position by allowing no third country developers in Bhutan⁴. When Bhutan did attempt in 2009 to open its hydropower development to third party players, she had to quickly back-track due to India's ire. Bhutan's hydropower development is entirely in the hands of Indian entities. Hence, the Guidelines will have no impact on Bhutan. Citing Bhutan's impressive attainment of '*gross national happiness*' through hydropower development, India has been relentlessly coercing Nepal to follow the Bhutan Model in situ – that is, like Bhutan no third party players in Nepal's hydropower development⁵!

Nepal: Among the SAARC member countries, Nepal and Nepal only will have to face the wrath of India's Guidelines. Nepal, like Bhutan, is hydropower rich but also India-locked. With bitter experiences on the one-sided bilateral Indo-Nepal treaties of Kosi (1954) and Gandak (1959), Nepal, from the early 1960s, involved third party players in her efforts to tap her huge 83,000 MW hydropower potential. But large hydropower projects invariably require large markets and for Nepal this meant India and India only. India thus had the advantage of monopoly over market. When the World Bank President McNamara was ready in early 1980s to move ahead with the 10,800 MW Karnali Chisapani, India for '*strategic, national and economic*' reasons

demurred. The multipurpose project was stalled to be 're-activated' later and some responsible Indians⁶ now openly admit that that was a gross mistake. Similarly, the World Bank financed 402 MW Arun III had to be 'down-sized' to 201 MW when India, after her successful 1989/'090 blockade on Nepal, evinced no interest at all on Arun III's 201 MW of exportable power. But when Satluj Jal Vidhyut Nigam, a public sector undertaking of the Government of India, bagged the 402 MW Arun III project in 2008, this export-oriented project was immediately 'right-sized' to 900 MW without any problem!

After a protracted four year hiatus, Nepal's newly created Energy Ministry finally heaved a sigh of relief when the Indo-Nepal agreement on **Electric Power Trade, Cross Border Transmission and Grid Connectivity** was initialed on October 21, 2014. The **SAARC Framework Agreement on Energy Cooperation (Electricity)** immediately followed on November 27, 2014. With heavy load shedding despite an equally heavy 400 MW of power import from India and with the Indo-Nepal Power Trade agreement safely under her belt, Nepal decided to take the great leap forward. In February 2016, she launched her ambitious 10,000 MW of hydropower in 10 years plan under the flagship, Electricity Development Decade 2016/026. This Electricity Development Decade 2016/'026 envisaged the commissioning of 133 hydropower projects⁷ totaling 9,935 MW within a decade: *2,587 MW of 117 run-of-river projects, 1,975 MW of 5 peaking run-of-river projects and 5,373 MW of 11 storage projects.* Just ten months after Nepal launched her flagship, India, citing electricity trade involved '**issues of strategic, national and economic importance**', put the spanner on Nepal's great leap forward by issuing her **Guidelines on Cross Border Trade of Electricity**. Many believe this '*strategic, national and economic*' Guideline of Sino-phobic India is meant to deter the swarms of Chinese companies working in Nepal's infrastructure including hydropower from Nepal's 10,000 MW in 10 years.

Yet an undeterred Nepal in her 2017/'018 budget hiked the 10,000 MW in 10 years to the more handsome figure of 17,000 MW in 7 years through the '**Brighter Nepal – Nepal ko Pani, Janata ko Lagani** (*Nepal's Water, People's Investment*)' campaign. Essentially, the government is calling for people's investment in large storage projects to store Nepal's water for augmenting the irrigational requirements of downstream users in India. Of course, despite the lapse of 22 years since the initialing of 1996 Mahakali Treaty, Nepal and India have yet to come to an understanding on what '*downstream benefits*' actually mean on the 6,480 MW Pancheshwar multipurpose project!

Whither SAARC Regional Cooperation?

In 2017, the Prime Ministers of both Bangladesh and

Nepal visited India. After the State Visit of Prime Minister Sheikh Hasina of Bangladesh to India from April 7-10, 2017, the following is the India-Bangladesh Joint Statement⁸ of April 8, 2017 on **Energising the partnership in Power Sector**:

28. The two Prime Ministers emphasized the advantages of sub-regional cooperation in the areas of power, water resources, trade, transit and connectivity for mutual benefit. They welcomed the fact that a Trilateral Memorandum of Understanding between Bangladesh, Bhutan and India for Cooperation in the field of Hydroelectric Power had been worked out and noted that it would be signed at an occasion when leaders of all three countries would be present together. Prime Minister Hasina requested Prime Minister Modi for facilitation of cross-border power sector cooperation with Nepal.

