



**STANDING COMMITTEE ON JUSTICE, LAW AND
HUMAN RIGHTS**

**REPORT ON THE ELECTRICITY BILL 2017
(BILL NO. 7 OF 2017)**



**PARLIAMENT OF THE REPUBLIC OF FIJI
Parliamentary Paper No. 57 of 2017**

March 2017

Published and Printed by the Department of Legislature, Parliament House, SUVA

TABLE OF CONTENTS

List of Acronyms	
Chair's Foreword	
1.0 INTRODUCTION.....	1
1.1 Background	1
1.2 Objectives of the Bill	1
1.3 Procedure and Program.....	2
1.4 Committee Members.....	2
2.0 <i>ELECTRICITY BILL</i> 2017	3
2.1 Introduction.....	3
2.2 Written and oral submissions received	3
2.3 Summary of submissions	3
3.0 COMMITTEES' OBSERVATION/DELIBERATION AND ANALYSIS OF THE BILL.....	4
3.1 Impact of the Bill	4
3.2 Analysis of the Bill – Reading through the Bill, Clause by Clause.....	4
3.3 Consideration of other jurisdictions.....	4
3.4 Analysis of the Bill - Other issues raised at the Committee	6
3.5 Outcome of deliberation	9
3.6 Gender analysis.....	16
4.0 CONCLUSION	17
APPENDIX A	
COPIES OF SUBMISSIONS RECEIVED BY THE STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS.....	
APPENDIX B	
VERBATIM REPORT	

LIST OF ACRONYMS

DNTMS	-	Department of National Trade Measurements and Standards
DOE	-	Department of Energy
FCC	-	Fiji Commerce Commission
FEA	-	Fiji Electricity Authority
MITT	-	Ministry of Industry, Trade and Tourism, Fiji
MOIT	-	Ministry of Infrastructure and Transport, Fiji
MPE	-	Ministry of Public Enterprises, Fiji

CHAIR'S FOREWORD

Electricity has become not only a want but a need in the modern domestic and commercial world. Whilst it is highly desirable to have electricity connected to each and every home and business in Fiji, the generation and supply of electricity has its challenges and limitations.

The Fiji Electricity Authority (FEA) has been the sole state-owned entity responsible for managing the electricity industry in Fiji. This monopolistic system of managing the industry, although effective, does lack certain development traits. Thus the Fijian Government through the Ministry of Public Enterprises (MPE) intends to carry out divestment of the Fiji Electricity Authority and to corporatise it and create a company. This then could ensure that development in all areas of the electricity industry could occur.

This proposed divestment and development of the electricity industry however would then need to be carefully monitored and this has led to the introduction of the *Electricity Bill 2017*. The *Electricity Bill* is a piece of legislation introduced by the Fijian Government that would introduce an independent Regulatory authority that takes all the regulatory functions, thus ensuring proper check on the industry is achieved

The Bill was referred to the Standing Committee on Justice, Law and Human Rights by this August House for review and scrutiny. Apart from its own deliberation on the Bill, the Standing Committee considered numerous submissions received by it that highlighted certain issues.

The Committee through the Parliament Research Unit looked into electricity industries in jurisdictions that have similar set ups to that which Fiji is aiming for, by the introduction of the Bill.

The Committee in its observation also consulted the drafters of the Bill for certain amendments. Amendments were made to various Sections and Subsections of the Bill and the amendments which were necessary have been made and marked in red in the copies of the Bill provided with this report.

This Report will cover the Standing Committees' role in reviewing the *Electricity Bill* to ensure that all due processes regarding the Bill has been followed and to also ensure that the provisions contained in the Bill would contribute to the achievement of the Bill's objectives.

Some of the pertinent areas which the Bill addresses are as follows:

- Encourage investors in generation of electricity;
- Make electricity supply more consistent and dependable;
- Make the electricity supplier more accountable to the consumers;
- Encourage investment in renewable energy;

- The regulatory functions which were previously performed by the Fiji Electricity Authority, such as licencing of electricians and inspection of apparatus, will now vest in the independent Regulator;
- Rules will be in place to safeguard the consumer interest;
- The right to appeal by the consumers against the actions of the public electricity supplier;

At this juncture I would like to thank the Honourable Members of the Justice, Law and Human Rights Committee for their deliberations and input, the alternate members who made themselves available when the substantive members could not attend, the staff and officers of the Research Unit and secretariat, the entities who accepted the invitation of the Committee and made themselves available to make submissions and the members of the public for taking an interest in the proceedings of the Committee and Parliament.

I on behalf of the Committee commend the *Electricity Bill* 2017 to the Parliament and seek support of all the members of this August house for the Bill since it is designed for the greater good of all Fijians.



Hon. Ashneel Sudhakar
CHAIRPERSON, STANDING COMMITTEE ON
JUSTICE, LAW AND HUMAN RIGHTS

1.0 INTRODUCTION

1.1 Background

The Standing Committee on Justice, Law and Human Rights, hereinafter referred to as the Committee, mandated by Standing Orders 109 (2) and 110 of the Standing Orders of Parliament, was referred the *Electricity Bill* 2017 for review on February 10, 2017. The Bill was referred to the Committee pursuant to Standing Order 51 and the Committee was tasked with scrutinising the Bill and to table a report on the Bill in the March 2017 Parliament Sitting.

1.2 Objectives of the Bill

Clause 4 of the Bill clearly sets out the objectives of the Bill and these are to;

- a) give effect to the Company having exclusivity in the provision of transmission and distribution of electricity services in Fiji;
- b) give effect to the Company having exclusivity as the licensed retail seller of electricity in Fiji under the procedures prescribed in this Act;
- c) ensure that the Company is financially able to cover its capital and operational costs and receive a certain predicted revenue stream through a determined tariff scheme;
- d) recognise the predominant position that the Company has in power generation in Fiji while creating opportunities for independent power producers to provide electricity if economical and, from a system integrity perspective, more beneficial to Fiji and the consumers of electricity;
- e) improve competition and efficiency in the system operations and wholesale markets within the electricity industry, and thereby enhance customer services;
- f) provide for an independent regulator for the electricity industry with powers to make regulations and grant licences and do such things as are necessary or desirable to ensure the efficient running of the electricity industry;
- g) permit the Minister to enter into such agreements as may be required to achieve the initial divestment transaction and in each subsequent case achieve the objectives set out in this Act; and
- h) remove from the FEA, or any subsequent successor, the direct responsibility to regulate the electricity industry and devolve all of the FEA's regulatory functions and responsibilities to the Regulator.

1.3 Procedure and Program

In order to carry out its task the Committee read through the Bill and did its own deliberation of the Clauses in the Bill. The Committee also invited the Ministry of Public Enterprises and the Office of the Solicitor General; the initiators of the Bill. In view of the time-frame to consider the Bill, the Committee called for submissions from the public and other interested stakeholders by placing advertisements through the local newspapers (Fiji Times and Fiji Sun) on February 18 and 20, and March 7, 2017. The Committee invited certain entities to also make submissions.

Details of the Committees deliberations on the submissions received are provided in this Report.

The Committee was mindful of the provisions in Standing Order 111(1)(a) and ensured that its meetings were open to the public and the media, except during deliberations and discussions to develop and finalise the Committee's observations.

1.4 Committee Members

The substantive members of the Standing Committee on Justice, Law and Human Rights are:

- i. Hon. Ashneel Sudhakar (MP) (Chairman)
- ii. Hon. Mataiasi Niumataiwalu (MP) (Deputy Chairman)
- iii. Hon. Lorna Eden (MP) (Member)
- iv. Hon. Semesa Karavaki (MP) (Member)
- v. Hon. Niko Nawaikula (MP) (Member)

For deliberation on the Bill, the following Hon. Members stepped in as alternate members, pursuant to Standing Order 115 (5):

- i. Hon. Balmindar Singh (MP) (Alternate Member for Hon. Lorna Eden)
- ii. Hon. Mikaele Leawere (MP) (Alternate Member for Hon. Niko Nawaikula)
- iii. Hon. Aseri Radrodro (MP) (Alternate Member for Hon. Semesa Karavaki)

2.0 *ELECTRICITY BILL* 2017

2.1 Introduction

The *Electricity Bill* 2017, hereinafter also referred to as the Bill, is a result of the intention by the Fijian Government to corporatise the Fiji Electricity Authority, hereinafter also referred to as the FEA, and to create a company that will be registered under the *Companies Act* 2015. The Bill also aims to realise the Government's intention of divestment of the shares of the Company (FEA).

The Bill will abandon parts of the provisions of the *Electricity Act* 1966, hereinafter also referred to as the Act, that established and gave authority to the Fiji Electricity Authority. The Bill would provide for a separate regulatory authority to perform all regulatory functions pertaining to the electricity industry. This would ensure that the electricity industry is deregulated and that Government policy for good governance, transparency and accountability is achieved. The Regulator will be responsible for issuing licences in relation to retail, generation, transmission and distribution of electricity, determining tariffs and price methodology for electricity and the administration, enforcement and regulation of the electricity industry¹.

2.2 Written and oral submissions received

The Committee as part of its deliberation heard numerous submissions on the Bill.

The Committee heard submissions, from relevant stakeholders, on various dates falling between and including February 21 to March 2, 2017. Organisations that made submissions to the Committee included:

- i. Fiji Electricity Authority (FEA);
- ii. Fiji Commerce Commission (FCC);
- iii. Consumer Council of Fiji;
- iv. Ministry of Transport and Infrastructure – Department of Energy; and
- v. Ministry of Industry, Trade and Tourism - Department of National Trade Measurements and Standards.

The Committee took into consideration the submissions made by the above mentioned organisations. The Committee would like to extend its gratitude to all those who participated and provided essential contribution to the Committee's work.

2.3 Summary of submissions

The submissions of the above-mentioned organisations are summarised and provided in this Report. Copies of the submissions are attached as 'APPENDIX A'. Copy of the Verbatim Report for Submission by the FEA is attached as 'APPENDIX B'.

¹ Explanatory Note to the *Electricity Bill* 2017.

3.0 COMMITTEE'S OBSERVATIONS/DELIBERATION AND ANALYSIS OF THE BILL

3.1 Impact of the Bill

The Committee noted that the Bill will repeal the *Electricity Act 1966*.

The Bill will continue to provide for some of the functions being performed by the Fiji Electricity Authority (FEA), specifically with regards to generation, transmission and supply of electricity. However, as provided above, the regulatory functions performed by the FEA will be removed and placed on the Regulator.

3.2 Analysis of the Bill – Reading of the Bill and Deliberation by the Committee

The Committee began its analysis of the Bill by reading through the Bill Clause by Clause and noting numerous issues.

Some of the main issues noted were:

- the lack of demarcation of the functions and powers of the Regulator and the Minister that will be responsible for the Bill;
- the need for more clarification on the differentiation between a public electricity supplier and a private electricity supplier; and
- the rationale for providing that the FEA has the first right of refusal – that is the FEA can step in, in cases where a self-supplier is concerned, to provide electricity to a self-supplier if it shows that it can supply the electricity at a lower price.

The Committee noted that these issues needed further clarification from the initiators of the Bill. Issues noted were then formulated into questions and suggestions and sent to the Office of the Solicitor General.

The Ministry of Public Enterprises briefed the Committee on the background of the Bill. The drafters also responded and advised the Committee that relevant suggestions put forward would be considered and necessary amendments would be made.

3.3 Comparison with other jurisdictions

The Committee noted the impact the Bill would have on the people of Fiji, thus resolved that it would also be prudent to look into jurisdictions with similar set ups as that which is being proposed to be set up in Fiji through the introduction of the Bill. The Research Unit of Parliament provided the Committee with a report, summarised below, on the electricity sector reforms in Kenya and Uganda, which have a somewhat similar set up to Fiji's proposed reform.

Furthermore, most have dedicated electricity regulators unlike the Fiji situation where the Fiji Commerce Commission handles all utility regulations. The current Fiji tariff rates are similar with other countries analysed in this report.

Fiji cannot be thoroughly compared to other countries due to differences in electricity generation sources and the market structure of their electricity sector. In many of these countries, there is a horizontally integrated market structure where several companies own and operate different parts of the supply chain. Fiji continues to have a vertically integrated structure where FEA owns and operates generation, transmission and end-user distribution. Also, most of these countries have a more varied source of generation that includes different renewable energy and fossil fuel sources. There are also differences in geography, population size and economy. It should be noted that in most countries the upward movement in electricity tariffs is due to many variables such as inflation, currency fluctuations, increase in generation costs (equipment, etc.), increase in maintenance of infrastructure, etc. Furthermore, most of these countries have dedicated electricity or energy sector regulators, unlike Fiji's direction towards regulated industries come under one regulator, the Fiji Commerce Commission. Many countries, particularly in the developing nations moved towards reforming their electricity sectors in the 1990s, aiming to increase efficiency, generation and coverage in electricity production. In most of these countries the changes were part of the overall corporatization and divestment of state-run services. The experiences of two countries – Kenya and Uganda – are summarily discussed below.

Kenya

Kenya reformed its electricity sector in the 1990s² to ensure efficiency in terms of increased electricity production. This began in earnest through the *Electric Power Act* 1997, which led to the change from a *vertically integrated structure*³ to a *horizontal integration* framework. The Kenya Electricity Generating Company (KenGen) was assigned with the responsibility of power generation while the Kenya Power and Lighting Company (KPLC) took the responsibility for power transmission and distribution. The horizontal integration framework was adopted by most of the countries in Africa that were reforming their electricity sector (e.g. Uganda). Despite some later legislative and regulatory changes, Kenya Power maintained a quasi-monopoly over Kenya's electricity transmission and distribution.⁴ Unlike Fiji, the electricity sector in Kenya has a dedicated regulatory authority – the Energy Regulatory Commission (ERC) – which also covers the energy sector as a whole. The ERC is responsible for both technical and commercial (e.g. tariff setting) regulation. Kenya's current generation mix are: hydro – 45%, thermal (fuel oil & coal) – 24%; other renewables (biogas, wind etc.) – 31%.⁵ The 2017 domestic tariff rate is at KES 20.42 per kWh or FJD 0.4094⁶ which is higher than the current FEA rate of FJD 0.3310.

² Njenga, E, Effects of Power Sector Reforms in Kenya (Online) <http://economics.uonbi.ac.ke/node/3954> [Accessed 21/07/17]

³ Fiji's electricity sector has a vertically integrated structure (i.e. FEA owns the whole supply chain from generation, transmission to retail distribution) and this is bound to continue under the *Fiji Electricity Bill* 2017.

