

1. Salient Features

I. Market Development

- Electricity Market across all National geography to remain same by removing special status to J&K
- Cross border trade finds statutory status rather than driven by policy guidelines, open ups avenue
- Market envisages the contract enforcement and payment as necessary tool for market reflective pricing. Making payment security mechanism as pre-requisite for scheduling and despatch goes a long way ensuring sanctity of contract and payment recovery confidence in participants.
- NLDC empowered to facilitate uniform grid operations and line of command of it may include SLDCs as well
- Attempt been made to streamline competitive bidding process with restricted time overrun
- Open Access facilitation by way of removing role of SERC specifying CSS and its reduction trajectory or role in defining surcharges
- DISCOMs may get more autonomy to introduce sub-licensees and franchisee to improve efficiency

II. Promotion of Renewable Energy

- Inclusion of National Renewable Energy will find special attention compared to a paragraph importance within National Electricity Policy and Tariff Policy
- RPO and HPO is mandatory compliance with specified enforceable penalty. Trajectory for RPO and HPO likely for foreseeable future infusing business confidence.
- Central Government specifying HPO and RPO may lead to avoid inconsistency across states, however, the challenge would be to assess
- Assured PSM, Contract enforcement authority to deal with contract violation, facilitative open access framework will be positive for grid decarbonisation
- Statute driven RGO and bundling of RE with thermal will give another push for RE and improved stranded asset utilisation

III. Strengthened legal framework for Electricity

- Mandatory legal member in regulatory bodies
- Separate Electricity Contract Enforcement Authority (ECEA) regarding performance of obligations under a contract related to electricity except any matter related to regulation or determination of tariff or any dispute involving tariff
- ECEA having same status as of High Court in matters related but lesser than APTEL. This ensures relieving legal forums of stress dealing electricity related matters and at the same time, it will expeditiously deal such matters across country through benches of ECEA. Legal and Technical Members being part of ECEA benches will ensure prudent and judicious judgments
- Appointment of SERC, ECEA and APTEL members by Central Government though in consultation of states will ensure unprejudiced recruitment in line with Shunglu Committee recommendations.
- Amendment gives more autonomy and power to ECEA and APTEL with a powers equivalent to judicial forums under CPC, Criminal Code making such authority no longer under 'quasi-judicial' but as 'judicial' authorities.

IV. Towards greater regulatory consistency and uniformity

- Central Government specifying norms of Open Access and reduction trajectory for CSS and Surcharge, RPO – HPO trajectory will ensure consistency
- With legal members as lead of each forum supplemented by technical members will ensure significant application of correct legal interpretation

2. Para-wise Analysis of Draft Amendments

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(2) It extends to the whole of India except the State of Jammu and Kashmir.	2. In sub-section (2) of section 1 of the Electricity Act, 2003 (hereinafter referred as “the principal Act”), the words “except the State of Jammu and Kashmir” shall be omitted.	<ul style="list-style-type: none"> • Welcome suggestion especially in view of Article 370 revocation under constitutional amendment. J&K was always an aloof state in terms of pushing electricity reform.
	(i) in clause (11), after the words “or Appropriate Commission” and before the words “or the Appellate Tribunal”, the words “or Electricity Contract Enforcement Authority” shall be inserted;	<ul style="list-style-type: none"> • New establishment as ‘Electricity Contract Enforcement Authority’ underway. • This would create a standalone self-sufficient legal framework for electricity and relieve the stress of existing judicial forums across states.
	“(15a) “Cross border trade of electricity” means transactions involving import or export of electricity between India and any other country and includes transactions related to passage of electricity through our country in transit between two other countries;”;	<ul style="list-style-type: none"> • In prevailing statute form, there was no activity distinctly defined as cross border trade of electricity. Though CERC has acted upon issuing a regulation on Cross Border Trade of Electricity in accordance with MOP Guidelines on Cross Border Trade of Electricity. • Though at present there wasn’t any dispute on establishment of CERC Regulations on Cross Border trade as CERC issued the same under its Interstate functions, however, defining the same as statutory amendment will go long way adding more sanctity to such transactions.
	“(17a) “Distribution sub-licensee” means a person recognized as such and authorized by the distribution licensee to distribute electricity on its behalf in a particular area within its area of supply, with the permission of the appropriate State Commission. Any reference to a distribution licensee under the Act shall include a reference to a sub-distribution licensee;”	<ul style="list-style-type: none"> • A new category of licensee defined under distribution licensee having operational characteristics similar to Franchisee which already find a place in existing statute. • The likely beneficiary categories under this amended provision would be the outsourced agencies which DISCOMs employ for meter reading or enforcing efficiency in Billing, Collection and Meter Reading and also in Energy Optimisation by doing Opex or Capex based efficiency intervention. • However, such initiatives were always possible and not sure whether this requires amendment to statute to enforce the same. Perhaps the idea is to provide legal status to such structures, or alternatively it could be viewed as legal status to PPP framework infusion without being burdened with a responsibility of being a licensee.