For Nepal, there are two noteworthy elements in this joint statement on power sector. The first is the '*Trilateral Memorandum of Understanding between Bangladesh, Bhutan and India for Cooperation in the field of Hydroelectric Power*'. Nepal is conveniently detached from this cooperation in the hydropower field. It is likely that India wanted only the Brahmaputra riparian and ostracized Nepal as the Ganges riparian. Researchers are now enlightened on why India diplomatically sidelined USAID's Four Border Project (Bangladesh, Bhutan, India and Nepal) on cross-border electricity trading under the South Asia Regional Initiative/Energy Integration (SARI/EI) program. The second, a far more important joint statement, is '*Prime Minister Hasina requested Prime Minister Modi for facilitation of cross-border power sector cooperation with Nepal.*' The eastern part of Nepal and the north-western part of Bangladesh is separated by a mere 18 km stretch of Indian territories in the so-called chicken-neck. Prime Minister Hasina has, in keeping with Bangladesh's strategic investment in Nepal's hydropower, rightly raised the '*cross-border facilitation*' between Bangladesh and Nepal through India. Despite Bangladesh's request, India has remained ominously silent.

After the ushering in of multiparty democratic dispensation in 1990, all Prime Ministers of Nepal, irrespective of whether their tenures are for six or nine months, invariably make their pilgrimages to Delhi. Sher Bahadur Deuba, the four-time Prime Minister with the cobbled mandate to conduct the first elections of federal republic Nepal, made such a visit to India on August 23-27, 2017. Of the 46 items mentioned in the Joint Statement⁹ of the Prime Ministers, there were six items relating to *Harnessing Water Resources and Expanding Energy Cooperation*. While Pancheshwar, Saptakoshi, Arun III, Upper Karnali, DPR of the controversial Sill Level of Tanakpur barrages and even the preparation of a Master Plan for the cross-border interconnection for the

period until 2035 appeared in the joint statement, there was no mention, none at all, of India's discriminatory December 2016 Guidelines. Prime Minister Deuba apparently dreaded to raise it. However, Prime Minister Deuba must have been pleased with himself with the inclusion of '... operationalize all aspects of the Power Trade Agreement signed in 2014' in the joint statement. Such harnessing of Nepal's water resources and expanding energy cooperation is how India envisages and choreographs regional cooperation – that is for India, by India and India only! When the ignorance is bliss Prime Minister Deuba fails to pursue Prime Minister Hasina's April 2017 initiated request to India for the 'facilitation' of Bangladesh-Nepal interconnection for electricity trading, will Nepal's 17,000 MW in 7 years have access to regional markets other than India?

Summing Up: India's December 5, 2016 Guidelines, Nepal's Fait Accompli!

To sum up, despite the Indo-Nepal Power Trade Agreement of October 2014 and despite the SAARC Framework Agreement on Energy Cooperation (Electricity) of November 2014, the Government of India, citing electricity trade involved '**issues of strategic, national and economic importance**', issued the discriminatory "*Guidelines on Cross Border Trade of Electricity*" on December 5, 2016. This has historically been the modus operandi of the Government of India. Nepal, despite being a sovereign independent nation, has always been a mere spectator in the past to such *modus operandi* like the construction of the barrages at Tanakpur, Laxmanpur or even the tiny Mahali Sagar. Hence, like these barrages and Sagars, Nepal will have to BUT unfortunately accept the December 5, 2016 "*Guidelines on Cross Border Trade of Electricity*" as her *fait accompli*!

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Footnotes

1. Bangladesh has proven gas reserves of 9.2 trillion cubic feet (tcf) and a possible reserve of 22.2 tcf.
2. This import is through the 400 kV interconnections at: Baharampur (India) - Bheramara (Bangladesh) and Surjyamaninagar (Tripura/India) - (Comilla/Bangladesh).
3. Kathmandu Post, Money, December 11, 2016. In fact, Nepal's media reported that though the Nepalese Commerce Minister signed the agreement with his Bangladesh counterpart, Nepal's Energy Ministry has evinced no interests so far.
4. *The Times of India, New Delhi, December 25, 2009 reported "3rd-party players in Bhutan's hydel policy worries India – may deny India its paramount position in Bhutan's lucrative energy market."*
5. A section of the Nepalese intelligentsia is lobbying hard for Nepal to follow the Bhutan Model.
6. Jagat Mehta, India's ex-Foreign Secretary in *India and Nepal Relations: A Victim of Politics; India-Nepal Relations – The Challenge Ahead*. Observer Research Foundation 2004. Rupa& Co. New Delhi.
7. Ministry of Energy, Government of Nepal's white paper of February 2016 on *Electricity Development Decade 2016/'026*.
8. Joint Statement issued by Ministry of External Affairs, Government of India, April 8, 2017.
9. Joint Statement issued by Ministry of External Affairs, Government of India, August 24, 2017.