⁴ Consumer Unity & Trust Society (CUTS) International, 'State of Electricity Reforms in Kenya', Country Base Paper (Online PDF). Available at: http://www.cuts-international.org/ARC/Nairobi/REKETA/pdf/Country_Base_Paper-State_of_Electricity_Reforms_in_Kenya.pdf [Accessed 21/02/17]

⁵ Power Africa Fact Sheet. Available at <http://www.res4africa.org/wp-content/uploads/2016/05/Power-Africa-Fact-Sheet.pdf> [Accessed 25/02/17]

⁶ XE Converter. Available at <http://www.xe.com/currencyconverter/> KES/FJD rate as at 14/04/17

Uganda

Uganda's electricity sector reforms began in the early 1990s, when the country undertook public enterprise reform primarily through the divestiture of public enterprises.⁷ In June 1999, the Government put in place the Power Sector Restructuring and Privatisation Strategy (PSRPS)⁸ to make the sector financial viable, efficient and reliable, and also improve quality of supply and attract private investment. The electricity industry was effectively liberalised with the passing of the *Electricity Act* 1999 which removed the monopoly status of the Uganda Electricity Board (UEB). The Act also saw the establishment of the Electricity Regulatory Authority (ERA) to regulate the generation, transmission, distribution, sale, export and import of electrical energy in Uganda.⁹ The previously vertically integrated structure was undone with the unbundling of electricity ownership through the separation of generation, transmission and distribution. ERA is responsible for technical and commercial regulations that includes licensing and setting of tariffs. There are 3 major companies (substantial Government ownership) that operate in the electricity sector. Uganda Electricity Generation Company Limited (UEGCL) is involved in generation, Uganda Electricity Transmission Company Limited (UETCL) core business is transmission, while Uganda Electricity Distribution Company Limited (UDCL) is responsible for distributed to end-users. UEGCL and UETCL are state-owned, while UMEME which supplies 98% of consumption in Uganda is a publicly traded company with a 20-year concession for distribution and retail. UMEME Ltd leased the assets of formerly government-owned UDCL to become the biggest company supplying electricity to consumers. The current domestic tariff rate (UEMEME Ltd.) is UGX¹⁰ 623.6, which is roughly equivalent to FJD 0.359511¹¹ (FEA rate FJD 0.3310).

3.4 Analysis of the Bill - Other issues raised at the Committee

The Committee took note of all presentations received and deliberated on the submissions. Some of the main points noted by the Committee are summarised as follows:

Fiji Electricity Authority (FEA)

FEA's submission mainly focused on the shift of the technical regulatory functions, including but not limited to licensing of electricity suppliers and technicians, to the Regulator. FEA advised the Committee that it supports the introduction of the Bill.

FEA's submission was mainly complimented by the questions posed by the Members. The questions posed were responded to accordingly and the following is a summary of the questions and responses given.

⁷ Joseph Mawejje J, Ezra Munyambonera E, Bategeka L. 'Powering Ahead: The Reform of the Electricity Sector in Uganda' in *Energy and Environment Research*, Vol.3, No.2; 2013, Canadian Center of Science and Education. (Online PDF) www.ccsenet.org/journal/index.php/ee/article/download/29998/18603 [Accessed 25/02/17]

⁸ 'Power Sector Reform in Uganda', http://www.un.org/esa/sustdev/sdissues/energy/op/parliamentarian_forum/uganda_dujanga_psr.pdf [Accessed 25/02/17]

⁹ Overview of Electricity Regulation in Uganda, ERA. Available at: <http://www.era.or.ug/index.php/sector-overview> [Accessed 25/02/17]

¹⁰ Ugandan Shilling

¹¹ Currency Converter. Available at: <http://www.xe.com/currencyconverter/> UGX/FJD rate as at 14/04/17

There was a question on how the Bill will affect operations and staffing of the FEA; the response highlighted that the operations will not be affected since the Bill comprehensively covers the operations of FEA. As for the issue of staffing, the Bill will mean new Board members who will determine how staffing is affected.

The cost and impact on the consumers was highlighted; the response was that since the Bill will create a company, commercial issues have to be taken into consideration. This may mean that the tariffs may have to be reviewed however this can only be done by the regulator after considering all relevant factors.

On the issue of the significance of the security deposits, the Committee was advised that FEA does not consider it as capital. Security deposits aims to address and cater for services provided that payments are still pending. FEA further added that the majority of the security deposit retained is from bank guarantees.

Pursuant to Clause 16 the Committee questioned the rationale vis-à-vis FEA to provide electricity to self-suppliers. FEA responded it is cheaper for customers to be on the existing grid in light of the investment done by FEA. Furthermore the self-suppliers have the choice to step up to the existing grid in view of economic leverage.

Fiji Commerce Commission

The Fiji Commerce Commission's submission mainly focused on how the Bill will improve competition and efficiency in the system operations and wholesale markets within the electricity industry. The Commission added that the Bill will better protect the interests of consumers of electricity and will ensure that the commercial sector and consumers have access to a fair tariff regime.

The Commission also highlighted the objective of the Bill, which encompasses the deregulation of the market giving opportunities to micro and macro power producers to provide electricity and further enables power producers to foster investments into the electricity industry and use of renewable energy.

The issue of delegation of powers by the Regulator to the agents was also questioned. In respect of this, the Commission advised that robust control and monitoring mechanisms are in place, which guarantees pinnacle to service delivery.

Furthermore the Commission noted that the separation of functions, between the FEA and the Regulator will benefit both the consumers and the commercial sector. Consumers will benefit since the independent regulator will ensure that conduct of the FEA and other licensees are properly reviewed and for the commercial sector the Regulator will promote proper check and balance.

Ministry of Transport and Infrastructure – Department of Energy

The Ministry first highlighted that the Interpretation part of the Bill needed to be amended to include certain words, such as ‘independent power producers’ and ‘electricity services’.

The Ministry also advised that FEA does not have exclusivity in the transmission and distribution of electricity services in Fiji, due to the geographical locations of consumers. In respect of this, the Ministry further advised that the Bill needed to be amended.

Moreover, the Ministry drew the attention of the Committee to the fact that the Bill does not address Fiji’s international commitments even though she is party to numerous international treaties including those that relate to renewable energy, which the Bill only covers briefly.

Furthermore the Ministry also commented that having a piece of legislation that protects a company’s interest could be problematic to society in the long run. Such a piece of legislation, gives the Company/FEA the prerogative to resort to any energy source even that which could threaten the safety of the public, such as hydrogen.

Consumer Council of Fiji

The Council highlighted that the Electricity Act 1966 had vacuum in respect of consumer’s rights thus a win-win situation of the business arm of FEA. The Council advised that the current Bill concretes the vacuum pursuant to the rights of the consumers and giving the ‘window of opportunity’ to FEA for return on investment.

The issue of authorised time that is given to inspectors to be able to enter a premises was noted. In respect of this the Committee felt that the authorised time should be made flexible to ensure that proper inspections can be carried out.

Ministry of Industry, Trade and Tourism - Department of National Trade Measurements and Standards

The Ministry advised that since the Bill outlines the rules for maintaining high standard of expertise and professionalism in the electricity industry. In respect of this the Ministry advised that a specialised body is to be established to regulate the operational standards in the electricity sector. Furthermore the body must be financially equipped in order to promote research and development aligned to Fiji’s ‘Green Economy and Green Growth’, and Climate Change.

Furthermore the Ministry also shared the same sentiments on the consumer protection as the Consumer Council.

Further comments by the Committee

In addition to the impact of the Bill mentioned above; there are certain positive aspects of the Bill that warrants commendation:

Comprehensively in Clause 6 the Bill will ease the flow of information between the Regulator and the service provider. This separation of powers will contribute to effectiveness in making rational decisions and also enable FEA to provide quality services to consumers. The Bill will enable the continuity and quality supply of electricity to consumers. The Bill provides effective regulatory system that is crucial for both investor confidence and consumer protection with a primary purpose to protect consumers from monopoly abuse while providing investors protection from arbitrary political actions and incentive to promote efficient investment.

The Bill ensures that the sector is more investment friendly and also gives way to newer technologies introduced by competent investors, which contribute to achieving renewable energy and lesser dependent on fossil fuel. The separation of the functions of the Regulator and the service provider will benefit both consumers and the private sector.

3.5 Outcome of deliberation

After deliberation, the Committee noted the following issues which were then considered with the assistance of the drafting team. This ensured that all relevant issues raised before the Committee was appropriately addressed.

1. Should the "Electricity services" be included in clause 2 and defined - in terms of providers in the rural areas and urban areas. Those that are connected to FEA grid and those not connected?

While it might seem as though trying to define the term "electricity services" will provide more clarity in the *Electricity Bill 2017* ('Bill'), ultimately it will restrict market development. For example, there are substantial developments currently being made in mini grid or off grid services which the Company may want to introduce as part of their services in the future. Should this be the case, we shouldn't need to redefine primary legislation which is the risk if the Bill defines terms such as "electricity services". These "electricity services" themselves are embedded in the Bill and will be embedded in the licences. They may also eventually be further scoped by the guidelines that the Regulator will issue with regard to the various licence conditions. By not defining the term "electricity services", the Fijian electricity industry is given the best opportunity to develop over time.

2. Should Electricity suppliers be inclusive of other suppliers who are not independent power producers?

Generators of electricity, including independent power producers ('IPPs') are not suppliers of electricity to the public or others. The generator of electricity provides electricity to the suppliers. The only current exception to this is that of private electricity suppliers who are off grid and who generate their own electricity for their own self-supply on their own site. It is open to the regulator of the electricity industry ('Regulator') to license such private electricity suppliers which are expected to be very few. However, in situations where for example private home owners or small businesses fit their own solar panels to self-supply their electricity, we would expect

such situations to be treated by the Regulator under rules yet to be prescribed as an exempt supply of electricity.

3. Should the independent Power Producers be also defined in clause 2 of the Bill?

The Committee's view is that yes it should be defined and appropriate amendment to the Bill has been made.

4. Should clause 4(a) of the Act be amended to give exclusivity to the Company for the following areas only: (a) Urban and Pen-Urban areas, (b) Rural mainland where the network has been connected, (c) Defined areas that are handed over to FEA? The reason being; the company should not have exclusivity for the whole of Fiji is because there are many parts of Fiji that are not currently and are unlikely to be connected to FEA network.

The successor entity of the Fiji Electricity Authority's ('Company') supply licence will apply to a specific authorised area and as such only the authorised area specified in the Company's supply licence will be supplied to by the Company. This is also desirable given that if the Company is found to breach licence conditions in a material way and is unwilling or otherwise unable to remedy the breach then the Regulator may want to remove part of the authorised area from the supply licence of the Company but without otherwise affecting the rights and duties of the public electricity supplier. This is why reliance should usually be on the licence to specify these points.

5. Should clause 4(d) be amended to remove "recognize the predominant position that the company has in power generation" to create opportunity for other independent power producers by providing an even playing field?

The Company still has duties to ensure firm supply of electricity to consumers. Therefore, the Company has to fill any void in power generation not taken up by IPPs and the Company also has the opportunity to compete for new power generation opportunities on the basis of best price and terms.

6. Despite Fiji's commitment to international obligations such treaties and trying to achieve international goals such as the SDG 7, the Bill seems to make no reference to promotion of renewable energy in the objectives. Should there be reference to generation and retail of renewable energy in Section 4 of the Bill?

When it comes to electricity generation and supply, for an economy to flourish, it is common to have some flexibility in terms of the international environmental commitments of a country and the need for firmness of supply of electricity. Most renewable sources are neither base load or firm and they are usually not the least cost options. Therefore, it is our recommendation to provide for the promotion of renewable energy in the electricity industry by way of a supplier obligation in the licences. This supplier obligation will state that suppliers are to achieve graduated increases in the percentage of electricity sold to customers from renewable sources over a period of time. This ensures that the Government is compliant with its international environmental commitments in this regard but also allows for the freedom of suppliers to deliver the optimum electricity mix.

7. Should clause 6(1) be amended to only refer to the regulator and not the Minister? Should this be consistent in Part 2? The submitter suggest that the role of the Regulator to be independent from the Minister.

While the Regulator is as independent as possible, the Regulator is still appointed by the Minister and therefore the Minister has the responsibility of ensuring that the Regulator acts properly. However, the independence of the Regulator can be emphasised by amending clause 6 to specify that the Minister is delegating the Minister's powers, other than final decisions and determinations on licences or certain disputes or points in regard to the Minister's statutory duty of oversight of the Regulator and its performance, to the Regulator and, to specify that the Regulator shall, provided it performs its duties in a fair, reasonable and professional manner, be free from all political and ministerial interference. The rest of Part 2 of the Bill on this point should stay the same as these are matters that the Government should help to achieve.

8. Should clause 6 (3) be amended to include license to "generate", supply or transmit of electricity?

As confirmed by the Standing Committee, this question is specifically about the wording of clause 6(3)(b) of the Bill. We agree that clause 6(3)(b) can be improved by slightly amending it to include the word "generate" before the word "supply".

9. Should clause 6(5) be amended to include definition of "rural areas" in the current FEA Act?

By not defining "rural areas", the Regulator is free to prescribe what a "rural area" is in guidelines and licences. If prescribed in guidelines and licences, the Regulator will also be able alter the definition of "rural areas" more easily upon discussion with the relevant stakeholders.

10. Should clause 7(5) of the Bill be amended to include definition of "generate"?

It is usually accepted that the term "generate" in the electricity industry has a well understood meaning. We are of the view that there is no ambiguity in its use or understanding in the Bill.

11. Should clause 8 and 9 of the Bill be amended to only state the Regulator instead of the Minister for the reason given in paragraph 7 above?

Given the similarity of questions 7 and 11, the Committees view remains the same.

12. Should clause 9(5) of the Bill be amended to remove "public electricity supplier"?

On the basis that public electricity supplier licences will specify the "authorised area", we agree that clause 9(5) of the Bill may be amended by deleting the words "on the public electricity supplier or".

13. Should clause 10 provide the duration of the validity of license?

The term of a licence will be specific to the licence itself. As such, the terms of licences will vary. For instance, transmission and supply licences are usually only terminated if circumstances are material and where the breach of licence conditions cannot be remedied. This is due to the fact that the country needs those particular services consistently provided by the same entity, if the entity is performing up to standard. The generation licences will have term of year restrictions based on the anticipated life of the assets but like in the cases of transmission and supply, these will be contained in the licences themselves and not the Act.

14. Should there be a Customer Charter to include matters between the electricity supplier and the consumer for matters in clause 15?

There is a "Customer Charter" in the Bill that provides for matters between public electricity suppliers and consumers. Please note Schedule 3 to the Bill which outlines the Public Electricity Supply Code.

15. Should clause 16 be amended to further clarify self-supply?

The Regulator may further clarify the term "self-supply" in subsidiary legislation or guidelines.

16. Should clause 30 be amended to ensure the rights of landowners are considered?

The rights of landowners are considered in clause 30 of the Bill. Acquisition of land under clause 30 of the Bill will be governed by the State Acquisition of Lands Act 1940 and it is compliant with the Constitution of the Republic of Fiji. The Committee notes that clause 30 of the Bill states that the State "may acquire" land compulsorily not "shall acquire".

17. Should clause 33 be amended so the losses incurred by consumers and cessation of supply by the Public electricity supplier or the licensee could be recovered by the consumers?

It is not fair to impose a reimbursement obligation on any company where the company's actions are a result of 'unforeseen circumstances beyond their control'.

