

:: TAMIL NADU ELECTRICITY BOARD ::
(Administrative Branch)

From:

Fr. P. V. RAJAH, B.E., F.I.E.
Chief Engineer/Personnel
144, Anna Salai,
Chennai - 600 002.

To

The General Secretary,
(15 Unions)
TNEB Engineers' Sangam

Letter No. 046299/452/G43/G431/2009-8 dated: 4.11.2009.

Sir

Sub: Restructuring of TNEB - Abstract of
Employee Transfer and Funding Mechanism
of Unfunded pension liability - Employee
Unions and Pensioner Unions opinion
Called for - Req.

1. I enclose herewith the note on employees transfer and funding mechanism of unfunded pension liability for your union's opinion. I request you to send the opinion within 2 days.

2. I request you to acknowledge receipt of this letter alongwith with the enclosures.

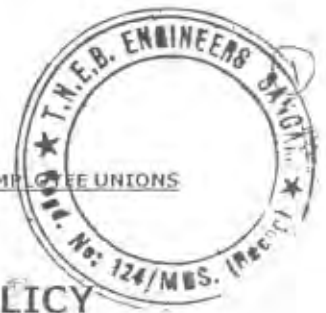


Yours faithfully

(I.B.A. KANIKATRAI)
ASST. PERSONNEL OFFICER/
TAMIL DEVELOPMENT
for CHIEF ENGINEER/PERSONNEL

Encl: As above

1 K/4.11.09
TMP/G43/G431/LET2009



STAFF TRANSFER AND TRANSFER POLICY

1. Background

The Electricity Act, 2003 ("the Act" or "EA 2003") enacted with effect from June 10, 2003 requires the State Governments to initiate major changes in the Industry Structure and Operations of the State Power Sector. EA 2003 seeks to provide a much-needed impetus to Power Sector Reforms in the country by incorporating provisions that would result in a much more competitive Power Sector. Sections 131 to 134 of the EA 2003 mandate restructuring of the State Electricity Boards into functional entities and corporatisation of the same. Further Section 41 Proviso 3 of the Act further mandates the unbundling or separation of the transmission business into transmission and power trading or bulk supply. The Act provides for the reorganization of the State Electricity Boards into Government Company or companies in accordance with a Transfer Scheme to be notified by the State Government.

In order to meet the requirements of the Electricity Act 2003, the Government of Tamil Nadu (GoTN) and the Tamil Nadu Electricity Board (TNEB) proposes to restructure the State Power Sector. GoTN in concurrence with the Act requirements, has accorded in-principle approval to the reorganisation of the TNEB, by the establishment of a Holding Company, viz., TNEB Limited and two subsidiary companies, namely the Tamil Nadu Transmission Corporation Limited (TANTRANSCO) and Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO), with the stipulation that the aforesaid companies shall be fully owned by the State Government.

As per the requirements of creation of new companies stated above, the staff transfer should be simultaneous with the formation and registration of the new company/companies. Based on the requirements of restructuring process as well as considering the interests of the staff of TNEB, we have listed out the major issues that must be addressed as part of the Transfer Policy and Plan. The objective of such transfer policies is to –

- 1) To meet the immediate needs of restructuring;
- 2) To safeguard the interest of the employees of TNEB;
- 3) To enable the new organisations to stabilise their operations in a more efficient way after they are formed; and
- 4) To address the long term needs of the organisations.

2. Transfer Policies



2

The principles on the basis of which the transfer policies under the transfer scheme are proposed are outlined as under:

• **Covered under transfer scheme notification**

1. The Transfer of personnel shall be subject to the terms and conditions contained in Section 133 of the Act.
2. All employees will be employees of TNEB LIMITED until they are formally transferred to one of the new companies.
3. The State Government shall in consultation with the TANGEDCO, TANTRANSCO and the Board finalize the transfer to and permanent absorption of the Personnel taking into account the suitability, ability and experience of the personnel, number and nature of the vacancies and other relevant factors and issue appropriate orders for such permanent absorption within the provisional period of the transfer scheme which is proposed to be one year.
4. Until such permanent transfer an employee will be sent on deputation to any one of the new companies. (preferably – TNEB LIMITED)
5. Any employee can be automatically allocated to the same position in one of the new companies (i.e. as is where is basis) if his/ her present job function is shifted, that is, transferred to the successor entities. This will be the primary basis for determination as to where an employee will be stationed and to which company he/ she would be transferred.
 - a. Thus all personnel working in Generating Stations and associated functions shall get transferred to TANGEDCO.
 - b. All personnel working in Substations of 66kV and above shall stand transferred to TANTRANSCO.
 - c. All personnel working in Substations of 33kV and below shall stand transferred to TANGEDCO.
 - d. All personnel attending to transmission systems of 66kV and above shall stand transferred to TANTRANSCO.
 - e. All personnel attending to distribution systems of 33kV and below shall stand transferred to TANGEDCO.
 - f. All personnel assigned to work in checking and maintaining Relays and Communication systems prevails in transmission system of 66 kV and above shall stand transferred to TANTRANSCO.
 - g. Personnel in Circles, Divisions and Sub-Divisions working in respect of Distribution related equipment and systems shall stand transferred to TANGEDCO.
 - h. Personnel in Circles, Divisions and Sub-Divisions working in respect of Transmission related equipment and systems shall stand transferred to TANTRANSCO.



- i. Personnel in HO and various other offices presently allocated to Generation and Distribution related work shall be transferred to TANGEDCO and those allocated to Transmission related work shall be transferred to TANTRANSCO.
6. Where there are urgent needs for filling up positions, but no people available within, the transfers to such positions will be given priority, irrespective of where the employee presently works. Managements have authority to implement such transfers.
 - a. In all such cases, the positions would be advertised within all the new companies and anyone having the necessary qualifications and experience can apply for the position.
 - b. The management may also choose to advertise for the position outside in recognised newspapers and other media.
 - c. There may be more than one application for the position from within all the companies of the erstwhile TNEB.
 - d. The right person would be selected based on an interview by the 'Interview Committee' appointed by the Management for the purpose.
 - e. In case there are no internal applicants for the advertised position and/or no insider is found to be fitting the requirements of the post, the management of the company can induct an outsider for the post.
7. In case there are no applications for a given post from within the new companies, the management can also decide to transfer a person of their choice to that post within the other companies.
 - a. Care would be taken to ensure that this should not affect the employee negatively in terms of growth opportunities and emoluments.
8. The management has the prerogative to decide on where to post an employee, based on the needs of the organisation. However, care should be taken to ensure that this is done with minimum negative impact on the employee/s and their families.
9. On the Date of Transfer notified by the State Government for transfer of the Undertakings, the personnel of the Board rendering services to more than one Undertaking or otherwise the services of common nature shall continue to render such services in the same manner as before till further orders of the Chairman of the Board.
10. The State Government shall, in consultation with TANGEDCO, TANTRANSCO and the Board, constitute a "Employee Transfer Committee" as the State Government may consider appropriate to
 - a. receive representations from the Personnel in regard to their transfer and absorption in a successor entities of TNEB and
 - b. to make recommendation on such transfer and absorption, within such time as State Government may specify for the purpose.
11. A "Counselling cum Grievance Handling Cell" will be constituted under "Employee Transfer Committee" at TNEB LIMITED with senior officers



(7)

who have good credentials and acceptance among employees as its members.

12. The State Government shall take a decision on the transfer and permanent absorption of the Personnel in successor entities after considering the recommendation of the Committee appointed for the purpose and shall issue orders for such transfer and permanent absorption of the Personnel.
13. Locational shifts will be based on critical needs of the organization and such transfers will be discussed with the concerned employees prior to such transfer and they will be explained about the need for such transfer.
14. Managements of the companies have been asked to prepare a new HR Policy Handbook taking into account the new requirements. The Policy would replace all the older policies, unless otherwise stated. However, until such a Policy Handbook is issued, the existing policies shall be considered as applicable and will not in any way affect the employees.
15. Notwithstanding the provisional nature of deputation of personnel to the new companies, all deputed personnel shall discharge the duties assigned to them from time to time by the managements faithfully.
16. The companies have the power to exercise administrative and disciplinary control on all such deputed personnel.
17. Upon the finalization and issue of orders, the personnel shall form part of the services of the successor entities concerned, in the post, scale of pay or seniority in accordance with the orders that may be issued for this purpose.
18. The terms and conditions of service of the personnel shall not in any way be less favourable in monetary terms than what was applicable prior to such transfer.
19. Continuity of service and retirement age will not get altered by such transfer, except where the managements may want to extend the service of the employee concerned.
20. Subject to the provisions of the Act and this Scheme, the successor entities shall be entitled to modify or frame new regulations governing the conditions of service of personnel transferred under this Scheme, but the rank, scale of pay, salary, allowances and other pecuniary benefits including terminal benefits after the effective date of transfer shall not in any way be inferior to those applicable to them immediately before the transfer.
21. In respect of all statutory and other schemes and employment related matters including the provident fund, gratuity fund, pension and any other superannuation fund or any other fund created or existing for the benefit of the personnel, the relevant successor entity shall stand substituted for the Board for all intent and purposes and all the rights,