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		<ul style="list-style-type: none"> • The amendment could go long way implementing the recommendations of BK Chaturvedi Committee of infusing greater efficiency in distribution within existing legal framework.
	<p>“(24a) “Electricity Contract Enforcement Authority” means an Electricity Contract Enforcement Authority referred to in sub-section (1) of section 109A;”;</p>	<ul style="list-style-type: none"> • This will go long way giving market signal to investment and lender community as the worry w.r.t. states reneging the contract midway or not honouring the contract would be handled under separate dispute redressal forum which will expedite the matters efficiently and with efficacy. • Apart from this, this establishment being the agency under Electricity Act, none of the state would be having powers to breach orders of such agency. • However, the legality of this establishment specially in wake of power being concurrent subject and how it doesn't require constitutional amendment allowing is something yet to be seen
<p>(27) “franchisee means a persons authorised by a distribution licensee to distribute electricity on its behalf in a particular area within his area of supply;</p>	<p>“(27) “franchisee means a person recognized as such and authorized by a distribution licensee to distribute electricity on its behalf in a particular area within his area of supply, under information to the appropriate State Commission. Subject to the provisions of the agreement entered into between the distribution licensee and the franchisee, any reference to a distribution licensee in the Act shall include a franchisee;”</p>	<ul style="list-style-type: none"> • Perhaps the provision is to contain the regulatory uncertainty arising out of franchise status being challenged after distribution licensee is either sold out or post creation of retail-wire segregation if happens.
	<p>“(43) "Member" means the Member of the Appropriate Commission or Authority or Joint Commission, or Electricity Contract Enforcement Authority or the Appellate Tribunal, as the case may be, and includes the Chairperson of such Commission or Electricity Contract Enforcement Authority or Authority or Appellate Tribunal;”.</p>	<ul style="list-style-type: none"> • New regulatory establishment with structures of chairman, members. Could be viewed as another retirement place for bureaucracy.
	<p>“3A National Renewable Energy Policy - The Central Government may, from time to time, after such consultation with the State Governments, as may be considered necessary, prepare and notify a National Renewable Energy Policy for the promotion of generation</p>	<ul style="list-style-type: none"> • So far renewable energy used to have some para in tariff policy and electricity policy formulated by centre. Even after promotional policy measures, there has been instances where the states used to have different interpretation and policy measures to deal renewable energy.

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	<p>of electricity from renewable sources of energy and prescribe a minimum percentage of purchase of electricity from renewable and hydro sources of energy.”.</p>	<ul style="list-style-type: none"> • This provides special attention to Renewable Energy Development in the country and would go a long way reducing the ambiguity with respect of diverse RE implementation plan by centre and states. Since States would also be part of such consultative framework, would be difficult for them to breach their policy commitment. • This also pays special emphasis considering hydro under renewable and specifying a minimum percentage as Hydro Purchase Obligations. Though Hydro is very much needed as per strategic Solar and RE Capacity addition plan allowing Grid friendliness, this may additionally burdened DISCOMs with another mandatory compliance. There is need of strategic shift in DISCOM power purchase portfolio management to supplant the thermal capacity by hydro need to meet the base and peak load management effectively and efficiently. Nonetheless there is other aspect of hydro with respect to R&R and higher upfront cost and how to reduce the same that need more attention.
	<p>i) for the seventh proviso, the following proviso shall be substituted, namely: - “Provided also that a franchisee shall not be required to obtain any separate license from the appropriate State Commission and such distribution licensee shall continue to remain responsible for distribution of electricity in its area of supply:”;</p> <p>ii) After the seventh proviso, the following proviso shall be inserted, namely: - “Provided also that a distribution sub-licensee shall not be required to obtain any separate license from the appropriate State Commission:”.</p>	<ul style="list-style-type: none"> • Though the franchisee operation is very well established practice even under Electricity Act 2003 and there is no requirement of license. There has been question on legal status of franchisee and this amendment may help removing such regulatory uncertainty. • With respect to the amendment of distribution sub-licensee, it will facilitate in same manner as it is for franchisee.
<p>Section 26. (National Load Despatch Centre) : --- (1) The Central Government may establish a centre at the national level, to be known as the National Load Despatch Centre for</p>	<p>6. In section 26 of the principal Act, after sub-section (3), the following subsections shall be inserted, namely:- “(4) the National Load Despatch Centre shall (a) be responsible for optimum scheduling and despatch of electricity in the country across</p>	<ul style="list-style-type: none"> • The proposed amendment is in addition to the already defined functions of NLDC. • Perhaps this provision was needed in view of the fact that NLDC so far has jurisdiction of regulating the scheduling and despatch w.r.t. Collective transactions only and inclusion of