18. Should clause 51 (5) be amended to allow for appeals to the independent Tribunal and not to the Regulator?

The Regulator is more likely to be able to deal expeditiously with issues regarding disconnection of the supply of electricity especially because this will also be covered under requirements imposed by licence conditions which fall under the ambit of the Regulator.

19. Should clause 8(2) be amended to set the criteria that will determine the class of persons who will be provided the exemption from complying with conditions for

license supply of the electricity Minister that will distinguish the types of persons who are exempted and who would not be exempted?

The Regulator may further clarify the criteria specifying the terms of exemption in subsidiary legislation or guidelines.

20. Should clause 9(3) be amended to make it compulsory for the Regulator to disclose the fees charged for an application for license or extension to the party paying for such a fee?

The fees will be prescribed by subsidiary legislation. The licences will also outline the individual fees to be paid for that particular licence.

21. Should clause 9(8) be amended to provide absolute responsibility of licensing, registration and complaints handling/dispute resolution to the regulator? The submission is that this will ensure the Minister will be independent and transparent in implementing regulations and policies with respect to electricity supply, regulation of suppliers and licensees, dispute resolution, tariffs, duties and responsibilities of the Regulator and Merger Regulator.

Given the similarity of questions 7 and 21, the Committees views remain as in 7 above.

22. Should clause 9(9) be amended to provide a timeframe to which the Regulator must send the license to the licensee?

There will be rules and guidelines published in this regard. Different licences and situations will have different complexities and as such will require different timeframes. The Regulator has obligations to be efficient and meet the objectives of the Bill but the rules and guidelines will indicate what is fair in terms of set timeframes.

23. Should clause 18 (3) be amended to provide method of calculation of the charges impose to the consumers, so that the consumer can comprehend how the charges are calculated and on what basis are the charges imposed on them?

The billing requirements are contained in the Public Electricity Supply Code at Schedule 3 to the Bill and the licences will provide further guidance. We agree that it is fundamental that suppliers are clear about how electricity prices are reached and this must be clear in consumer's electricity bills.

24. Should clause 19(1) be amended to provide that the supplier can charge the actual expenses incurred and nothing extra to avoid any confusion to the consumer on the charges imposed on him since the current section does not restrict the supplier to charge more than the expenses incurred for the supply of electricity?

The Regulator will ultimately prescribe a charging methodology for the price of electricity and the costs abovementioned will be recoverable based on that methodology. In the meantime they are able to recover expenses that are reasonable

which usually amounts to the cost of works and a fair profit margin given that the Company has committed its capital and resources to provide the supply of electricity. The Company is not a non-profit making organisation and is not designed to be such.

25. Should clause 20(1) be amended to state the exact amount or the method of calculating the security deposit amount to avoid confusion to the consumer as to what is reasonable and what is not?

This will form part of the Regulator's guidelines which will be published in due course. The sum of the security deposit abovementioned will also be based on perception of risk and cost of works and as such will be alterable annually.

26. Should clause 20(2) be amended to extend the timeframe of security deposit payment from 7 to 21 working days to give ample time for consumers to arrange payments to the public electricity supplier? The reason being is that many times the amount of security deposit will be exorbitant and consumers would not be able to secure such kind of money within the timeframe.

The point here is not that the posting of security will be a common thing but it will be exceptional where the risk or the price of connection works is substantive. It will rarely be required but when it is needed it should be posted quickly or the Company should not have to commence work until it is received which delays the connections. That is why 7 days is selected.

27. Should clause 21 be amended in a way that the public electricity supplier is held liable for the financial loss resulting from its negligence? The provision protects the supplier from adhering to the regulations/policies which only reflects the service provider's perspective and compromises the rights and interest of the consumers.

It is unreasonable to try and impose consequential damages on a supplier or any other entity arising from negligence in the chain of delivering electricity to consumers. The licences will prescribe liabilities for poor performance and potentially even the suspension or termination of the licence. These threats are the best way to guarantee good performance by a licensee. Furthermore, should legislation guarantee that licensees under the electricity industry are held liable for damages if found negligent, it is highly likely to deter investment.

28. Should clause 23(1) be amended to include the involvement of the Fiji Mediation Centre to resolve disputes? Participants should be encouraged to use mediatory processes to solve issues in a timely manner with a win-win situation between disputants.

The Committee suggests that mediation takes place after the Regulator has failed to reach an agreement between the disputants but before the arbitration step.

29. Should clause 33(1) be amended to have a mandatory provision that will require the public electricity supplier to inform the consumers about the reduction in the quantity of electricity to allow consumers to prepare in advance for the insufficient supply of electricity?

The requirement to inform customers about the reduction or discontinuation of their electricity supply exists under paragraph 6(2) of Schedule 3 to the Bill. This requirement will also be made mandatory by the licences of public electricity suppliers.

30. Should clause 33 (2) be amended so that the public electricity supplier or licensee can bear some liability in respect of any loss or damage caused by a reduction in the supply of electricity rather than consumers being left to bear the full cost? This is because the provision protects the public electricity supplier and licensee from incurring any liability for losses or damages caused to the consumer?

We consider it unreasonable to expect the Company to incur liability for the reasons abovementioned. Also, please note that if this was the case, the Company and other investors would correctly state that the risk liability is now so high and the financial consequences so unknown that the method and level of tariff would need to be substantially higher. This would certainly require a greater tariff level across the board and that is not in the broader public interest.

The licences will prescribe liabilities for poor performance and potentially even the suspension or termination of the licence. These threats are the best way to guarantee good performance by a licensee. Furthermore, should legislation guarantee that licensees under the electricity industry are held liable for damages if found negligent, it is highly likely to deter investment, particularly foreign investment as this is not industry standard.

31. Should clause 33(3) be amended to include liability on the public electricity supplier part due to unavoidable accidents, overloading, power outages and surges to provide redress of compensation to consumer for damages sustained to their properties?

Accidents, overloading, power outages and surges happen as a matter of course in the electricity industry. Instead this should be dealt with by setting out performance conditions in the licences which licensees must fulfil and not by loading the Company with damages it cannot pay. Furthermore, should legislation guarantee that licensees under the electricity industry are held liable for damages in the cases abovementioned it is highly likely to deter investment. Please note that putting the Company in a position where it cannot finance its ongoing business activities also breaches one of the fundamental principles of the Bill.

32. Should clause 51 (1) and (2) be amended to include both domestic consumer and businesses for disconnection for unlawful use of electricity to avoid segregation between domestic consumers and commercial consumers in regards to disconnection of electricity? Further the definition of the term "consumer" is different in all other legislation. Perhaps the Bill could be amended to mention "where electricity is used for business, professional or industrial purposes".

Domestic and business consumers should not be treated the same as the consequences of no electricity supply are fundamentally different to each of them. This is

recognised in Schedule 3 to the Bill (Public Electricity Supply Code) and the licences. Losing supply of electricity for a business can drive it into bankruptcy with job losses and may have potential national or regional impact. This isn't the case for individuals who in any case have protections under the Public Electricity Supply Code, in the licences and also have the Regulator to appeal to.

The Committee considers that the definition of "consumer" be amended to mention "where electricity is used for business, professional or industrial purposes". Although there is no definition of the word "consumer" in the Bill, we propose an amendment to clause 51(2) of the Bill whereby the words "by the consumer" is moved from before the words "for business, professional or industrial purposes" to after these words.

33. Should clause 51 (4) be amended to replace 30 days with 7 days for disconnection period of electricity to consumers since consumer should not be expected without electricity for one month which is considered too long a time?

Disconnection of the supply of electricity to consumers cannot happen under the Bill or under the licences without proper safeguards that are currently absent in the existing *Electricity Act* 1966. The period cannot be 7 days given that the licensee will be taking considerably longer than that to satisfy the right to disconnect the supply of electricity.

3.6 Gender analysis

The Committee took into account the provisions of Standing Order 110(2), where a committee conducts an activity listed in clause (1), the committee shall ensure that full consideration will be given to the principle of gender equality so as to ensure all matters are considered with regard to the impact and benefit on both men and women equally.

4.0 CONCLUSION

After adhering to due process and the requirements of the Standing Orders of Parliament, the Committee in its deliberation saw that there was support for the Bill. The Committee also made observations on the Bill and considered making amendments as highlighted above. These observations led to consultations with the drafters and amendments being made, so as not to upset the objectives of the Bill. Those amendments are reflected in red in the amended copy of the Bill presented with this report.

The Committee through this report commends the *Electricity Bill* (Bill No. 7) 2017 to the Parliament.

APPENDICES

APPENDIX A

COPIES OF SUBMISSIONS RECEIVED BY THE STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS

Consumer Council of Fiji

www.consumersfiji.org



CONSUMER COUNCIL OF FIJI

HEAD OFFICE

4 Cameron Street
Private Mail Bag
GPO, Suva
Phone - General Office: 3300792, 3310183
Chief Executive Officer: 3305864
Fax: 3300115 | Email: complaints@consumersfiji.org

LAUTOKA/West

Suite 4 Popular Building
Vidila Street
PO Box 5396, Lautoka
Phone: 8664967 | Fax: 6652846
Email: consumerlkt@connect.com.fj

LABASA/North

Level 1, Lot 41 Raza Properties Ltd
Nasekula Road
PO Box 64, Labasa
Phone: 8812559 | Fax: 8812559
Email: colbe@connect.com.fj

27 February 2017

The Chairperson

Standing Committee on Justice, Law and Human Rights

P O Box 2352

Government Buildings

SUVA

Dear Chair

RE: ELECTRICITY BILL 2017

Warm Greetings from the Consumer Council of Fiji

Please find attached the Council's submission on the Electricity Bill 2017.

We sincerely hope the issues raised and the recommendations in the submission will be given due consideration.

We would be happy to provide further clarifications should these be required.

Yours sincerely,

.....
Ms Premila Kumar
Chief Executive Officer



A Submission to the
Standing Committee on Justice, Law and
Human Rights
Of the Parliament of the Republic of Fiji
On the Electricity Bill 2017

27 February 2017

1.0 Introduction

1.1 Role of Consumer Council of Fiji

The Consumer Council of Fiji (hereinafter referred to as 'the Council' or 'CCF') has statutory obligations under the Consumer Council of Fiji Act (Cap 235) to "to do all such acts and things which it may consider necessary or expedient to ensure that the interests of consumers of goods and services are promoted and protected." The Council is also obliged to advise and make recommendations to the Minister responsible for consumer affairs in Fiji or any other Minister on issues affecting the interests of consumers. This work extends to providing advice and making submissions to regulatory agencies, policymaking bodies, private sector or industry groups and international agencies.

The Council is the statutory representative of consumers in Fiji, the largest socio-economic group whose economic well-being is an important indicator of economic stability and development. The Council has the legal duty to ensure that consumers are not disadvantaged by unfair trade practices and policies that limit their basic consumer rights to choice, disclosure of information and fairness. Thus, CCF submission lies within the ambit of this legal duty.

The Council sincerely hopes that the issues raised in this submission are given due consideration in the interest of consumer justice.

This submission is in two parts. Part 1 highlights the current problems consumers face with the Fiji Electricity Authority (FEA) and Part 2 highlights the strengths and weaknesses of the Bill to address the issues.

PART 1: Current Issues faced by consumers when accessing electricity from Fiji Electricity Authority (FEA)

2.0 Electricity – Essential Service

Electricity is an essential energy source that plays a critical role in growth and development of Fiji. It is vital not only to consumers but to the retail industry, service providers, Government, manufacturing and industrial sector, hospitality industry, communication and entertainment. Access to electricity is also linked to the right to life, rather than a privilege for those who can pay for it.

United Nations Guidelines for Consumer Protection promotes strengthening of national policies to improve the supply, distribution and quality of affordable energy to consumers according to their economic circumstances.

The Universal Declaration of Human Rights recognizes the right for every individual to access electricity as part of the right to adequate housing.

Article 14 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) explicitly recognizes rural women's rights to electricity as part of the right to adequate housing.

The Council wishes to stress that for consumers in Fiji, this essential utility service is virtually provided by a single commercial entity – FEA, which holds monopoly status. The provision of electricity in Fiji warrants appropriate policies that protect consumers from the monopolistic service provider who is a producer, transmitter and regulator. This makes FEA the judge, jury and the executioner.

2.1 Government Policy on Energy – Electricity

The Government's vision for Fiji's energy sector, as set out in the Roadmap for Democracy and Sustainable Socio-Economic Development 2009-2014, is for a resource efficient, cost effective, and environmentally sustainable energy sector.

The objectives of the Fiji National Energy Policy 2013-2020 are to provide all Fijians with access to affordable and reliable modern energy services; to establish environmentally sound and sustainable systems for energy production, procurement, transportation, distribution and end-use; and to increase the efficient use of energy and the use of indigenous energy sources to reduce the financial burden of energy imports on Fiji.

Furthermore, the government has acknowledged that electricity production is being constrained by *current regulatory arrangements*. In other words, a major impediment to the provision of efficient, cost-effective and affordable electricity is FEA's dual role of both regulator and provider of one product in one single market. FEA has been self-regulated for many years with respect to all non-tariff aspects of the electricity system, including issuing licences, developing technical rules, and defining incentives for third party generation.

In 2016 National budget speech, the Minister responsible for Public Enterprises said "*separating FEA's regulatory and commercial functions would promote competition and lead to efficient and affordable electricity services to the general public.*"

2.2 FEA's Powers and the need for a review of the Electricity Act

FEA as a monopoly has an unfair advantage of dictating the environment in which it conducts its business which goes unchecked. The billing system used is also dictated by Electricity Act which allows FEA to practice *estimated reading* which is inaccurate and unfair. While price regulation comes under the jurisdiction of FCC, FEA still reserves other powers under the outdated legislation. FEA's monopolistic and legislation-sanctioned power needs to be reviewed and removed to prevent continuing abuse of consumers' rights.

3.0 Consumer Concerns

3.1 Complaints

Consumer complaints against the FEA consistently remains in the top ten recurring complaints lodged at the Consumer Council since 2008. Gradually over the years, FEA complaints have decreased not because FEA's service has improved but consumers have no desire to lodge complaints because FEA is the regulator and the current Electricity Act is written only from the producer perspective disregarding consumer rights and interests.

(formally lodged at the Consumer Council of Fiji)		
Year	Number of Complaints	Monetary Value
2012	95	\$ 47,776.76
2013	70	\$ 45,729.68
2014	46	\$ 10,918.02
2015	29	\$ 15,733.45
2016 ¹	78	\$ 169,867.80
2017	4	\$ 172.72
Total	300	\$ 289,575.92

Some of the most recurring complaints are:

- Meter readers not making honest attempt to do normal reading, claiming inaccessibility to meters;
- Faulty meters (*refer to Annex 2*);
- Unusually high estimated bills against normal readings;
- Billing errors – e.g. wrong tariff line used i.e. domestic consumer charged commercial rate;
- Power surges, blackouts resulting in damage to household appliances with no avenue for compensation;
- Upward revision of security deposit without giving lead time or using step wise increase;
- Disconnections without proper notice;
- Customer being charged the full reconnection fee despite them paying their bill on time;
- Non-issuance of bills and bulk billing (*refer to Annex 2*).