powers and obligations of the Board and the services of the personnel shall be treated as having been continuous for the purpose of the above.

22. The State Government shall notify appropriate arrangements in regard to the funding of the pension funds and other personnel related funds to the extent they are encumbered on the date of the transfer of the Personnel from the Board including for the due payment of the amounts to personnel who retire after the date of the transfer, by the respective transferees to which the personnel are transferred and till such time the Transferees and the Board shall be jointly and severally responsible to duly make such payments to the Personnel.
23. The State Government shall notify appropriate arrangements in regard to the funding and due payment of the terminal benefits to the existing pensioners of the Board as on the date of the transfer and till such time the Transferees and the Board shall be jointly and severally responsible to duly make such payments to the existing pensioner Personnel.

For the purpose of this clause the term -

- a. **"Existing Pensioner"** means all the persons eligible for the pension as on the date of the transfer from the Board and shall include family members of the personnel as per the applicable scheme, and
 - b. **"Terminal Benefits"** means the TNEB's employee-related liabilities, including payments of pension, gratuity, leave encashment, and general provident fund, and any other retirement benefits and other applicable benefits including the right to have the appropriate revisions in the above benefits consistent with the practice that were prevalent in the Board.
24. All proceedings including disciplinary proceedings pending against the personnel prior to the date of the transfer from the Board to the Transferee or from such successor entity transfer to another successor entity, as the case may be, or which may relate to misconduct, lapses or acts of commission or omission committed before the date of the transfer, shall not abate and may be continued.
 25. The personnel transferred shall be deemed to have entered into an agreement with the Successor entity concerned to repay loans, advances and other sums due and perform obligations undertaken by them to the Board which remain outstanding as on the date of the transfer in the same manner on the same terms and conditions as contained in the arrangement with the Board.
 26. Nothing contained in this Scheme shall apply to personnel of the State Government or other organization on deputation to Board as on the date of the transfer but such personnel shall continue on deputation



11

to the concerned successor entity to whose services they are assigned on as is where is basis till further orders.

27. Any orders passed by courts on pending cases will be automatically applicable to the successor companies.

3. Classifications and transfer of property, rights, liabilities and proceedings provisional in the first instance.

1. The classification and transfer of Undertakings including personnel under this Scheme, unless otherwise specified in any order made by the State Government, shall be provisional for a period of one year from the respective date of transfer or any other date as specified by State Government;
2. At any time within a period of one year from the respective date of the transfer or any other date as extended by State Government, the State Government may by order to be notified amend, vary, modify, add, delete or otherwise change the terms and conditions of the transfer including items included in the transfer, and transfer the functions or such properties, interests, rights, liabilities, personnel and proceedings forming part of an Undertaking of a Transferee to that of an other Transferee or the Board or to the State Government in such manner and on such terms and conditions as the State Government may consider appropriate in terms of the provisions of the Act.
3. On the expiry of the period of twelve months from the date of the transfer or any other date as extended by State Government and subject to any directions given by the State Government, the transfer of undertakings, properties, interests, rights, liabilities, personnel and proceedings made in accordance with the Scheme shall become final and the transfers under this Transfer Scheme shall stand completed for all intent and purposes.



FUNDING MECHANISM OF UNFUNDED PENSION LIABILITY

1 Background

Among the unfunded liabilities, the liability arising out of inadequate provisioning of the requirements to meet retirement benefits of the employees needs specific attention, as there is a need to provide "assurance" to the current / past employees of TNEB regarding protection of their future needs. Further, protecting such terminal benefits is also a statutory obligation under the Companies Act. Further, as part of the Reforms process it is important to ensure protection of the terminal benefits of the past and current employees of TNEB and propose an appropriate treatment for handling the issue related to the liabilities arising out of the terminal benefits and inclusion of the same in the Transfer Scheme to be notified as part of the restructuring process.