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<p>optimum scheduling and despatch of electricity among the Regional Load Despatch Centres.</p> <p>(2) The constitution and functions of the National Load Despatch Centre shall be such as may be prescribed by the Central Government:</p> <p style="padding-left: 40px;">Provided that the National Load Despatch Centre shall not engage in the business of trading in electricity.</p> <p>(3) The National Load Despatch Centre shall be operated by a Government company or any authority or corporation established or constituted by or under any Central Act, as may be notified by the Central Government.</p>	<p style="color: red;">different regions in accordance with the contracts entered into with the licensees or the generating companies;</p> <p style="color: red;">(b) monitor grid operations;</p> <p style="color: red;">(c) exercise supervision and control over the inter-regional and interstate transmission network; and</p> <p style="color: red;">(d) have overall authority for carrying out real time operations of the national grid.</p> <p style="color: red;">(5) The National Load Despatch Centre may give such directions and exercise such supervision and control as may be required for the safety and security of the national grid and for ensuring the stability of grid operation throughout the country.</p> <p>(6) Every Regional Load Despatch Centre, State Load Despatch Centre, licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall comply with the directions issued by the National Load Despatch Centre.”.</p>	<p>the provision may ease NLDC intervention into Bilateral contracts also. NLDC has these specified functions in their charter however, it finds statutory status with proposed amendment.</p> <ul style="list-style-type: none"> • <i>There is a need to include the responsibility of ‘<u>inter-country or cross-border flow of electricity</u>’ as well under NLDC as this will help reducing the touchpoints for such transactions and it is befitting with ongoing functions of NLDC to have authority of carrying out real time operation of national grid.</i> • The proposed amendment of 5 and 6 ensures complete authority of NLDC to issue instructions w.r.t grid related matters across national geography. • This will create a standalone line of hierarchy on similar grid functions and thus help in segregating SLDC to act as independent body less subservient to transmission or distribution utilities.
	<p>In section 28 of the principal Act, the following proviso shall be inserted in clause (a) of sub-section (3), namely:-</p> <p style="color: red;">"Provided that no electricity shall be scheduled or despatched under such contract unless adequate security of payment, as agreed upon by the parties to the contract, has been provided."</p> <p>8. In section 32 of the principal Act, the following proviso shall be inserted in clause (a) of sub-section (2), namely:-</p> <p style="color: red;">"Provided that no electricity shall be scheduled or despatched under such contract unless adequate security of payment, as agreed upon by the parties to the contract, has been provided."</p>	<ul style="list-style-type: none"> • This paves greater enforcement of contracts and helps such enforcement by way of creating payment security mechanisms. • This will help in working capital management by the parties which otherwise had no option but to take working capital loan to meet the ends till the payment is not released by the paying entities. • On one hand this will help generating companies and RE developers to discount the risk of payment however, on other hand will leverage the balance sheet of DISCOMs as they have to mandatorily provide Payment Security Mechanism from the same existing revenue sources. • Though in longer run this will help removing discoms from the clutches of spiralling debt as this being mandated under statue will surely be reflected in tariff and thus cost recoverable irrespective of regulatory status.

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		<ul style="list-style-type: none"> • Making it mandatory condition for scheduling the onus will be on load despatch agencies to ensure and thus greater acceptability for sector
<p>38. 2 (d) to provide non-discriminatory open access to its transmission system for use by- ..</p> <p>(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the Central Commission:</p>	<p>“(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges, as may be specified by the Central Commission and a surcharge, as may be specified by the State Commission under sub-section (2) of section 42, if required by the Appropriate Commission to be collected by it.”.</p>	<ul style="list-style-type: none"> • The proposed provisions need more clarification with respect to how specification of surcharge by state commission would be recoverable by CTU, otherwise it adds to regulatory uncertainty • If the intent is to club the transmission charges and surcharges by Commission, then it need more clarity • However, it provides clarity w.r.t. that it withdraws powers of levying of any surcharge by DISCOMs or transmission utilities unless the same is required by Commissions. This helps in application reactive energy surcharge, grid support surcharges etc.
<p>39. 2 (d) to provide non-discriminatory open access to its transmission system for use by-</p> <p>(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission</p>	<p>10. In section 39 of the principal Act, for sub-clause (ii) of clause (d) of subsection (2) including the provisos, the following shall be substituted, namely:-</p> <p>“(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges, as may be specified by the State Commission and a surcharge, as may be specified by the State Commission under sub-section (2) of section 42, if required by the State Commission to be collected by it.”.</p>	<ul style="list-style-type: none"> • Same as above.
<p>(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission:</p>	<p>11. In section 40 of the principal Act, for sub-clause (ii) of clause (d) of subsection (2) including the provisos, the following shall be substituted, namely:-</p> <p>“(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the Appropriate State Commission.”.</p>	<ul style="list-style-type: none"> • Same as above • However, it adds another angle of interpretation w.r.t. supplanting State Commission with Appropriate Commission. Does it intend to handover the determination of Open access surcharge by CERC for Open access allowed by SERC or vice versa.?
<p>Provided that 1[such open access shall be allowed on payment of a surcharge] in addition to the charges</p>	<p>Provided that such open access shall be allowed on payment of a surcharge, and charges for wheeling, as may be determined by the State Commission in addition to the</p>	<ul style="list-style-type: none"> • It specifies allowing open access upon payment of explicit surcharge, wheeling charges and transmission charges.