3.2 FEA's Unfair Practices

Some unfair practices undertaken by FEA (based on complaints) are quite perplexing and inexplicable because FEA is left to practice without regulatory oversight.

Application of the Government consumer subsidy - The Government provided 17.64 cents per unit subsidy for consumption equal to or less than 75kwh per month in 2010. This was to encourage energy conservation. The subsidy was then increased to 85kwh. This resulted in complaints from consumers as the subsidy did not necessarily benefit the poor with big families, as most live in households with higher consumption even for basic lighting and other essentials. The subsidy mainly targeted low consumption rather than assisting poor consumers with big families or incentivizing consumers that practiced energy conservation.

From January 2016, a new scheme has come into effect which provides 48% subsidy on an household's monthly electricity bill provided the household consumes less than or equal to 95kwh per month and the combined household income is less than \$30,000 per annum.

¹ The Consumer Council's National Consumer Helpline, since its establishment in July 2016 to date, has received a total of 22 complaints with a monetary value of \$622.51 in relation to electricity issues.

A review of the subsidy is warranted to ensure that it captures those consumers who are in real need as many households with large number of members will surely consume more than 95kwh as families in Fiji also need to enjoy a bit of luxury such as, watching television or using electrical fans in hot weather situations, etc.

Also the issue is how FEA is interpreting a month needs to be considered. There are consumers who have been raising their concern that despite their electricity bill showing 95kWh the subsidy is not passed on.

FEA applies this subsidy based on the average daily usage while the registered consumers understand that if the bill shows 95kWh, they qualify for the subsidy. Unfortunately, FEA does not bill consumers exactly after a month. The billing period can be for 28 to 34 days, therefore FEA uses average daily usage. For FEA, a month is 30.42 days ($1 \text{ month} = 365 / 12 = 30.42 \text{ days}$) and not number of days in a calendar month.

If a registered consumer's average daily usage is same or less than 3.12kWh then subsidy is applied and the tariff rate is 17.20 cents. Those consumers whose average daily usage is more than 3.12kWh (i.e. 3.13kWh) then he/she although registered with FEA will not qualify for the subsidy. In that case the consumers are expected to pay the normal tariff rate of 33.10 cents

Improper Disconnection & Estimated reading – The Council has also received complaints from consumers where their meters have been disconnected although the bills were paid on time. FEA at all times should give a written notice to customers before disconnecting. Some consumers were in shock when they received hefty FEA bills after several months of estimated readings putting consumers into financial hardship with constant threat of disconnection if the bill was not paid.

There have also been complaints where it has been proven that meter readers were dishonest and did not conduct normal reading with the excuse that the meters were not accessible. The Council also dealt with a case where the meter reader could not read the meter and a digit was left which resulted in wrong billing (See Annex 3). Ultimately, a very hefty bill was issued. FEA maintained its stance that if the consumer has used the electricity, then he had to pay for it.

Determination of Estimated Billing –Neither the Electricity Act nor the Electricity Bill 2017 states how such calculations are done. The criteria of when FEA can do estimated readings and billings is also highly unclear and undisclosed to consumers. Consumers are left in a difficult situation due to FEA lacking transparency in their billing system.

Liability of FEA staff / Staff Negligence – the Council has been inundated with complaints regarding staff negligence in overcharging consumers, poor customer service, slow turnaround time to fix electrical faults, lack of efficient updating of the billing system, etc. Consumer bears all the losses while FEA takes no responsibility for its staff (*refer to Annex 3*).

- * **Overcharged bills** –Those consumers who were careful, picked up the errors and notified the Council. They were provided with redress. However, what happens to those consumers who do not have the time to check their bills and pay as per the bill? Some consumers trust FEA with the billing amounts and do not find it necessary to query about their bills versus the usage of electricity (*refer to Annex 1 (a)*).

- **Inefficient billing system** – FEA’s billing system needs to be updated in real time. Staff who are responsible for updating the system are seen to be inefficient and are not doing their work effectively. Yet, when consumers are overcharged, staff are not willing to take liability for the error made on FEA’s part (*refer to Annex 1 (b)*).
- **Poor customer service** – customers are often frustrated with the poor service provided by FEA. Customers are made to bear the costs for their run around and since FEA is the sole supplier of electricity leaves consumers with no choice but to put up with such service provider. Staff need to be trained to provide consumers with correct solutions. During times of power outages, staff do not respond to consumer query about the reason/timeframe of the power outage because the staff themselves do not have any answer to give consumers.
- **Slow turnaround time to fix electrical faults** – office staff are slow to escalate the electrical faults reported by consumers to FEA technicians to be fixed. Sometimes it takes days and weeks even months for electrical faults to be fixed.

Compensation – FEA bears no responsibility and liability if the power surge causes damage or losses to consumers’ electrical appliances because there are no laws requiring FEA to compensate consumers for such damages to their home electrical appliances. This is an unjust situation where FEA’s legislation gives it the leeway to estimate and charge a security deposit, but not bound to provide compensation to consumers.

3.3 Partial Divestment of FEA shares

The partial divestment of FEA, which is currently a wholly government-owned statutory body, is preparing the way for other sell-offs. The proposed restructuring and partial sell-off of the FEA was first announced in the 2014 budget, as part of plans for a one-off boost to the public coffers from the sale in some state assets. The government, reaffirmed its intention to proceed with the sales in the 2015 budget. According to the 2015 budget, the government intends to raise a total of F\$507m (around US\$240m) from the asset sales².

The government is seeking secure, long-term partnerships for FEA, which provides electricity for 90% of the population, with a view to helping the utility to achieve its renewable energy goals.

FEA is currently enjoying monopolistic status in the retail, transmission and distribution of electricity in Fiji. FEA also performed regulatory functions of approval of licences and compliance with safety standards. Given the proposed partial divestment, it is considered inappropriate for the company to regulate the electricity industry or to issue electricity related licences³.

² See more: [Economic Intelligence Unit \(EIU\)](#)

³ See more: [Fiji Times Article: 'Bid to divest FEA shares'](#)

3.3.1 The Implications of Partial Divestment of FEA shares on Consumers

Two of the objectives of the divestment program for partial divestment of FEA are: *"Ensure more reliable and affordable supply of electricity,"* and *"increase participation of ordinary Fijians in the development of the capital market"*⁴.

"Divestment" shows that partial privatisation of government owned utilities in countries like New Zealand, the US and Australia is the first step towards full privatisation, usually involving takeover by foreign companies, not local investors. Overseas experience shows that the price of energy to consumers increases and does not reduce even when the supply of available electricity has increased. This happens because the new entity's sole objective is to increase profits, particularly when debts accruing from the takeover have to be paid.

The public needs to ask 'what will be the implications for electricity consumers to have a "natural monopoly" like FEA partly in private hands?' and 'what are the implications for taxpayers in the long run, if risk events occur such as prolonged droughts or oil price rises?'⁵ FEA was required to provide electricity not just urban areas (easy and cost effective) but also to rural and distant areas with few consumers.

Privatizing shares in a natural monopoly may hurt electricity consumers (residential and commercial) through higher electricity prices to generate sufficient profits for private investors. Taxpayers would still need to fork out subsidies if FEA is required by government to continue to satisfy social or development objectives.

In Fiji's case so long as the Government has majority shares; FCC sets the tariff and the independent Regulator acts independently to balance both consumer and investor interests.

3.4 FEA's Profitability

In the seven-year period from 2008 to 2014 FEA's profitability has improved vastly. Between 2008 and 2012 the company's profit after tax had increased by 1200%. FEA's good performance from 2010 to 2013 led to bonus payments to its employees. In 2011, a total of \$1.6million was allocated for bonus payments, \$880,000 in 2013, and \$1.3million in 2014 and the latest was \$1.2million in 2015. The low \$2.4m profit in 2009 was largely due to foreign exchange losses after the April 2009 devaluation of the Fiji Dollar.

FEA is enjoying Government tax benefits and overall pro-business policies. The \$51.9m profit reported in 2011 included a large gain from Government's reduction of the corporate tax rate from 28% in 2011 to 20% in 2012. In 2012, FEA's positive bottom line was assisted by an income tax benefit of \$13.5m due to its investment in the Nadarivatu Hydro Project.

In 2015, the increase in profit compared to 2014 was due to good management of the Monasavu and Nadarivatu hydro schemes, the low fuel price recorded in 2015 and cost control measures put

⁴ See more: [Fiji Times Article: 'To divest or not'](#)

⁵ See more: [Privatizing FEA: If it ain't broke, don't fix it](#)

in place by Management. The thermal fuel cost decreased substantially by \$39M to \$141M in 2015 when compared to \$180M recorded in 2014.

Year	Profit Earned (\$)
2008	2.5m
2009	2.4m
2010	8.4m
2011	51.9m
2012	75.3m
2013	32.5m
2014	972,000
2015	39.7m

3.5 Current tariffs and scope for reduction

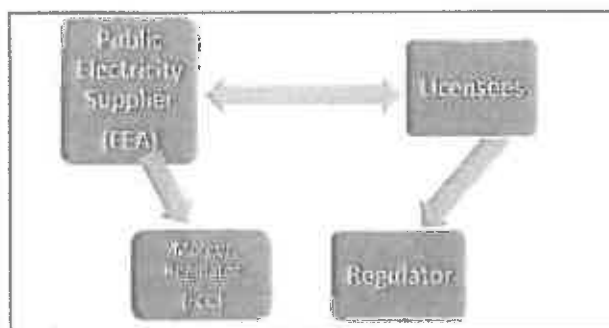
Many rural areas are not connected to FEA's electricity grid and are forced to rely on intermittent and unreliable stand-alone diesel generators. In 2007, the Department of Energy began installing solar home systems in rural areas, but the program's sustainability is being comprised by maintenance issues.

The FCC's last determination on electricity tariff rates in December 2012 reduced the consumer/domestic tariff by approximately 5% from 34.84kwh to 33.10kwh. A major rationale for that determination was the increase in FEA's renewable energy mix to 75.9% after the commissioning of the 40MW Nadarivatu Hydro scheme. The Council notes that FEA continues to undertake expansion and improvement of its hydro power generating scheme. For example: Installed generation capacity is approximately 237MW, comprising 80MW Monasavu Hydro Scheme and 40MW Nadarivatu Hydro Scheme in Viti Levu and about 112MW of diesel capacity in 14 stations on the three main islands. The tariff rate including subsidy for lifeline consumers is attached as Annex 4.

PART 2: Highlights the strengths and weaknesses of the Bill to address the issues.

4.0 Electricity Bill 2017

We comprehend that the purpose of the Electricity Bill 2017 is to promote the development of the electricity industry by the appointment of an independent regulator to license the generation, transmission and supply of electricity. In this case, the regulator mentioned in the Bill will be appointed by the Minister. Setting tariff rates is the responsibility of FCC who will act as the Merger Regulator (refer to illustration below).



4.1 Strengths in the Electricity Bill 2017

- The Bill is promoting inclusion of multiple stakeholders for the supply of electricity. This will create competition in the level and quality of services offered by each power generating company to consumers.
- The Bill states that FEA will no longer set fees and charges nor will it be a licensor to approve licences for electricians to carry out electrical work in the country. This will create separation of powers.
- *Section 5 (3) and (4)* – which spells out the powers of the Regulator that will ensure that underperforming staff, that includes the Chief Inspector, inspectors and administrative staff are disciplined.
- *Section 6 (2a-d)* – the functions and duties of the Minister and the Regulator stated in sub-section 2a-d will protect consumers in terms of the retail prices charged to tariff customers for electricity supplied once agreed by the Regulator are fixed in accordance with the tariff pricing methodology which may be set by the Regulator from time to time. The provisions also state the promotion of lowest cost solutions for power generation and to require possible generation from renewable sources and the chief inspector or inspectors will register, test, inspect and certify all electrical installations and equipment (including meters) that the Regulator deems necessary.
- *Section 6 (3a-e)* – the Minister or Regulator has the responsibility to protect the interests of consumers of electricity which must (other than in situations of self-supply) be supplied by the Company in respect of the prices charged and other terms of supply, continuity of supply and quality of the electricity supply services provided. The provisions also state that corporatization will promote efficiency, research, development and use of new techniques by or on behalf of persons authorized by a licence to generate, transmit or supply electricity. Also, the public will be protected from dangers arising from the generation, transmission or supply of electricity. Maintenance of machinery will also be a priority to promote health and safety of persons employed in the generation, transmission or supply of electricity as well as the general public that may be passively affected.
- *Section 6 (4), (5) and (6)* – the Minister or the Regulator must take into account the interests of consumers of electricity with limited or restricted incomes, interests of consumers of

electricity in rural areas and interests of disabled persons and persons of pensionable age. By doing so, ALL consumers are aimed to be provided with the supply of electricity.

- *Section 9 (5)* – before granting any licence which might have any detrimental economic impact on the public electricity supplier or on the security of electricity supply or future tariffs to customers, the Minister or the Regulator must fully consider the objectives of this Act, and the Minister's and the Regulator's duties.
- *Section 18 (2)* states "A tariff to be applied by a public electricity supplier under subsection (1) must be: (a) so framed as to show the methods by which and the principles on which the charges are to be made and the prices to be charged; and (b) published in such manner as in the opinion of the public electricity supplier will secure adequate publicity for it." The sub-sections under this provision allow for transparency in the manner in which tariffs will be determined.
- *Section 23 (1) (a)* – any dispute arising between the public electricity supplier and the person requiring the supply of electricity will be referred to the Regulator by either party to be solved.
- *Section 29 (1a-c)* – the Minister will ensure that the supply of electricity is secure, regular and efficient; the public is protected from dangers that may arise from the generation, transmission and supply of electricity; the dangers associated with the use and maintenance of any electric line; and eliminate or reduce the risks of personal injury. The occupational, health and safety plan needs to be implemented at all times to avoid consumers as well as employees of the electricity supplier to come in contact with any such danger.
- *Section 33 (2) (b)* states "in appropriate cases, an abatement in the charges for the supply of electricity will be made in proportion to the reduction made." Consumers who will receive the reduction in supply of electricity will not be charged for the period in which no or a less quantity of electricity was supplied. However, consumers need to ensure that their electricity bills reflect such abatements.
- *Section 45 (1)* – the timeframe of 6.00am and 6.00pm is reasonable for the inspector to enter the premises of consumers to carry out the necessary duties such as meter readings, installations, etc. This time allows the consumers to be present when the inspector enters their premises.
- *Section 45 (2)* states "An inspector seeking to enter any premises under the powers conferred by subsection (1) must carry, and produce on demand, an official identification card or badge in such form as may be prescribed, and no person is obliged to admit to the person's premises any person purporting to be an inspector except upon production of such identification card or badge." This provision prevents unlawful trespass of unwanted persons in consumers' properties who may claim to be authorized officers/inspectors of the electricity supplier.