The estimation of the liabilities and cash outflows need to be based on detailed information, by adopting necessary scientific methodologies, which are carried out under "Actuarial Analysis".

Currently, consultants have undertaken a provisional estimation of the pension liability without any certified actuarial valuation technique. Therefore, the value might undergo a change once the actuarial valuation is undertaken at the time of final transfer scheme.

2 Strategy for managing the terminal liabilities

The amount of liability and cash flows that need to be recognized and managed is substantial. Further, the point-of-servicing of these liabilities is to be considering the interest of the employees as well as of the successor entities. The strategy therefore needs to consider the magnitude of servicing requirement as well as the varied nature of servicing requirement, in the backdrop of legal requirements.

2.1 Ownership of the Terminal Liabilities:

Liabilities distributed among the sector entities, namely TANGEDCO and TANTRANSCO:

The liabilities on account of retirement benefits could be considered for retention



15

With the sector entities, namely with TANGEDCO and / or TANTRANSCO. Based on the allocation of employees to the successor entities, the liabilities may be allocated in the employee ratio.

The costs associated with the liabilities may be considered as a pass through in tariffs by the sector entities. As the costs and tariffs in the sector are subject to Regulatory regime, the allowance of the costs for recovery through tariff may be subject to regulatory risks;

Liability of pensioners to be retained with holding company and of existing employees with TANGEDCO and TANTRANSCO in the ratio of their employees:

One of the other options is that the un-funded liabilities on account of the existing employees to be retained by the successor entities and for the retired personnel, the same is to be retained with the TNEB holding company. The retention of the above liabilities needs to be viewed on the following grounds:

- Any deficit can be recovered by passing the same to its subsidiaries i.e. TANGEDCO and TANTRANSCO who would in turn recover the same through hike in tariff or subsidy support from Government;

2.2 Options for recognising the liabilities:

While, the future funding of the retirement liabilities would be met from the contributions made by the employer, and are expected to be parked with desired trust / institution, the options for recognizing the past liabilities needs to be explored. Since the front end funding of the liabilities is not feasible, other available / feasible option to recognise the liability is through issue of financial instruments (Bonds) in form of debt by the successor entity(ies) to the respective trust(s).

The financial instrument and its features are discussed below,

Structure of bonds for servicing the liability

The bonds contemplated need to have the following structure:

- The bond would carry an irrevocable and unconditional Government Guarantee for servicing the bonds. The Government may consider waiver of guarantee commission on the quantum of the bonds;
- The instruments would be redeemed over a long maturity period and would be structured to meet the annual payment requirement by the trust;
- It's proposed that this liability should be broken up into 8-10 bonds of maturity from 15-30 years and staggered repayment schedules.

2.3 Options for Servicing the Liabilities



The un-funded liabilities, recognised through the financial instrument (bonds) need to be serviced on a regular basis (monthly). The options for raising resources for the payout are as follows.

- a. Pass through of the actual cash outflow on account of servicing the past unfunded liabilities through the sector costs, to be recovered through tariffs, subject to regulatory approval. This same may result in tariff increases (the quantum of which would depend on extent of neutralising of the increased costs possible through efficiency improvements)
- b. In case the consumers cannot absorb the increased cost, GoTN may have to provide necessary revenue subsidy to make good the cost-revenue gap.

2.4 Operational structures for management of liability and cash flows

Options for issuance of financial instruments (bonds) for operationalisation

The options available for issuance of financial instruments for recognition of the liabilities are:

- (a) Issuance of bonds to a single master trust;
- (b) Issuance of bonds to trusts of respective sector entities;
- (c) Issuance of bonds to trusts and create a pension fund with LIC (With role for TNEBL);
- (d) Issuance of bonds to trusts and create a pension fund with LIC (Without any role for TNEBL);

In order to establish a payment mechanism which would enable the employees receive their payments from a single agency (trust of the company from which he retires), TNEB needs to establish a mechanism for transfer of amounts to the trust of the respective companies proportionate to their share, for which the following four funding options are available:

(a) Issuance of bonds to a Single Master Trust

As per this option, TNEB Limited would issue bonds (under GoTN guarantee) to TNEB trust for the entire terminal liabilities identified as accumulated past unfunded liability (till transfer date) on account of pensioners and current employees. TNEB trust would then service the liabilities of the retired personnel and the employees of the successor entities as and when they retire by transferring a corresponding amount to the trusts of the successor entities including servicing the liabilities for pensioners. For the servicing of liabilities in the post transfer period each successor companies would provide contribution to their respective trusts.