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for wheeling as may be determined by the State Commission:	charges for intra-state transmission, as determined under section 39, if applicable, and charges for inter-state transmission, as determined by the Central Commission under section 38, if applicable:	<ul style="list-style-type: none"> • Does it reduce the ambiguity to expand the scope of surcharge, is something need deliberation?
Provided also that such surcharge and cross subsidies shall be progressively reduced 2[***] in the manner as may be specified by the State Commission:	“Provided also that such surcharge and cross subsidies shall be progressively reduced by the State Commission in the manner as may be specified by the State Commission provided in the Tariff Policy.”;	<ul style="list-style-type: none"> • The proposed amendment delinks the discretion of state commission to reduce CSS progressively. It mandates the SERC to abide by Tariff Policy to reduce the CSS. However, whether the policy directions can be mandatorily being adopted when it is voluntary to state commission is something need deliberation. • This subsidises the discretionary power of SERCs in order to define the CSS and way forward to reduce the same. • Positive for Open Access framework
	“Provided also that the manner of payment and utilization of the surcharge shall also be specified by the State Commission.”.	<ul style="list-style-type: none"> • Addition of the new provisions help removing ambiguity w.r.t. modalities and open access charges recovery by discom in their own arm twisting manner, which now need regulatory approval to be in practice.
Where the Appropriate Commission has allowed open access to certain consumers under section 42, such consumers, notwithstanding the provisions contained in clause (d) of sub-section (1) of section 62, may enter into an agreement with any person for supply or purchase of electricity on such terms and conditions (including tariff) as may be agreed upon by them.	<p>13. For section 49 of the principal Act, the following shall be substituted, namely:-</p> <p>“49. Agreement with respect to supply or purchase or transmission of electricity). –</p> <p>(1) A generating company or a licensee may enter into an agreement with a licensee for supply, purchase or transmission of electricity on such terms and conditions, as may be agreed upon by them, including tariff and adequate security of payment consistent with the provisions of this Act.</p> <p>(2) Where the Appropriate Commission has allowed open access to certain consumers under section 42, such consumers, notwithstanding the provisions contained in clause (d) of sub-section (1) of section 62, may enter into an agreement with any person for supply or purchase of electricity on such terms and conditions (including tariff) as may be agreed upon by them.”.</p>	<ul style="list-style-type: none"> • The proposed amendment expands the scope of existing provisions to include not only the open access agreements but also the contracts w.r.t. supply, purchase and also for transmission of electricity • The proposed provisions enforce the contractual obligations of payment security mechanism in all such kind of transactions not only in open access but also in contracts of generator with licensees

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	<p>“49A: Cross Border Trade of Electricity - (1) The Central Government may prescribe rules and issue guidelines for allowing and facilitating cross border trade of electricity in accordance with the provisions of this Act.</p> <p>(2) The Central Government may require the Central Commission to make regulations for cross border trade of electricity.”.</p>	<ul style="list-style-type: none"> • This amendment provides statutory status to cross-border regulations of CERC which was issued to abide by MOP guidelines • This raises concern and question on statutory status of existing and ongoing cross-border trade as provisions would be having statutory basis on prospective basis.
<p>(g) that the tariff progressively reflects the cost of supply of electricity and also, reduces cross-subsidies in the manner specified by the Appropriate Commission;</p> <p>(h) the promotion of co-generation and generation of electricity from renewable sources of energy;</p> <p>(i) the National Electricity Policy and tariff policy:</p>	<p>15. In section 61 of the principal Act</p> <p>i) in clause (g), the word “progressively” shall be omitted and for the words “specified by the Appropriate Commission” the words “as provided in the Tariff Policy” shall be substituted and may be read as below:</p> <p>g) that the tariff progressively reflects the cost of supply of electricity and also, reduces cross-subsidies in the manner specified by the Appropriate Commission as provided in the Tariff Policy;</p> <p>ii) in clause (h), after the words “from renewable” and before the words “sources of energy”, the words “and hydro” shall be inserted and may be read as</p> <p>(h) the promotion of co-generation and generation of electricity from renewable sources of energy and hydro;</p> <p>iii) In clause (i), after the words “tariff policy”, the words “and National Renewable Energy Policy” shall be inserted and may be read as</p> <p>(i) the National Electricity Policy and tariff policy and National Renewable Energy Policy;</p>	<ul style="list-style-type: none"> • The proposed amendment provides more clarity with respect to CSS roadmap as per tariff policy, inclusion of hydro under renewable and also National Renewable Energy Policy • This reflects the importance of Renewable Energy as a corner stone of policymakers thinking process • The provision highlights the linking of necessary provision as per Tariff Policy and delinks from the discretion of SERCs.
	<p>16. In section 62 of the principal Act</p> <p>i) in sub-section (1) after clause (d), the following proviso shall be inserted before the existing provisions, namely: -</p>	<ul style="list-style-type: none"> • This amendment plays subsidy disbursement by respective state government through DBT mechanism and tariff setting will be more scientific and it can help SERCs to move towards Cost to Serve methodology rather than Cost of Supply