- *Section 52 (1-8)* – the sub-sections of the provision regarding the types of offences and the penalties for each type of offence are clearly stated. Offences include persons engaged in meter tampering, dishonest consumption of electricity, licensees supplying electricity without the authorization of the Regulator, etc. are subject to fines and a term of imprisonment.

5.0 Weaknesses in the Electricity Bill 2017

The Consumer Council of Fiji, after a comprehensive review of the “Electricity Bill 2017” submits the following concerns:

5.1 Section 8 (2):

- *“An exemption may be granted to (a) a particular person; or (b) persons of a particular class.”*
- **Concern:** This provision does not set the criteria that will determine the class of persons who will be provided the exemption from complying with conditions for licensed supply of electricity set by the Minister.
- **Recommendation:** At least the Regulations must contain a set criteria that will distinguish the types of persons who are exempted and who would not be exempted.

5.2 Section 9 (3):

- *An application for a licence or extension must be made in the prescribed manner and must be accompanied by such fee, if any, as may be prescribed, and within 14 working days after the making of such an application, the applicant must publish a copy of the application in the approved manner.*
- **Concern:** The provision does not make it compulsory for the Regulator to disclose the fees for the application for licence or extension of electricity supply.
- **Recommendation:** The fee charged for an application for a licence or extension must be disclosed to the party paying for such a fee.

5.3 Section 9 (8):

- *“As soon as practicable after granting a licence, the Minister must send a copy of the licence to the Regulator.”*
- **Concern:** The section does not separate the functions of the Regulator and the Minister.
- **Recommendation:** The Regulator should be provided with absolute responsibility of licensing, registration and complaints handling/dispute resolution. This will ensure that the Minister is independent and transparent in implementing regulations and policies with respect to electricity supply, regulation of suppliers and licensees, dispute resolution, tariffs, duties and responsibilities of the Regulator and Merger Regulator, etc.

5.4 Section 9 (9):

- *"As soon as practicable after granting any licence or extension falling within subsection (8)(a), (b) or (c), the Regulator must send a copy of the licence or extension to any person mentioned in that provision."*
- **Concern:** This provision fails to provide a timeframe within which the Regulator must send a copy of the licence to the Licensee.
- **Recommendation:** The provision should contain a clear timeline within which the licence must be sent to the licensee.

5.5 Section 18 (3):

- *"A tariff to be applied by a public electricity supplier under subsection (1) may include:
a) a standing charge in addition to the charge for the actual electricity supplied;
b) a charge in respect of the availability of a supply of electricity; and
c) rent or other charges in respect of any electricity meter or electrical plant provided by the public electricity supplier,
and the charge in paragraph (b) may vary according to the extent to which the supply is taken up."*
- **Concern:** The tariff to be applied by a public electricity supplier is unclear as to how this will be calculated. Consumers will not be able to comprehend how the charges are calculated and on what basis are the charges imposed on them.
- **Recommendation:** The provision, if not the Regulation, should contain the method of calculation of the charges that will be imposed on the consumers.

5.6 Section 19 (1):

- *"Where any electric line or electrical plant is provided by a public electricity supplier under section 15(1), the public electricity supplier may require any expenses reasonably incurred in providing it to be defrayed by the person requiring the supply of electricity to such extent as is reasonable in all the circumstances."*
- **Concern:** The provision does not make a mention that the public electricity supplier can charge the person requiring the supply for only the expenses incurred by the supplier. It does not restrict the supplier to charge anything more than the expenses incurred for the supply of electricity.
- **Recommendation:** The legislation should allow the supplier to charge for the actual expenses incurred and nothing extra. This will avoid any confusion the consumer might have on the charges imposed on him.

5.7 Section 20 (1):

- *"Subject to the following provisions of this section, a public electricity supplier may require any person who requires a supply of electricity under section 15(1) to give the public electricity supplier reasonable security for the payment to the public electricity supplier of all money which may become due to the public electricity supplier —
a) in respect of the supply; or*

The Act has a provision but the Bill doesn't have that

b) where any electric line or electrical plant is provided under section 15(1) in respect of the provision of the electric line or electrical plant, and if that person fails to give such security, the public electricity supplier may if it thinks fit refuse to give the supply, or to provide the line or plant, for so long as the failure continues."

- **Concern:** The term "reasonable security" is not clearly defined in the legislation. This will cause confusion amongst the consumers as to what is reasonable and what is not.
- **Recommendation:** The provision should be amended to state the exact amount or how the security deposit amount will be calculated. This will allow consumers to make informed decisions.

5.8 Section 20 (2):

- *"Where any person has not given such security as is mentioned in subsection (1), or the security given by any person has become invalid or insufficient—*
 - a) the public electricity supplier may by notice require that person, within 7 working days after the service of the notice, to give the public electricity supplier reasonable security for the payment of all money which may become due to it in respect of the supply..."*
- **Concern:** The 7 working days to pay the security deposit may not be adequate for ordinary consumers. This is in consideration of the fact that many a times the amount of security deposit will be exorbitant and consumers would not be able to secure that kind of money within 7 days.
- **Recommendation:** The timeframe should be extended to at least 21 working days to allow consumers to arrange payment of the security deposit to the public electricity supplier.

5.9 Section 21:

- *A public electricity supplier may require any person who requires a supply of electricity under section 15(1) to accept in respect of the supply any*
 - a) restrictions which must be imposed for the purpose of enabling the public electricity supplier to comply with regulations; and*
 - b) terms restricting any liability of the public electricity supplier for economic loss resulting from negligence which is reasonable in all the circumstances for that person to be required to accept.*
- **Concern:** The abovementioned provision is unfair and unreasonable. It is limiting liability on the part of the public electricity supplier for economic loss (financial loss) caused to consumers due to the supplier's negligence. It also avoids the supplier from adhering to the regulations/policies which may be necessary to comply with. This provision appears to be from the service provider's perspective only whilst compromising on the rights and interests of consumers.
- **Recommendation:** This provision needs to be expunged and/or drafted in a way that the public electricity supplier is held liable for the financial loss resulting from its negligence.

5.10 Section 23 (1)

- *"Any dispute arising under sections 15 to 22 between the public electricity supplier and a person requiring the supply of electricity—*
 - a) may be referred to the Regulator by either party; and*

b) on such a reference, will be determined by order made either by the Regulator or, if the Regulator thinks fit, by an arbitrator, appointed by the Regulator, and the practice and procedure to be followed in connection with any such determination will be such as the Regulator may consider appropriate."

- **Concern:** Resolution of any dispute through the process of arbitration can be complex. The participants can be encouraged to use mediatory process at the Fiji Mediation Centre to ensure the disputes are resolved in a timely manner. This will also ensure that the disputants have a win-win situation in their disputes.
- **Recommendation:** The dispute can be referred to the Fiji Mediation Centre for mediation as a first step. If the dispute is not resolved at the Centre, then it could be submitted to arbitration for resolution as the next step. All the provisions which require grievances and/or disputes to be resolved through arbitration should be referred for mediation as a first step for dispute resolution.

5.11 Section 33 (1):

- *"The public electricity supplier and any licensee may reduce, as they may think fit, the quantity of electricity supplied to any consumer if, by reason of any unforeseen circumstances beyond their control, it may appear that the supply of electricity generated is insufficient to enable the full quantity to be supplied."*
- **Concern:** The provision does not require the public electricity supplier to inform the consumers about the reduction in the quantity of electricity supply. As such consumers would not be able to prepare themselves in advance due to insufficient supply of electricity to them.
- **Recommendation:** The reduction in the full quantity of supply of electricity needs to be communicated within a certain timeframe to consumers. The legislation should contain a mandatory provision that will require the public electricity supplier to inform the consumers about the reduction in the quantity of electricity. There will definitely be factors/indicators within the company of the electricity supplier that will determine the insufficient supply of electricity beforehand.

5.12 Section 33 (2):

- *"Where the quantity of electricity has been reduced as aforesaid and in each case the public electricity supplier or the licensee has acted in accordance with its licence conditions—*
 - a) no liability will be incurred by the public electricity supplier or the licensee, as the case may be, in respect of any loss or damage caused by such reduction; and*
 - b) in appropriate cases, an abatement in the charges for the supply of electricity will be made in proportion to the reduction made".*
- **Concern:** The provision prohibits the public electricity supplier and licensee to incur any liability for losses or damages caused to the consumers. It is unfair that the actions of the public electricity supplier or licensee are fully borne by the consumers for no fault of theirs.
- **Recommendation:** The public electricity supplier or licensee needs to bear some liability in respect of any loss or damage caused by a reduction in the supply of electricity. The provision should be amended to include this arrangement.

5.13 Section 33 (3)

- *"The public electricity supplier or a licensee, their servants or agents, will not be liable (provided the damage is not caused by a breach of a licence condition) for any damage to persons or property or for any cessation of the supply of electricity which may be due to unavoidable accident, fair wear and tear, or overloading due to unauthorized connection of apparatus, or to the reasonable requirements of the system, or to defects in any installation not provided by the public electricity supplier or licensee, as the case may be, but will be liable when such damage or cessation is shown to have resulted from negligence on the part of the public electricity supplier, a licensee, their servants or agents, as the case may be, or from faulty construction of the installation."*
- **Concern (a):** This is currently the situation in the existing Electricity Act which protects the service provider from any liability incurred due to power outages and surges and other unavoidable accidents. A consumer is not provided with any redress or compensation for the damages sustained on their properties.
- **Concern (b):** This provision is contradictory to Section 33 (2) whereby the public electricity supplier or licensee will not bear any liability in terms of a reduction in the supply of electricity to consumers but will however, be liable when damages have resulted from negligence on the part of the public electricity supplier, a licensee, their servants or agents from faulty construction of the installation. The reduction in the supply of electricity and the damages caused needs to be treated in the same manner. The liability cannot be fully borne by the consumer for the former.
- **Recommendation:** The provision should be modified to include liability on the public electricity supplier's part due to unavoidable accidents and overloading, etc.

5.14 Section 42 (1)

"No consumer may use electricity supplied to the consumer for purposes other than those for which such electricity is supplied."

- **Concern:** This provision could be made clearer by stating examples of "purposes other than those" for which the electricity is supplied.

5.15 Section 51 (1) and (2) regarding disconnection of supply of electricity

(1) – *"Where any person employed by the public electricity supplier or a licensee finds upon any premises evidence which in the person's opinion indicates that an offence has been committed under the provisions of section 52(2), the public electricity supplier or the licensee or any person duly authorized by the public electricity supplier or the licensee, as the case may be, may, upon giving not less than 24 hours' written notice thereof, in such form as may be prescribed, cause the supply electricity to be disconnected from such premises."*

(2) – *"Notwithstanding subsection (1), where electricity is used by the consumer for business, professional or industrial purposes and the disconnection of the supply of electricity would prevent the consumer from carrying on the consumer's business, profession or*

industry, the supply of electricity must not be disconnected without the approval of the Regulator endorsed upon the notice referred to in subsection (1)."

- **Concern (a):** The Council wishes to clarify why domestic consumers are treated differently from commercial consumers despite both of them paying for using electricity. The offence is committed by both the domestic and the commercial consumer but the domestic consumer receives a written notice of less than 24 hours before the disconnection while the commercial consumer may not be subject to disconnection at all. This is simply unfair.
- **Concern (b):** Moreover, the use of consumers in the abovementioned section is contrary to the definition and use of the term "consumer" in all other legislations. Perhaps the Bill could be amended to mention "*where electricity is used for business, professional or industrial purposes.*"

5.16 Section 51 (4):

- *"If the supply of electricity has been disconnected under the provisions of the preceding subsections, the public electricity supplier or employee of a licensee, as the case may be, may determine the period for which such disconnection will be enforced, provided that such period does not exceed one month."*
- **Concern:** This provision is harsh and unfair. A consumer is expected to be without electricity for one month, which happens to be a basic need. If anything, the supply should be restored within 7 days' time to allow consumers to use such essential services once the consumer has complied with the laws and policies in place. One month without electricity is too long a time.
- **Recommendation:** The provision can be amended to include 7 days instead of one month.

6.0 Conclusion

The Electricity Act (*Cap 180*) was designed from the producer perspective of electricity supply. The Electricity Bill 2017 is also written along the lines of the producer of electricity, the Regulator and licensees in generating the supply of electricity. The Bill does cover consumer interests but the provisions are limited. The legislation needs to be balanced where both the producer and consumer perspectives are taken in to account. Regulatory reforms must consider the national interest while balancing both consumer and investor interests

- - - ENDS - - -



FIJI COMMERCE COMMISSION

HEAD OFFICE & CENTRAL EASTERN DIVISION

Level 1 Garden City Complex, Raiwal, Suva.

P O Box 5031, Raiwaga, Suva.

Phone: (679) 337 2175

Fax: (679) 337 2389

Email : helodesk@commcomm.gov.fj

Website: www.commcmm.gov.fj

WESTERN DIVISION

1st Floor, Downtown Holdings Biggs,

165 Vitogo Parade,

P O Box 594, Lautoka

Telephone/Fax: (679) 8661853

NORTHERN DIVISION

Corner of Nanuku/Jeduram Street,

P O Box 262, Labasa

Telephone/Fax: (679) 881 1155

23 February 2017

The Honorable Ashneel Sudhakar
The Chairperson
Justice, Law and Human Rights Committee
Government Building
SUVA.

Dear Sir,

RE: INVITATION TO MAKE SUBMISSION ELECTRICITY BILL

Greetings from the Fiji Commerce Commission!

The Commission is an independent Statutory Body that promotes effective competition and informed markets, encourages fair trading practices, protects consumers and businesses from restrictive trade practices and controls prices of regulated industries and other markets where competition is lessened or limited.

The Commission acknowledges receipt of the Invitation dated 20th February, 2017 from your esteemed office. We understand that the Committee is particularly interested to hear our views on the commercial impact of regulating the Electricity industry.

The Electricity industry is predominantly a monopoly industry which is declared a regulated industry under Section 5 of the Commerce Commission Act 2010.

Upon perusing the Electricity Bill the Commissions views regarding the Objectives and Functions of the Regulator are as follows;

i) Establishing an independent regulator

The Commission after reviewing the various functions would like to commend and support the separation of the regulatory function from Fiji Electricity Authority (FEA) to an independent regulator.

The Commission is of the view that having an independent regulator is beneficial for Fijian consumers, as the independent regulator will ensure that the conduct by the Fiji Electricity Authority and other licensees' in the electricity sector will be independently reviewed. This not only protects consumers but it also protects the commercial sector by ensuring there is a proper check and balance. The Commission supports the idea of separating the regulatory function from FEA but is of the view that the regulatory function be vested with a multi-sector regulator.

ii) Determining tariff scheme;

The Commission currently regulates the tariff setting in the electricity sector as electricity is declared as a regulated industry under section 4 of the Commerce Commission Act 2010. The Commission has carried out reviews and authorisations under the Commerce Commission Act 2010 and Commerce (Control of Prices for Supply of Electricity and Ancillary Services) Order as follows;

- a) Determination on Electricity Tariff rate (Tariff Alignment Phase 1) dated 1 June 2010;
- b) Determination on Electricity Tariff rate (Tariff Alignment Phase 2) dated 21 October 2010;
- c) Determination for FEA Charging Customers for Capital Costs dated 20 June 2011;
- d) Determination on FEA General Extension Policy dated 13 April 2011;
- e) Authorisation on Electricity Tariff Rates dated 11 December 2012;
- f) Authorization on Independent Power Producers Rate (Phase 1 & 2) - May 2014; and
- g) Authorisation for Regulatory fees and Ancillary services charges for FEA – August and December 2015.