(b) Issuance of bonds to trusts of respective sector entities.

Under this option, TNEB Limited would issue bonds to the respective trusts of



19

the successor entities. These trusts would then pay the employee liabilities as and when due, from the debt service received on these bonds from successor entities from their revenue operations. Also, the servicing of the retired pensioners will be carried out by the trust of the successor entities. Retired Personnel would be allocated a trust of respective successor entities for collection of their retirement benefits.

(c) Issuance of bonds to trusts and create a pension fund with LIC. (With role of TNEB LIMITED)

Under this option, the terminal liabilities are bifurcated into two parts; Pension liability accrued till the date of unbundling of TNEB and Estimated Pension Liabilities to be discharged by successor entities for employees under service. In the given case, a bond is issued to the trust to discharge the pension liabilities estimated prior to unbundling of TNEB and the pension liabilities post unbundling will be serviced by LIC / any other recognised financial institution through purchase of annuities by the successor entities by way of contribution towards the fund every year. In the given case, the liability towards retired pensioners will be assigned to TNEB Limited whereas existing employee's pension liability will be assigned to TANGEDCO and TANTRANSCO. The bond issued by the TNEB Limited to the trust related to the liabilities towards retired pensioners will be financed by TANGEDCO and TANTRANSCO through the contribution every year. The LIC pension Fund would then pay the employee liabilities as and when due from the debt service received on these bonds from Trust.

(d) Issuance of bonds to trusts and create a pension fund with LIC. (Without any role of TNEB LIMITED)

The given option is similar to the above option whereby the terminal liabilities are bifurcated into two parts; Pension liability accrued till the date of unbundling of TNEB and Estimated Pension Liabilities to be discharged by successor entities for employees under service. In the given case, the total pension liabilities will be assigned to TANGEDCO and TANTRANSCO in the existing employee ratio. TNEB LIMITED will have no role to play in the given model.

In the given case, a bond is issued to the trust to discharge the pension liabilities estimated prior to unbundling of TNEB and the pension liabilities post unbundling will be serviced by LIC through purchase of annuities by the successor entities by way of contribution towards the fund every year. Also the bond related to the liabilities for retired pensioners will be financed by TANGEDCO and TANTRANSCO through the contribution every year. The LIC pension Fund would then pay the employee liabilities as and when due from the debt service received on these bonds from Trust.



2.5 Institutional Arrangement – Formation of Trusts

The trusts that are required to be put in place for smooth operation follows:

a. At TNEB Limited Level

- Master Trust for un-funded pension and gratuity;
- The roles of the trust would be:
 1. To realise the funds required as per the structure, either from the sector costs, if approved by the Regulator or from Government as the case may be and disburse the funds to the respective trusts of entities for meeting cash out flows for servicing.
 2. Create necessary corpus from any surplus so as to fund the un-funded amounts over a period of time.

b. At Sector entity Level

- Individual Trust for un-funded pension and gratuity;
- The roles of the trust would be:
 1. to collect funds towards the past liabilities from the successor entities for servicing the retirement benefits;
 2. to operate the trust with the current contributions made by employees / companies and invest surplus funds to meet future liabilities towards the retirement benefits;
 3. to maintain separate accounts for the existing and future employees so as to determine the retirement benefits as per their terms of service.

3 Government Guarantee for past liability servicing

The bond would carry an irrevocable and unconditional Government Guarantee for servicing the bonds. The Government should consider waiver of guarantee commission on the quantum of the bonds. In the event of devolution of Government of Tamil Nadu Guarantee, there could be a mechanism by which the retirement benefits payment be made from the State Government treasury in case of any shortfall of fund in the trust(s). However, it is subject to the approval of the government.

4. Similar to existing system of managing terminal liabilities

The terminal liabilities may also be managed from cash flow of day to day business operation by the respective companies similar to existing system of managing the pension liabilities. Based on the allocation of employees to the successor entities, the liabilities may be allocated in the employee ratio.