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	<p>“Provided that the Appropriate Commission shall fix tariff for retail sale of electricity without accounting for subsidy, which, if any, under section 65 of the Act, shall be provided by the government directly to the consumer;”</p> <p>(i) in sub-section (1), after the word “Provided” in the existing proviso, the word “further” shall be inserted;</p> <p>(ii) in sub-section (3), after the words “but may”, the words “,subject to provisions of the Tariff Policy,” shall be inserted.</p>	<ul style="list-style-type: none"> • The proposed amendment of subsection 3 coerces the tariff policy provisions of tariff fixation by the SERC. • This was highly mandated as SERC won’t find shelter of prospective subsidy assurance by state government, and also SERC do not now have to consider differentiating tariff setting of consumers on basis of load factor, power factor, voltage, total consumption as per guidance under Tariff Policy and not as per their discretion.
<p>Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.</p>	<p>17. Section 63 of the principal Act shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely: -</p> <p>“(2) The Appropriate Commission shall, after receipt of application complete in all respects, adopt the tariff so determined under sub-section (1), in a timely manner but not later than sixty days from the date of application: Provided that on expiry of sixty days from the date of application, if it is not decided by the Appropriate Commission, the tariff shall be deemed to have been adopted by the Appropriate Commission.”.</p>	<ul style="list-style-type: none"> • The proposed amendment fixates the timelines for SERC to adopt the tariff discovered through competitive bidding. This reinforces the commitment and timelines prescribed under the SBDs • There has been instances, wherein due to lack of tariff adoption by respective SERC, LoA wasn’t issued and there was risk of tariffs being irrelevant or dispute w.r.t. application of change in law without agreed tariff or LOA or agreement in place.
<p><u>Existing Provision</u></p> <p>If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under section 62, the State Government shall, notwithstanding any direction which may be given under section 108, pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licence or any other</p>	<p><u>Amended Provision</u></p> <p>If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under section 62, the State Government shall, notwithstanding any direction which may be given under section 108, pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission the amount of subsidy directly to the consumer and the licensee shall charge the consumers as per the tariff determined by the Commission may direct, as a condition for the licence or any other person concerned to implement the subsidy provided for by the State Government:</p>	<ul style="list-style-type: none"> • The provision mandates subsidy release in advance by the respective state governments through mechanism similar or otherwise to DBT directly to consumers and also removes any directions of future assurance or deferment of subsidy to be considered in tariff setting

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<p>person concerned to implement the subsidy provided for by the State Government:</p> <p>Provided that no such direction of the State Government shall be operative if the payment is not made in accordance with the provisions contained in this section and the tariff fixed by State Commission shall be applicable from the date of issue of orders by the Commission in this regard.</p>	<p>Provided that no such direction of the State Government shall be operative if the payment is not made in accordance with the provisions contained in this section and the tariff fixed by State Commission shall be applicable from the date of issue of orders by the Commission in this regard.</p>	
<p>Section 77. (Qualifications for appointment of Members of Central Commission): --- (1) The Chairperson and the Members of the Central Commission shall be persons having adequate knowledge of, or experience in, or shown capacity in, dealing with, problems relating to engineering, law, economics, commerce, finance or, management and shall be appointed in the following manner, namely:-</p> <p>(a) one person having qualifications and experience in the field of engineering with specialisation in generation, transmission or distribution of electricity;</p> <p>(b) one person having qualifications and experience in the field of finance;</p> <p>(c) two persons having qualifications and experience in the field of economics, commerce, law or management:</p>	<p>Section 77. (Qualifications for appointment of Members of Central Commission): --- (1) The Chairperson and the Members of the Central Commission shall be persons having adequate knowledge of, or experience in, or shown capacity in, dealing with, problems relating to engineering, law, economics, commerce, finance or, management and shall be appointed in the following manner, namely: -</p> <p>(a) one person having qualifications and experience in the field of engineering with specialisation in generation, transmission or distribution of electricity;</p> <p>(b) one person having qualifications and experience in the field of finance law;</p> <p>(c) two persons having qualifications and experience in the field of finance, economics, commerce, public policy, law public policy or management:</p> <p>Provided that not more than one Member shall be appointed under the same category under clause (c).</p> <p>(2) Notwithstanding anything contained in sub-section (1), the Central Government may appoint any person as the Chairperson from amongst persons who is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court:</p>	<ul style="list-style-type: none"> • The proposed amendment is to include the directive of courts on mandatory inclusion of judicial member in regulatory bodies. • The amendment further expands the scope for people having credentials in public policy for being eligible to be member of commission. • The proposed amendment removes the requirement of consultation with Chief Justice for appointment of legal member or chairman