The full review of the Fijian Electricity Tariff was last conducted in 2010. In the 2010 review, the Commission approved a forward-looking tariff plan.

iii) Create opportunities for Independent power producers to provide electricity;

The Commission has been regulating the IPP feed-in tariff rates since 2010. Prior to regulations the IPP rate ranged from 8.8 cents to 14.2 cents. The Commission started

to regulate the IPP rates from 2010 and these rates were set at a minimum to encourage more IPP entry into renewable energy generation in the Fijian market.

The Commission is currently in the final stages of completing its review into 2014 IPP rates. The current review considers modern systems of regulation with consideration on the pricing level in the spirit of fair and efficient markets. The Commission believes that a fair and efficient pricing system will attract investments by IPPs'.

iv) Improving Competition and efficiency in the system operations and wholesale markets within the electricity industry;

The Commission is the Fijian competition regulator where the focus is to remove anti-competitive conduct, restrictive trade practices and other markets where competition is lessened or limited. The Commission promotes competition through informed markets and encouraging fair trading practices. The Commission has also undertaken efficiency audits of FEA in the tariff setting process.

v) Protecting the interests of consumers of electricity;

The Commission is the Fijian Consumer protection enforcement regulator where the Commission through elimination of unfair trade practices protects consumers. The Commission has a comprehensive established complaint management system to receive complaints and/or to consider complaints affecting or likely to affect consumer interest.

vi) Promote research into the sector

The Commission firmly believes that research is an essential part of regulation, as such the Commission in its regulatory efforts has undertaken research into various sectors. Some examples of the sector research are as follows;

- a) Hardware supplies market; ✓
- b) Basic food items; ✓
- c) Pharmaceutical including essential medicines; ✓
- d) Postal services; ✓
- e) Petroleum ✓
- f) Liquefied Petroleum Gas; ✓
- g) Maritime transport; ✓
- h) Electricity; ✓
- i) Transference of gains from duty reductions to consumers

The Commission does not prima facie see any adverse impact of this Bill on the commercial sector and on consumers. This proposed Electricity Act upholds fairness and transparency by providing rules for determining the price of electricity, rules for determining authorised charges for the use of supply lines and the Act also sets out the Public Electricity Supply Code. These essentially will enable the commercial sector and consumers to have confidence on the processes, additionally, these processes will be independently verified by an independent regulator.

The establishment of an independent regulator ensures that the commercial sector and consumers both have access to a fair tariff regime.

The Commission is of the view that the separation of the regulatory function coupled with the objectives set out in Section 4 to create opportunities for Independent power producers to provide electricity will assist the commercial sector;

- a) to make investments into generation, transmission and retail of electricity;
- b) promote renewable energy by allowing the independent regulator to consider renewable energy investment and under Section 6 also consider the effects on the physical environmental of activities connected to the generation, transmission or supply of electricity.

Considering the abovementioned points, the Commission is of the view that this proposed Electricity Act will be beneficial to all Fijians including participants of the commercial sector as well as consumers.

Should the esteemed committee require any further clarification, please do not hesitate to contact the undersigned on 9996 759 or ceo@commcomm.gov.fj.

Yours Sincerely



Joel Abraham (Mr.)
Chief Executive Officer



Department of National Trade Measurement & Standards (DNTMS)

For Standing Committee on Justice Law & Human Rights

Content

Introduction

Department of National Trade Measurement and Standards

Membership and affiliations

Administration and enforcement of Acts and Regulations

DNTMS and the electricity sector

Other functions

Date: 27 February 2017

Introduction

The Standing Committee on Justice Law and Human Rights (SC-JLHR) is reviewing the *Electricity Bill 2017* which was tabled in Parliament by the Attorney-General on 10 February 2017. The development of the Bill is part of Government's intention to corporatise the Fiji Electricity Authority (FEA) and create a company to be registered under the *Companies Act 2015*. The enactment of the Bill will partially divest the FEA and also remove its regulatory powers under the current *Electricity Act 1966*. As part of its review the Committee has invited relevant stakeholders and members of the public to make submissions on the Bill. One of the stakeholders to make an oral submission to the Committee is the Department of National Trade Measurement & Standards (DNTMS). This brief provides some information on the Department's roles and functions, and its relevance to the Bill. The brief intends to provide some background information that would assist the Committee members in their deliberations on the Bill and other relevant matters relating to the electricity sector.

Department of National Trade Measurement and Standards

The DNTMS was established in 1957 with the enactment of the *Weights and Measures Act 1979*. The Department was formerly known as the Weights and Measures Department.¹ In fact "Weights and Measures" is the term in common usage today to refer to the Department. The *Weights and Measures Act 1979* was repealed by the *National and Trade Measurement Decree 1989* (now referred to as the *National and Trade Measurement Act 1989* after the 2016 consolidation of Fiji laws. The Department is responsible for the administration and enforcement of two laws – *National and Trade Measurement Act 1989* (deals with metrology) and the *Trade Standards and Quality Control Act 1992* (deals with trade standards). The DNTMS is a department within the Ministry of Industry, Trade & Tourism.

Some of the work of the DNTMS are:

- preparation, framing, modification, or amending of standard specifications for quality of commodities, processes, practices and services imported into, produced or provided in, or exported from Fiji;
- provision of metrology laboratory for calibration and certification of weighing/measuring instruments;
- promotion of research in relation to standards;
- provision of services for the examination and testing of commodities, processes, and practices, and for those purposes may either establish such laboratories and other facilities or arrange with such laboratories as may be necessary;

¹ Department of National Trade Measurement & Standards, Ministry of Industry, Trade & Tourism. Available at: <http://www.mit.gov.fj/index.php/divisions/departments/departments-of-national-trade-measurement-standards> [Accessed 24/02/17]

INFORMATION BRIEF

- approval of the use of standards mark for products and commodities or services complying with Fiji Standards;
- undertaking educational work and promotion in connection with standardization and quality control;
- collecting and disseminating information relating to standards and related matters, including the publication of reports, pamphlets, booklets, journals, and any other publications;
- maintaining a library and publish and print documents including standards;
- providing technical advice and assistance in standards and quality control matters; and
- undertaking other functions as directed by the Minister for Industry, Trade & Tourism.

The Department maintains the national system of units and standards of measurement on physical quantities to provide for the fair and just use of units of measurement, standards, measuring instruments and pre-packed articles.

The Department consists of two organisational units namely the Trade Standards and Weights & Measures or Metrology Unit. One looks after trade standards and the other is involved in metrology such as calibration and certification of weighing instruments used for trade or other measuring instruments such as water and electricity meters.

Membership and affiliations

DNTMS has affiliations/membership with international standards organizations such as:

- International Organization for Standardization (ISO)
- International Electrochemical Commission (IEC)
- Pacific Area Standards Congress (PASC)
- International Organization for Legal Metrology (OIML)
- National Measurement Institute (NMI)
- Asia Pacific Metrology Programme (APMP)

Administration and enforcement of Acts and Regulations

The Department is responsible for the administration and enforcement of laws relating to trade measurement and standards.

- *National Trade Measurement Act 1989* and its associated regulations;
 - *National Trade Measurement (Units & Standards) Regulations 1989*
 - *National Trade Measurement (Pre-packed Articles) (Packaging) Regulations 1989*
 - *National Trade Measurement Bread Regulations 1989*
 - *National Trade Measurement Misleading Markings and Deceptive Packaging Regulations 1989*
 - *National Trade Measurement Fees & Charges 2010*

This law provides for the

- Control and use of measuring instruments through periodic inspections. This is to establish whether or not such instruments furnish fair and just measure readings and the units of measure used are in compliance with the prescribed Fiji legal Units of Measurement.
- Licensing of measuring instruments, repairers and sellers;
- Maintenance of Fiji's Primary, Secondary and Reference Standards of Measurement;
- Marking and Labelling of pre-packed articles;
- Checking accuracy of purported quantity in pre-packed articles.

INFORMATION BRIEF

The Department also administers and enforces the *Trade Standards and Quality Control Act 1992*. This law is aimed at:

- ensuring that goods and services sold are of an acceptable and uniform standard;
- removing from the market place any dangerous and unsafe goods;
- ensuring that warning statements are issued on any dangerous or unsafe goods.

Some of the associated Regulations enforced by the Trade Standards Unit under the Act are:

- *Trade Standard (Used Motor Vehicle Import Certification Standard) Order 2013*
- *Trade Standard (Battery Standard) Order 2013*
- *Trade Standard (Bottle Water Standard) Order 2004*
- *Declaration of Fireworks as Dangerous Goods 2004*
- *Trade Standard (Shopgoods Fireworks Labeling Standard) Order 2005*
- *Trade Standard (Fuel Standard) Order 2007*
- *Trade Standard (Fuel Standards) National Biodiesel and Ethanol Fuel Standards (Amendment) Order 2011*
- *Trade Standards (Safety Information Standard for Hot Water Bottle) Order 2011*
- *Trade Standard Quality Control (Prescribed On-Spot Contravention Notice) Regulation 2011*
- *Declaration of Dangerous Goods* such as (Corona Electric Showers, PVC Plastic Toys, Yo-Yo Water Balls, Lead Soldered Cans, Mini-Cup Jelly Cup Confectionary, Toy Guns, Emergency Rechargeable Portable Lamps-Premier/Philips Tube, Roof Sarking Foils, Electric Kettles-Yaxing Long, Incapacitating Spray, & Taiyo Cigarette Lighters).

Fiji Trade Standards Unit signed a Memorandum of Understanding with Standards Australia International in 1998, which gave Fiji a platform from which it approached standardization issues. This allowed the Unit the opportunity to adopt and modify Australian Standards as Fiji Standards.

DNTMS and the electricity sector

The DNTMS as the agency responsible for metrology currently inspects, calibrates and certifies trade meters and weighing instruments. Section 27(1) of the *National and Trade Measurement Act 1989* requires that every measuring instrument used for trade should be produced to an inspector for inspection at least once every 12 months or before it is used. The inspectors from department of weights and measures have the powers to examine and test the measuring instruments used by businesses. In this regard the Department is involved in inspecting, testing, calibrating and certifying water (WAF) meters, electricity (FEA) meters, taxi meters, weighing scales used in retail outlets and so forth. The Department's Weights & Measures (Metrology) unit is currently involved in the certification of FEA's electricity meters as per the requirement of the Act.² It also conducts spot inspections of weighing machines and meters in retail and wholesale outlets

Other functions

- Control and regulation of the scrap metal trade industry to prevent illegal trade.
- Registration, licensing and control of repairers and adjusters of measuring instruments.

--- ENDS ---

Disclaimer

This Information Brief was prepared to assist the Standing Committee on Justice, Law & Human Rights in its review of and deliberations on the *Electricity Bill 2017*. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the issues. Other sources should be consulted to enhance understanding of the issues. The Research and Library Unit shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice. The Research and Library Unit accepts no responsibility for any references or links to, or the content of, information maintained by third parties.

² Re-confirmed via phone communication with DNTMS Inspector Joeli Kini, 27/02/17



PERMANENT SECRETARY

MINISTRY OF INFRASTRUCTURE AND TRANSPORT

STATEMENT ELECTRICITY BILL 2017

PARLIAMENT 28.02.17

1300 – 1400 HOURS

Comments on the proposed Electricity Bill 2017

The Ministry of Infrastructure and Transport supports the Electricity Bill 2017 as it clearly demarcates the role of a service provider and the regulator; however, we seek to provide additional comments;

PART 1: (Sections 1-4)

Electricity services to be included in Section 2 and defined - in terms of providers in the rural areas and urban areas. Those that are connected to the FEA grid and those not connected.

Electricity suppliers to include other suppliers who are not independent power producers;

Independent Power Producers to also be defined in section 2;

The Ministry proposes that Section 4 (a) of the Act is to be amended as this gives exclusivity to the Company. There should exclusivity given to any Company for the following areas;

- (a) Urban and Peri-urban areas;
- (b) Rural mainland where the network has been connected;
- (c) Defined areas that are handed over to FEA;

The following reason is why the Company should not have exclusivity for the whole of Fiji is because there are many parts of Fiji that are not currently and are unlikely to be connected to the FEA network. For these reasons there should be;

- i. There should be a clear demarcation of the exclusive rights, in terms of providers in the rural areas and urban areas. Those that are connected to the FEA grid and those not connected.
- ii. We recognize that the Company is not the sole provider of electricity;
- iii. We need to encourage the participation of many providers of small scale village based systems;

Section 4(d) should be amended as the Company who will be a competitor in power generation is also given special position to creating opportunities with other independent power producers which is an uneven playing field. To remove “recognize the predominant position that the company has in power generation...”

Section 4 to include a new subsection incorporating international commitments and obligations such as SDG 7 that Fiji is party to

PART 2 (Sections 5 – 29)

Section 6 (1) to be amended and only refer to the Regulator and not the Minister. This should be consistently referred to in Part 2.

Section 6 (3) b should be amended to include....licenses to “*generate*”, supply or transmit electricity...

Section 6 (5) to also include a definition of “*rural area*” in the current FEA context;

Sections 7(5) to also include the definition of “*generate*.”

Section 8 to be amended and only state the Regulator instead of the Minister.

Whole of Section 9 to be amended and only state the Regulator instead of the Minister.

Section 9(5) to be amended to remove “public electricity supplier”

Section 10 – there is no duration of validity for the license;

Section 15 – a time limit needs to be imposed. This could be included in a Customer Charter that states the time limits. This Charter should be approved by the Regulator and reviewed annually.

Section 16 – issue of self-supply needs to be further clarified.

PART 3

Section 30 needs to be amended to ensure the rights of landowners are considered and this clause may need further consultation with the indigenous communities.

PART 4

Section 33 needs to be amended so the losses incurred by consumers due to Reduction and Cessation of supply by the Public electricity supplier or the licensee to be recovered by the consumers.

Section 51(1) – notice for disconnection is very punitive (not less than 24 hours). This can be covered in the Customer Charter.

Section 51 (5) – This should be handled through a Customer charter. The appeal process should made to an independent tribunal.

PART 5

Section 55 (1) (c) – remove reference to Minister and include an independent tribunal.

PART 6

Part 6 Section 63 of the new bill, the Fiji Commerce Commission (FCC) will become the Regulator of the electricity sector while FEA, termed as the “Public Electricity Supplier” and later be succeeded by an entity called “Company” (Part 1 Clause 2 (h)) will be the operator. Licenses for supply and transmission of electricity to customers in the case of IPP’s will be issued by FCC after consultation with FEA (Part 2 Clause 7(2)).

Regulatory & Merger Regulator roles

The FCC will assume the role of a regulator (Part 6 Section 63) as stated above for the electricity sector but to avoid issues with mergers which could potentially create monopoly in electricity market, Part 2 Clause 14 of the proposed Electricity Bill draws in the Clause 72 of the Commerce Commission Decree 2010 to be part of this bill. This is to avoid major electricity service providers from merging companies to monopolize the electricity market.

Provisions for other energy sources

Part 2 Clause 6(2c) covers renewable sources but does not specifically mention the renewable source type.

APPENDIX B

VERBATIM REPORT

**VERBATIM NOTES OF MEETING OF THE STANDING COMMITTEE ON JUSTICE,
LAW AND HUMAN RIGHTS, HELD IN THE COMMITTEE ROOM (WEST WING),
PARLIAMENT COMPLEX, ON THURSDAY, 23RD FEBRUARY, 2017 AT 10.30 A.M.**

Submittee: Fiji Electricity Authority (FEA)

In Attendance:

Mr. Hasmukh Patel	-	Chief Executive Officer
Mr. Bobby Naimawi	-	Chief Financial Officer

(Welcome and introduction by Chairman)

[Recording commenced]

MR. H. PATEL.-The Act was first enacted in 1966 and has been in operation for the last 51 years or so. There were some minor changes made to that particular Act over the years but in essence, the Act has been there for the last 51 years.

As you rightly stated as part of the partial divestment of the FEA, it has become necessary to review the existing Electricity Act, because one of the prime reasons for amending the Act is that up until today, the regulatory powers were with FEA - FEA was the regulator. One might say, or for clarification sake, the regulation that FEA was carrying out was purely technical regulation.

As far as the commercial regulation is concerned, that has been in the hands of the Fiji Commerce Commission. As far as the pricing is concerned, the various fees that FEA have been charging, that came actually under the ambit of the Fiji Commerce Commission. The Fiji Commerce Commission is to establish what are the tariffs that FEA could impose on the customers, but as far as the technical regulation is concerned, to ensure compliance to international standards and to promote safety and security of power supply. The technical regulations was the responsibility of FEA under the present Electricity Act.

Now the Government, as part of the partial divestment as you rightly said, Chairman, FEA will now become a commercial, shall I say 'company', more or less 'a limited liability company', which means that the regulation or the regulatory function of FEA needs to be palmed out of FEA. Sometimes people have said that FEA cannot be the judge and the jury, so all we are saying is that that is fine. I think the regulatory functions needs to be taken out and parked outside to an independent body that can then regulate both the technical side and the commercial side.

That is the prime reason why the Electricity Act obviously be looked at, and at the same time because up until today and still is, FEA is a Government body, 100-percent owned by the Government and it is a commercial statutory authority, but now it is going to become a limited company and therefore, the Act also needs to be revised to reflect that.

Over the past couple of months, the Electricity Act has been looked at and discussions have been held with FEA. We have looked at some of, shall I say 'clauses' that we thought were important to incorporate in the new Act. We have passed that information on to the SG's office and the PS for Public Enterprises and we have had discussions with them and they are happy to incorporate because it made sense that these clauses be incorporated to ensure that operations within the new company also move on very successfully.

So all in all, FEA has expressed its views, their views will be taken on board before the Electricity Act is finalised and is presented to the Parliament and therefore, FEA is a company, we are happy that the consultation has taken place and we are almost coming towards the end of the finalisation.

MR. CHAIRMAN.- Thank you Mr. Patel. Mr. Naimawi would you like to add something to that presentation.

MR. B. NAIMAWI.- I think it is basically covered by the CEO pretty fairly, so I leave it to the floor, Chairman.

MR. CHAIRMAN.- Thank you Mr. Patel and Mr. Naimawi. I will now open the floor for questions if there are any pertinent questions to the diversification to the officials from FEA, Honourable Members may ask those question.

HON. M.A. NIUMATAIWALU.- What will it mean to FEA, will it affect operations? Will it affect staffing now, that the regulatory aspect of it is taken out of FEA?

MR. H. PATEL.- Will it affect operations - not really. As I said, the Act very fairly and comprehensively covers all aspects of FEA's operations, to enable the operations to continue in a smooth manner, that means the transition will be seem less, if I can use that word. So, there were a few points that we have raised with the SG's Office and the PS's Office and suffice it to say, they have considered them and they will be taking them on board.

So as far as operations are concerned, it will be very smooth. The new Act, we have had a look at it and we are happy with it, and as far as staffing is concerned, again, once the partial divestment takes place, obviously there will be new shareholders in the company and obviously, there is likely to be a change in the Board composition because the new shareholders would like representation on the Board, like any other company and as far as the staffing is concerned, FEA presently, I would say is very well staffed in terms of numbers.

In terms of sizing I would say, if I can quickly give an example, way back in 1985, when we had only 3.5 thousand kilometres of transmission network, those days, we had some 1200 people in the company. Today, in 2017, we have some 9000 kilometres of transmission network, which is almost about three times or at least two and half times what we had in 1985 and we have 750 people in the company.

So in terms of staffing, over the years we have had a look at the organisation structure, we have thinned down the organisation. There are number of activities that have been outsourced because it was considered that outsourcing was the way to go in certain sectors of the operations of FEA, and I think as far as the staffing goes, FEA is a right size organisation. But once again, it will be totally up to the new Board on how they look at the staffing overall and we will take it from there as and when it happens.

MR. CHAIRMAN.- Thank you, CEO. Honourable Leawere.

HON. M.R. LEAWARE.- I would like to thank the CEO for his deliberation. It looks like he has got all the information on his fingertip, but the thing I would like to ask the CEO is that, you are taking ownership in terms of people who will buy or probably invest in FEA in terms of shares. So taking ownership by consumers is one thing and the cost to them, especially on the impact that it will have on the consumers, especially down the line is another. What are your comments on that?

MR. H. PATEL.- Well electricity tariffs, irrespective of the partial divestment or not, one has to look at the long term plans of the electricity utility, electricity utility industry is capital intensive, Sir. It is not that you can spend some money and then keep quiet and things will function because the demand is increasing every day. The Government of the day has taken on a challenge that we will energise the whole of Fiji by 2020 and therefore, the demand will increase and it is increasing.

Every year, we are connecting new customers, existing customers. Their demand is also increasing commercially. Also, there are new establishments, new factories being established, so the demand is increasing on an yearly basis, which basically means that you need to have a long-term power development plan and we have a 10 year power development plan, which ensures that if you executed that power development plan as per the plan over the 10 years. Then going forward, FEA or whatever the new companies name is will be able to meet the power requirements of the citizens of Fiji, which means that in order to execute that power development plan, you have to invest capital, which means you should have an electricity tariff, which is appropriate to enable you to execute that plan so that the power requirements of the nation is met.

Obviously, as I said earlier, if FEA wants a revise in the tariff either way, then the process is there, the methodology is there, we have to approach Fiji Commerce Commission, they will carry out their own scrutinising, they will carry out and have discussions with FEA and at the end of the day, Fiji Commerce Commission is an independent body and it is their call.

So at this stage, whether the partial divestment will affect the prices and the consumers, it is not possible to say, but over the long-term, you expect that if you want to develop more renewable energy sources and as we know our Honourable Prime Minister has taken on this task rightfully that we need to make Fiji a renewable energy nation because we are a small island nation and we are subject to climate change and we have seen the impact last year. So in order to promote more renewable energy into Fiji, obviously we will have to spend a lot of money and the FEA should have a revenue stream which will enable them to actually execute these projects for the benefit and long-term benefit of everyone in Fiji.

So at this stage, I cannot say how the tariff will fluctuate, but then we have the mechanism in place, like Fiji Commerce Commission to study, and at the end of the day it is their call.

MR. CHAIRMAN.-I have a question. You mentioned that the pricing currently is with the Commerce Commission, however, compliance structure or compliance oversight is with FEA. Can you give us some examples of what sort of duties, what sort of regulatory functions in terms of compliance, FEA conducts at present and what sort of duties the regulator, Commerce Commission conducts at present?

MR. H. PATEL.- As I said earlier, as far as the price regulation and any type of fees that FEA levies on the customer for the types of services that they may require is determined by the Fiji Commerce Commission. As far as the technical regulation is concerned, that is carried out by FEA.

Let me give you a very quick example, Sir. For example, if someone builds a new house and needs electricity connection, and assuming that the grid is already in front of his house but because it is a new house that he has built or a new factory that has been built, obviously the new premises will be wired up. So one of the requirements under the Electricity Act is that the premises, whether it be a residential or a commercial factory, or whatever it maybe, it needs to be wired according to certain standards.

The standards that we follow are the Australian and New Zealand standards in terms of electrical wiring which are very similar. So we make sure that before that particular premises is connected to the FEA grid, we ensure that our electrical inspectors go and inspect the wiring and ensures that it is according to the standards and ensures that before we connect it to the grid, it is electrically safe. So those are technical regulations. We make sure that the wiring is carried out as per standards, so that the people who use electricity will be safe.

Suffice it to say, I think most of the regulations that we carry out right now, technical regulations are all basically technical in nature, which ensures that the customer gets the right voltage of supply in terms of security of supply, in terms of safety of supply. Those are the types of technical regulations that FEA right now looks after and ensures compliance. Any type of fees, any type of price, which is levied on the customer is with the Fiji Commerce Commission. I hope, Sir, I have answered your question.

MR. CHAIRMAN.- Thank you CEO for that. Does the FEA at present also certify or license private electricity contractors?

MR. H. PATEL.- Yes, presently we are talking about electrical contractors, so the law is that if you need to carry out any sort of electrical wiring on your premises, whether it is alterations or new editions, you need to hire the services of a licenced electrical contractor and the licencing presently is carried out by FEA. Similarly with electric wiremen, that means only someone who has got an electrical licenced issued by FEA can wire any premise. So these licences, both to the electricians and to the electrical contractors, are issued by FEA. For the electricians, when we issue a wiremen's licence, they have to sit for an examination and if they pass the examination, and they have the requisite, shall I say 'practical experience', then the licences are issued and then they can actually work for an electrical contractor and carry out wiring on any new or alterations or editions.

So such licencing will be now taken out of FEA and this will now lie with the regulator. So basically, all licencing whether it is of electrical contractors or it has to do with electricians, whether if someone has a generator installed on their premise, they also need a licence to generate even for their own usage or for backup, they need to apply for a licence. So all these licencing activities that we have previously embedded within FEA's operations will be taken out and that will lie now with the regulator.

MR. CHAIRMAN.- That is the answer I was looking for. In fact, that is what I was trying to investigate.

MR. H. PATEL.- Thank you for prompting me.

MR. CHAIRMAN.- As I understand correctly, the compliance part will still be with FEA, the pricing part will be with the regulator Commerce Commission, in addition to that, all licencing will now be handled by Commerce Commission?

MR. H. PATEL.- Absolutely. So if Fiji Commerce Commission is the regulator, then they will be handling all the licencing going forward.

MR. B. NAIMAWI.- What the CEO is saying, that the new regulator will look after both the functions now, commercial and the regulatory arm.

MR. CHAIRMAN.- The pricing and the licencing?

MR. H. PATEL.- Yes, pricing and the licencing.

MR. CHAIRMAN.- According to our research, as at 2015, FEA held about close to \$38 million in security deposit from customers, how does FEA apply this security deposit? Is it a capital for FEA?

MR. H. PATEL.- No, as rightfully stated in the Electricity Act, it is a consumers security deposit which means basically if the consumer fails to pay his electricity bill, we have some sort of a fall-back position, because normally, majority of the customers of FEA are post-pay customers. Of course, in the last 15 years, especially as we go more and more deep into the rural areas, we are connecting what we call "installing of pre-pay meters." Pre-pay means they buy the electricity, so those customers do not have to pay any security deposit. It is only the post-pay customers, especially in the urban areas and all.

The post-pay customers, they have to pay a security deposit because when we bill them, it is for the previous month's bill, the electricity that they have consumed, by the time the next bill comes, you know they have already consumed the electricity for that existing month. So if that customer wants to run away, shall I say in any way and not pay, then obviously we will be ending up with the bad debt and it may be difficult to find that customer.

So therefore, it is wise and prudent that we hold the security deposit for two months' consumption and that is where the two months actually comes from and the security deposit is based on your consumption. So what we do is, initially when we determine the consumers security deposit, say if it is a new home, then we look at what the new home is involving; how many lights are there, how many power points, whether it is a big home or a small home, we determine the deposit and the deposit is reviewed every now and then.

For example, if FEA came up with a security deposit of \$100, which we thought was likely to be your two months consumption, after six months when we saw that you are more like \$70, then we review it and we return the money. On the other hand, if we have under estimated your security deposit and you have a higher consumption then we anticipated, we go back to customer and say we need an additional amount to cover that. As far as the major customers are concerned, commercial and industrial, in fact these applies to all the customers - the choice is yours.

We do not need to have the security deposit in cash; if you want to give us a bank guarantee, we are prepared to accept a bank guarantee. So answering your question, we are not looking for the consumers security deposit as a capital to run FEA's operations, no. It is purely a security because this particular account is not static, it is dynamic, in the sense that on a daily basis, there are people closing their accounts. We have to refund their money back and there are new people who are opening their accounts and we have to take deposits. So it is a dynamic account, so it has got nothing to do and the majority of the deposits that we hold for example are by way of bank guarantee.

MR. CHAIRMAN.- Thank you very much for the explanation CEO, that actually answers a lot of queries about security deposit. Just on that one point again, the new law will require that a certain percentage of interest will be paid on that security deposit. It has to be an interest-bearing account, FEA will have to pay a particular amount of interest regulated by the Commerce Commission. How will that interest be applied?

MR. H. PATEL.- We have seen that particular Clause in the Electricity Act and we are looking at how we will be able to best address the law. Now obviously, we are not a bank and we do not want to get into interest calculations on a daily basis or three monthly basis. So we will be

discussing this matter further with the FEA Board and address it in the best possible practical manner.

So for a very quick example, we may be talking to some banks and see whether we can transfer the deposits, you know what I am saying, you know like a bank guarantee because the banks are in a position to calculate interest on a daily basis, that is their core business, whereas our core business is not to do that. So, all in all, suffice it to say, yes, FEA will pay interest as determined by the Commerce Commission, but how we actually execute it, the methodology, we are still thinking about the best way possible to do that.

MR. CHAIRMAN.- There was another query that was raised by this Committee earlier when we were discussing the Bill and that is regarding Clause 16 of the Bill, which states that if a private person wants to self-generate, wants to generate electricity for its own purpose, then the FEA will have the first right of refusal which means that if FEA can provide electricity to that premises on its terms, on a cost equal to, or lower to than the price that the private generation would take, then FEA will have a legitimate right to supply electricity to that premises. How does it operate in practical terms?

MR. H. PATEL.- Let me say what the present law is, that if an individual decides to generate electricity on his own for his own consumption, then he has the right to do that. There are many customers who have backup plants in the event the grid supply fails, then the backup supply comes on.