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<p>Provided that not more than one Member shall be appointed under the same category under clause (c). (2) Notwithstanding anything contained in sub-section (1), the Central Government may appoint any person as the Chairperson from amongst persons who is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court: Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of India.</p>	<p>Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of India.</p>	
<p>Section 78. (Constitution of Selection Committee to recommend Members): --- (1) The Central Government shall, for the purposes of selecting the Members of the Appellate Tribunal and the Chairperson and Members of the Central Commission, constitute a Selection Committee consisting of – (a) Member of the Planning Commission in-charge of the energy sector Chairperson; (b) Secretary-in-charge of the Ministry of the Central Government dealing with the Department of the Legal Affairs Member; (c) Chairperson of the Public Enterprises Selection BoardMember; (d) a person to be nominated by the Central Government in accordance with sub-section (2)..... Member;</p>	<p>Section 78. (Constitution of Selection Committee to recommend Members): --- (1) The Central Government shall, for the purposes of selecting the Members of the Appellate Tribunal and the Chairperson and Members of the Central Commission, Electricity Contract Enforcement Authority, State Commissions, and Joint Commissions, constitute a Selection Committee consisting of – (a) A person who is, or has been, a Judge of the Supreme Court to be nominated by the Chief Justice of IndiaChairperson; (b) Secretary-in-charge of the Ministry of the Central Government to be nominated by the Central GovernmentMember; (c) Chief Secretaries of two State Governments in accordance with sub-section (2)..... Member; (d) Secretary-in-charge of the Ministry of the Central Government dealing with power.....Member. (2) For the purposes of clause (c) of sub-section (1), the Chief Secretary of the State Governments in alphabetical order of the states starting with Andhra Pradesh, Arunachal</p>	<ul style="list-style-type: none"> • The proposed amendment empowers the central government over states for the purpose of the appointment of members and chairperson of Electricity Contract Enforcement Authority, SERC or JERC • To avoid this being breach of states power, the chief secretaries of two state governments has been considered • Members of Selection Committee will be on rotation basis with chief secretary of respective states in alphabetical manner. • The proposed amendment ensures the appointment process to start much before retirement of member, chairperson for agencies specified in act

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<p>(e) a person to be nominated by the Central Government in accordance with sub-section (3) Member;</p> <p>(f) Secretary-in-charge of the Ministry of the Central Government dealing with power Member.</p> <p>(2) For the purposes of clause (d) of sub-section (1), the Central Government shall nominate from amongst persons holding the post of chairperson or managing director, by whatever name called, of any public financial institution specified in section 4A of the Companies Act, 1956.</p> <p>(3) For the purposes of clause (e) of sub-section (1), the Central Government shall, by notification, nominate from amongst persons holding the post of director or the head of the institution, by whatever name called, of any research, technical or management institution for this purpose.</p> <p>(4) Secretary-in-charge of the Ministry of the Central Government dealing with Power shall be the Convenor of the Selection Committee.</p> <p>(5) The Central Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of a Member of the Appellate Tribunal or the Chairperson or a Member of the Central Commission and six months</p>	<p>Pradesh shall be the members of the Selection Committee for a period of one year.</p> <p>(3) For the purposes of clause (e) of sub-section (1), the Central Government shall, by notification, nominate from amongst persons holding the post of director or the head of the institution, by whatever name called, of any research, technical or management institution for this purpose.</p> <p>(3) Secretary-in-charge of the Ministry of the Central Government dealing with Power shall be the Convener of the Selection Committee.</p> <p>(4) The Central Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of a Member of the Appellate Tribunal or the Chairperson or a Member of the Central Commission and six months before the superannuation or end of tenure of the Member of the Appellate Tribunal or Member of the Central Commission or the Electricity Contract Enforcement Authority and within a period of twelve months before the superannuation or end of tenure of the Member of the Appellate Tribunal or Chairperson or Member of the Central Commission or Electricity Contract Enforcement Authority, make a reference to the Selection Committee for filling up of the vacancy.</p> <p>(5) The State Government shall, within a period of one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson or a Member and within a period of twelve months before the superannuation or end of tenure of the Chairperson or Member, make a reference to the Selection Committee for filling up of the vacancy.</p> <p>(6) The proceedings of the Selection Committee shall be held in Delhi or such other places as the Central Government may notify.</p> <p>(7) The Selection Committee shall finalise the selection of the Chairperson and Members referred to in sub-section</p>	

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<p>before the superannuation or end of tenure of the Member of the Appellate Tribunal or Member of the Central Commission, make a reference to the Selection Committee for filling up of the vacancy.</p> <p>(6) The Selection Committee shall finalise the selection of the Chairperson and Members referred to in sub-section (5) within three months from the date on which the reference is made to it.</p> <p>(7) The Selection Committee shall recommend a panel of two names for every vacancy referred to it.</p>	<p>(4) and (5) and make a recommendation for every vacancy referred to it within three months of the receipt of the reference. within three months from the date on which the reference is made to it.</p> <p>(8) Before recommending any person for appointment as Member of the Appellate Tribunal, or the Chairperson or other Member of the Appropriate Commission or Electricity Contract Enforcement Authority, the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as the Chairperson or Member.</p> <p>(9) No appointment of the Chairperson or other Member shall be invalid merely by reason of any vacancy other than that of the Chairperson in the Selection Committee.”.</p>	
	<p>In section 82 of the principal Act</p> <p>“(7) If there is no chairperson and member in a State Commission to perform its functions, the Central Government may, in consultation with the state government concerned, entrust its functions to any other State Commission or Joint Commission, as it deems proper.”.</p>	<ul style="list-style-type: none"> • This empowers the central government to appoint chairperson or members in SERC in consultation with State government. • This provision helps in losing the prejudices state government reflects in appointment of retired host state bureaucrats at SERC positions. • This may be read in line with recommendations of Shunglu Committee recommendations may help detaching the chairperson and members of SERC from having previous interest in states.
<p>Section 84. (Qualifications for appointment of Chairperson and Members of State Commission): ---</p> <p>(1) The Chairperson and the Members of the State Commission shall be persons of ability, integrity and standing who have adequate knowledge of, and have shown capacity in, dealing with problems relating to engineering, finance,</p>	<p>“(1) The Chairperson and the Members of the State Commission shall be persons having adequate knowledge of, or experience in, or shown capacity in, dealing with, problems relating to engineering, law, economics, commerce, finance, public policy or management and shall be appointed in the following manner, namely:-</p> <p>(a) one person having qualifications and experience in the field of engineering with specialization in generation, transmission or distribution of electricity;</p> <p>(b) one person having qualifications and experience in the field of law;</p>	<ul style="list-style-type: none"> • The proposed amendment mandates for 4 member SERCs with one member mandatorily from legal