This particular new enactment that will come about basically says that should you decide to generate your own power, then the first right of refusal is with FEA. Now what does that mean? That means that if FEA can supply you electricity, at the same price or less than what you will generate at, then it will only make sense that you stay with FEA. I think that makes sense because one has to consider this, that if the number of customers for some reason decreased, then overall the FEA's operations will be impacted and the remaining customers will be affected.

So all we are saying is, yes, we have the right to generate for your consumption, but if the price that you are going to pay for your generation is going to be equal to, or less than, or more than FEA, then you should remain with FEA, and I think that is a fair law.

I think even the customer will think that if it is going to be cheaper or the same, why do I get into the hassle of generation, because generation is not simple because if we have a power plant or something, then you need to service the plant, you need to maintain the plant and it becomes a headache and not every person has that expertise. So basically if it is going to be the same price or cheaper, then obviously it makes sense and overall as I say, the impact of FEA's operations will not be adversely affected.

MR. CHAIRMAN.- Yes, because if everyone starts generating on their own, then the pool decreases.

MR. H. PATEL.- Yes, the pool decreases and the overheads are still there. For example, the rural customers, they may not be able to generate their own because of the low income and things like that, so then it will be becoming more expensive to actually service it.

MR. CHAIRMAN.- Now when you say that same point, when you say the cost of supply for electricity should be either equal to or lower, which entitles FEA to have a first right of refusal, do you also add to that the cost of bringing electricity to the premises, like putting extra posts and wires all in that, or just the tariff you are looking at?

MR. H. PATEL.- I think as far as the customer is concerned, if it is an existing customer, he has already got the grid right at his doorstep, but supposing if it is a new customer, that means he does not have the grid near his house. Presently, if the grid is nowhere near your house and you wanted power supply, you could install a small generator in your house; whether it be renewable or diesel. You could do that, and if you thought that was cost effective, that is the way, but if you thought in the long run, let me pay for the grid extension and let me clarify, today for all rural electrification, the Government pays for the cost.

MR. CHAIRMAN.- 100 percent.

MR. H. PATEL.- 100 percent. So the point is, that thing is no longer a cost to new rural customers. So for example, if the grid had to be extended, all that the prospective customers have to do is go through the right channel, make their applications through FEA, we give the quotation to the Ministry of Infrastructure and Transport to the Department of Energy, and they look at the funding arrangements and ultimately the funding is provided by the Government and FEA carries out the RE work and then they are electrified.

So in terms of the grid extension for residential customers is concerned, mostly in the rural areas because the urban areas are already electrified, obviously the Government is going to pay for the grid extension.

MR. CHAIRMAN.- Also cheaper for the consumers.

MR. H. PATEL.- It only makes sense that they take electricity from FEA.

MR. CHAIRMAN.- Thank you CEO that was one of the pertinent questions we had. Honourable Singh, I think you had a question in that same area.

MR. B. NAIMAWI.- Sorry if I can just add to the CEO. In terms of that Clause 16, basically it also protects FEA's investment. Say for tomorrow, FEA invests into a multi-million dollar hydro project, say \$400 million and then you have got this customer base, just to service the debt and to repay that loan over that period for that particular project and suddenly half of those customers decide to own their own generators, then obviously this particular project will fail, so that is basically the reason why that clause is there.

MR. CHAIRMAN.- It is the same card for all the customers on the larger pool, that if people who cannot afford their own generators are still protected by this clause.

MR. B. NAIMAWI.- Provided that that project that FEA has implemented is least cost.

MR. H. PATEL.- The remaining customers are protected.

HON. B. SINGH.- Thank you for the explanation and deliberation this morning. Just to add to what the Chair has said, for example, currently the grid is single phase up to my premises and later I need to upgrade that to three phase, and it is a cost to the consumer. The cost the consumer has to pay is having the three phases and that is about \$150,000 to \$200,000 depends on the assessment that FEA does and ask the customer to pay up and that becomes a capital investment for the consumer and for example if I use solar, which is more cheaper, I have many panels installed and then later I could expense against my books. I think I would best invest on my solar rather than investing on FEA's or giving FEA \$150,000 to \$200,000 which will also affect my cash flow.

Would this Clause 16 be idle or restriction to this, what are your comments on that? For me, I would better invest on my solar and have that capitalised as expense in my books and have that as an asset for 10 years, rather than giving you \$150,000 to \$200,000 capital investment or cash, which will also be affecting my cash flow.

MR. H. PATEL.- As we all know, the solar technology has been advancing, moving ahead. Some years ago, it was very expensive, nowadays it is becoming somewhat affordable. The point that you have raised is, do you have an option? Well with solar, the fact is that solar is intermittent, unless you have proper battery backup. So for example, supposing you said that I will invest in solar and get a three phase supply. The day when there is no sunshine, you will not have a power supply, then you will have to depend on the grid. So my point is, that if you want a regular and reliable secure power supply and you wish to invest in solar, then you will have to invest big time into battery banks, because that will give you a 24/7 power supply.

Just for the information of the committee, the battery banks, the cost have not come down substantially, it is fairly expensive. So if you wanted to invest into a solar, with a proper battery bank that is going to give you 24/365 supply, the cost of electricity to you could range in the range of 60 to 70 cents. I am just giving you a ballpark figure per unit, whereas, the FEA tariff on an average today is 37.4 cents. So it could be even twice.

So the point I am saying is, that when you invest, now you might say if I invest over the long-term, I will be able to pay it off, but again you have to look at the life of the batteries. The batteries are not lifelong, the batteries have a certain life. So overall, it is a commercial thing, but the reality of the situation is that, FEA has the right of refusal because we will approach you and tell you, this is the cost and we will try and prove to you that what is in your benefit and what is not in your benefit, but at the end of the day, if you feel, remember it says there that at the end of the day, if the price is not equal to a cheaper overall, then it is your call. But you will have to make the decision, not short term, but real long-term, taking into account battery life, battery cost and servicing.

For example, when you become a customer of FEA, then you do not carry any risk. That means if the power supply is not there for some reason, it is FEA's responsibility to re-establish it. Supposing when a cyclone came and it does any damage, the total responsibility lies with FEA, and we have to repair the power lines and repair everything and ensure that you get the electricity, but if you have your own plant and for some reason it becomes damaged, un-operational, then you run that risk. So you have to factor all those risks, when you are actually assessing and comparing with FEA. Those are my comments, I hope I have answered your question.

MR. CHAIRMAN.- Thank you for that explanation Sir.

HON. M.R. LEAWERE.- So if you regulate that as well, solar and for the future?

MR. H. PATEL.- Electrically yes, for safety purposes, because at the end of the day, the electricity company has the, shall I say, 'the responsibility of ensuring electrical safety'. So for example, we do not expect someone to put up a solar panel and then get it connected themselves. We will want FEA to come and inspect it, to ensure overall electrical safety.

MR. B. NAIMAWI.- That will come under the new regulatory arm that will do this inspection and make sure it is up to the standard and safety.

MR. CHAIRMAN.- There will be a new regulatory within FEA itself?

MR. H. PATEL.- That is one area that FEA will be retaining and let me clarify. For example, today in FEA, we have what we call a 'chief inspector' and we have got what we call 'electrical installation inspectors'. These inspectors, we have almost about 20 inspectors in the company, they are involved in daily operations, both working hours and after hours.

Now we do not expect the new regulator to get into this mode and running an operations because that is not the objective. So therefore, one of the things that we have proposed in the new Electricity Bill is that the day to day activity of the inspectors will remain within FEA and we will ensure that the technical compliance is done according to the standards.

Let me give you a very quick example, if you have a cyclone, like we had *Tropical Cyclone Winston*, and there was substantial damage. Obviously, our meters will not start spinning till we get the electricity back and we cannot pay our employees until we get the electricity bell and our revenue stream back. Now if we get the grid repaired, that does not ensure electricity to the customer because there is a black wire between the FEA grid and the customer. You may have it an overhead connection or an underground connection.

Now if we were to pump that out to the regulator and pump all the inspectors out there who are actually responsible for that black wire. Supposing your black consumer wire broke, then you have to get an electrical contractor, get it fixed up and once it gets fixed up, then the FEA inspector has to go and inspect it, make sure everything is safe, then he connects it to the grid.

Now if we were to park that operations with the regulator, then the regulator will have to do early operations. They will have to have so many vehicles, so many inspectors, there is an after service that has to be provided of it happens after hours, someone's main broke and he got it repaired at 8 p.m. and he needs a connection. So all I am saying is, it is not the intention of the regulator to do that. So one of the things that we have asked is, that function, day to day function remains within FEA, and of course the Chief Inspector position will remain with the regulator and the Chief Inspector overall can have some level of supervision on the inspectors. I hope I have clarified that point.

So answering your question, Sir, basically if someone were to put their own plant, obviously they will need to get it inspected; generator will need to be inspected; and also the connectivity. So that particular function, you will have to apply for a licence to the regulator. The regulator will only give you a licence once it has all been inspected and for that service the regulator will come to FEA, and say 'can you inspect this and ensure that this is all okay and ticked,' that is the way we intend it to operate.

MR. CHAIRMAN.- That is a very good explanation. FEA has been one of the more up-to-date and more prompt companies, in fact I have seen instances where FEA inspectors are at the premises at mid-night to check the black wire and connect.

MR. H. PATEL.- Thank you for that.

MR. CHAIRMAN.- FEA – do you have any question there?

HON. M.A. NIUMATAIWALU .- With this becoming an Act, there will no longer be an FEA, there will be a new company, is that correct?

MR. H. PATEL.- It will be a new company in the sense that the ownership will be different. It will be 51 percent Government and 49 percent which is the intention to sell. So 49 percent could be owned by someone else. So obviously, as I say, it will no longer be a statutory

authority, but it will become like a commercial company as the Chair said, so the name could be different.

I was wanting to get to the views that you had expressed to Government, what are some of the risks as we go down this road? You know you said, the axe has been there for quite some time but we are moving into a new mode now. Did you analyse the risks as we move into the divestment of funds from FEA, the regulatory aspect of it taken out of FEA as well? What are some of the risks?

MR. H. PATEL.- The new company?

HON. M.A. NIUMATAIWALU.- Yes.

MR. H. PATEL.- As I said earlier, the electricity industry is capital intensive, that means in order to meet the requirements of the customers going over the years, you need keep investing. Also, the infrastructure ages, so in the long term you need to refurbish them or replace them, so it is an ongoing cost, which the new company will have to bear in mind. Up until today, obviously whether it is a Government company or it is a limited liability company, the fact still remains that it is capital intensive, and you have to bear in mind the developments that need to take place, both in terms of security of power supply. Security of power supply means you need to make sure if the assets are aging, you need to refurbish or replace them - that is a cost.

Just to give a quick example; Monasavu Hydro Scheme is the more strategic asset of FEA, I mean, suffice it to say, if it was not for Monasavu hydro scheme, then the price of electricity in this country would not be what it is today, and you know what are some of the fees or shall I say tariff rates that some of the small island nations in the Pacific pay who are totally dependent on fossil fuel.

So Monasavu, for example has been in operation, it came on line in 1983 and it has been in operation for 35 years. In the last three to four years, we have spent some \$50 million trying to refurbish and change things, so this is just an example. As an asset ages over a period, in order to ensure reliability of power supply, you will need to invest in it. It does not matter whether it is a Government company or it is a limited liability company, the new owners will have to accept that fact that the electricity industry is such that if you want to make sure that your revenue keeps coming in; you need to make sure that the electricity keeps flowing; and in order to make sure that the electricity keeps flowing, you need to invest. So all I am saying is, that fact has to be kept in mind by the new company.

MR. CHAIRMAN.- The thing is, you are correct on that. Our research shows that in Solomon Islands, the price of electricity equivalent to Fijian dollar is \$1.47 per unit, in Tonga it is \$0.90 per unit and in Cook Island it is \$0.93 per unit.

MR. H. PATEL.- Absolutely.

MR. CHAIRMAN.- So in Fiji it is 37.4 cents per unit. Just one question in that regard, currently the Government pays 15.9 cents per unit as subsidy for low-income earners, while the consumer pays 17.9 cents which then totals to the unit cost. With the incoming company and currently Government is the 100 percent shareholder if I put it that way of the Authority, the Government has the power to invest and the interest to invest, with the new company coming in, would that be possible to maintain that subsidy?

MR. H. PATEL.- Yes, I think as far as FEA is concerned, the subsidy is provided by the Government, so as far as the company *per se* is concerned, we are happy. So all I am saying is, you know after the divestment, I think the Government will continue to provide the subsidy. In which form and format it does, that is something up to the Government, but I think the subsidy will be there.

MR. CHAIRMAN.- Honourable Singh – you have any last question?

HON. B. SINGH.- My question has partly been answered, just on the capital base. What is the total capital base today for FEA and also what is the total bond been held?

MR. B. NAIMAWI.- In terms of the net asset, that is the total ownership of Government, we are looking at about \$600 million to \$700 million as of today. In terms of the asset which belongs to Government and the people of Fiji, it is slightly over \$2 billion and that is exactly what Mr. Patel is saying that \$2 billion is what we maintain on a daily basis to make sure reliability of power supply to customers.

MR. CHAIRMAN.- And of course to upgrade that and to keep that in good maintenance, and to keep investing.

MR. B. NAIMAWI.- \$2 billion value of asset that we need on daily basis.

MR. CHAIRMAN.- Thank you gentlemen; Mr. Patel and Mr. Naimawi for your presentation this morning. It has been quite enlightening for us, in fact we were really anticipating FEA's presence here when we were looking at the Bill.

You have answered all the questions that we had and it interests the Committee in the work it is doing in scrutinising the Bill. Should we have any further questions or queries we will definitely email and call you on the contacts provided. We have the regulators next and you are welcomed to sit through their presentation if you have time. The Commerce Commission is here and they will be representing on the other aspect.

But before you leave, if you are qualified to answer that question, it is on Clause 56(3), it reads actually “the regulator may by licence or otherwise in writing require the public electricity and supplier to provide various services as agent of the regulator”. And those *quasi* regulatory functions identified under the Electricity Regulation 1968, the regulator might pass some of the responsibilities back to FEA?

MR. H. PATEL.- That is the one I was referring to the inspection services.

MR. CHAIRMAN.- So those are the once that you have?

MR. H. PATEL.- That will remain with FEA because more or less it is an operational activity, it requires a lot of resource, both in terms of capital and human.

MR. CHAIRMAN.- So while the Bill gives the power to the regulator, they might pass it back to FEA because you have the expertise to that?

MR. H. PATEL.- Correct.

MR. CHAIRMAN.- With that final clarification, thank you very much team FEA. I have the numbers that you have provided to contact you should we have further clarifications.

MR. H. PATEL.- Sure, and I would like to take this opportunity to once again thank the Honourable Chairman and the Honourable Members of Parliament. Thank you very much.

MR. CHAIRMAN.- Thank you very much.

The Committee Interview adjourned at 11.15am