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<p>commerce, economics, law or management.</p> <p>(2) Notwithstanding anything contained in sub-section (1), the State Government may appoint any person as the Chairperson from amongst persons who is, or has been, a Judge of a High Court:</p> <p>Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of that High Court.</p>	<p>(c) two persons having qualifications and experience in the field of finance, economics, commerce, public policy or management.”;</p> <p>(2) Notwithstanding anything contained in sub-section (1), the State Government may appoint any person as the Chairperson from amongst persons who is, or has been, a Judge of a High Court:</p> <p>Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of that High Court.</p>	
<p>Section 86</p> <p>1...</p> <p>(e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;</p> <p>(f) to adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;</p> <p>(4) In discharge of its functions, the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under section 3</p>	<p>Section 86</p> <p>1...</p> <p>(e) promote co-generation and generation of electricity from renewable and hydro sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee as may be prescribed by the Central Government from time to time;</p> <p>(f) to adjudicate upon the disputes, ‘except matters referred to in section 109A’ between the licensees, and generating companies and to refer any dispute for arbitration;</p> <p>(4) In discharge of its functions, the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under section 3 and National Renewable Energy Policy</p>	<ul style="list-style-type: none"> • This reinforces inclusion of hydro promotion in line with renewable sources and the minimum percentage as HPO or RPO to be adopted as specified by Central Government from time to time. • This removes the discretionary power of respective SERC to choose the target and the target will be uniform across the country. • In addition, for matters referred to Electricity Contract Enforcement Authority would not be dealt by SERCs • In addition amendment requires the SERCs to consider National Renewable Energy Policy while discharging its functions.

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Section 90. (Removal of Member): ---	Omitted	<ul style="list-style-type: none"> • Earlier the members had immunity under statute and coercing the performance indices for the same was not permissible. • The proposed omission may help coercing the performance, efficiency in regulating the regulators.
Section 92	Section 92 “(6) Where before or during the course of a proceeding, the Appropriate Commission comes to a conclusion that the Electricity Contract Enforcement Authority has the sole authority and jurisdiction to adjudicate a matter, it shall refer the same to the Electricity Contract Enforcement Authority for its orders”.	<ul style="list-style-type: none"> • The proposed amendment allows referring the matter to Electricity Contract Authority by respective commission in dispute of matters relating to parties.
	PART XA ELECTRICITY CONTRACT ENFORCEMENT AUTHORITY 109A. Establishment of Electricity Contract Enforcement Authority. - 109B. Application to Electricity Contract Enforcement Authority and order thereon 109C. Composition of Electricity Contract Enforcement Authority 109D. Qualification for appointment of Chairperson and Members of Electricity Contract Enforcement Authority 109E. Term of Office and Terms and Conditions of service 109F. Vacancies 109G. Resignation and Removal 109 H. Member to act as Chairperson in certain circumstances 109I. Officers and other employees of Electricity Contract Enforcement Authority. - 109 J. Procedure and powers of Electricity Contract Enforcement Authority. - 109 K. Distribution of business amongst Benches and transfer of cases from one Bench to another Bench Decision to be by majority.- 109 M. Right of parties to take assistance of legal practitioner.	<ul style="list-style-type: none"> • The proposed amendment provides statutory status and delineates the key roles, responsibilities of Electricity Contract Enforcement Authority (ECEA) • ECEA shall be appointed by Central Govt. • ECEA shall have sole authority and jurisdiction to adjudicate upon matters regarding performance of obligations under a contract related to sale, purchase or transmission of electricity, provided that it shall not have any jurisdiction over any matter related to regulation or determination of tariff or any dispute involving tariff • For contracts to be part of jurisdiction of ECEA, the same need to be filed with respective commissions within 30 days of contract conclusion. • There will be atleast 6 member ECEA with 2 or more from judiciary and 3 as technical members. With chairman of ECEA always as High Court Judge. • ECEA will operate through benches across country with each bench having atleast one judicial member and technical member • Term of Members shall be upto 67 years of age at maximum • ECEA shall have specified powers and also of CPC 1980 and can regulate its own procedure while following principle of natural justice

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	109 N. Appeal to Appellate Tribunal.-	<ul style="list-style-type: none"> • Orders made by ECEA shall be executable by it as a decree of civil court and shall have all the powers of a civil court including but limited to powers of attachment and sale of property, arrest and detention in prison and appointment of a receiver. • ECEA shall be deemed to be a civil court for the purposes of section 345 and 346 of the Code of Criminal Procedure, 1973 • Person aggrieved from order of ECEA can be filed within 60 days of order communication to APTEL
The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Appellate Tribunal for Electricity to hear appeals against the orders of the adjudicating officer or the Appropriate Commission under this Act	The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Appellate Tribunal for Electricity to hear appeals against the orders of the adjudicating officer or the Appropriate Commission or the Electricity Contract Enforcement Authority under this Act	<ul style="list-style-type: none"> • Grievance against ECEA can be dealt by APTEL
Any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity:	Any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission or an order made by the Electricity Contract Enforcement Authority under this Act may prefer an appeal to the Appellate Tribunal for Electricity:	
Section 119	Section 119 “(4) The Chairperson of Appellate Tribunal shall exercise such financial and administrative powers as may be prescribed by the Central Government”	<ul style="list-style-type: none"> • The proposed amendment provides the necessary administrative powers to enforce and execute decisions in similar manner as of judicial forums.
	Section 120 “(g) dismissing an appeal or an application on default or deciding it <i>ex-parte</i> ; (h) setting aside an order of dismissal of an appeal or an application on default or an order passed by it <i>ex-parte</i> .”.	
	“(2)The Appellate Tribunal shall have the same jurisdiction, powers and authority to take action on wilful disobedience to any of its judgment, decree, direction, order or other process or wilful breach of an undertaking given to a it, as	

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	<p>a High Court under the provisions of the Contempt of Courts Act, 1971 (70 of 1971) on its own motion or on a motion made by the Advocate General or such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer or the Advocate General, and a reference in the Contempt of Courts Act, 1971 to a High Court shall be construed as including a reference to the Appellate Tribunal.”.</p>	
	<p>Section 142 “(2) Notwithstanding anything contained in sub-section (1), in case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person, with effect from such date as may be notified by the Central Government, has not purchased power from renewable or hydro sources of energy as specified by it using its powers under the Act, the Appropriate Commission shall after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, a sum calculated at the rate of fifty paise per kilowatt-hour for the shortfall in purchase in the first year of default, one rupees per kilowatt-hour for the shortfall in purchase in the second successive year of default and at the rate of two rupees per unit for the shortfall in purchase continuing after the second year.”.</p>	<ul style="list-style-type: none"> • The proposed amendment goes long way enforcing RPO compliance. Giving administrative rights to Commissions for levying penalty @ 0.50 Rs/kWh to 1 Rs/kWh for the shortfall which will increase upto 2 Rs/kWh after second year. • Though the provision is questionable if viewed in terms of REC floor and forbearance prices determined by CERC after public consultation.
<p>Whoever, fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made thereunder, shall be punishable with imprisonment for a</p>	<p>Whoever, fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made thereunder, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one lakh Crore rupees, or with both in respect of each offence and in the case of a continuing failure, with an additional fine which</p>	<ul style="list-style-type: none"> • The proposed amendment reinforces amount of penalty for non-compliance of orders and directions of electricity forums such as SERC, ECEA, APTEL etc.

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<p>term which may extend to three months or with fine, which may extend to one lakh rupees, or with both in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to five thousand rupees for every day during which the failure continues after conviction of the first such offence:</p> <p>1[Provided that nothing contained in this section shall apply to the orders, instructions or directions issued under section 121.]</p>	<p>may extend to five thousand one lakh rupees for every day during which the failure continues after conviction of the first such offence:</p> <p>1[Provided that nothing contained in this section shall apply to the orders, instructions or directions issued under section 121.]</p>	
	<p>Section 176</p> <p>“(aa) the minimum percentage of purchase of electricity from renewable and hydro sources of energy under section 3A;</p> <p>(ab) allowing and facilitating cross border trade of electricity and any matter related to it under sub section (1) of section 49A;</p> <p>(ac) laying down the modalities of bundling of renewable energy (including hydro) with thermal energy;</p> <p>(ad) Renewable Generation Obligation;</p> <p>(ae) regarding maintaining adequate capacity resources;</p> <p>“(da) payment security mechanism under section 49;”</p> <p>“(pa) the form, the manner of verifying the form, and fee for filing the application under sub-section (4) of section 109B;</p> <p>(pb) the number of Judicial and Technical Members to be included in the Electricity Contract Enforcement Authority under sub-section (1) of section 109C;</p> <p>(pc) the salaries and allowances and other terms and conditions of service of the officers and other employees of the Electricity Contract Enforcement Authority under sub-section (3) of section 109I;</p>	<ul style="list-style-type: none"> • The proposed amendment bestows further coercible rights to Central Government in terms of RGO, specifying RPO, HPO and laying modalities for bundling of renewable energy with thermal energy for improved asset utilisation • This enforces the payment security mechanism establishment for purpose of scheduling and despatch and to avoid every state specifying differently paves a road for standard payment security mechanism to be adhered across states.

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	<p>(pd) the exercise of financial and administrative powers by the Electricity Contract Enforcement Authority under sub-section (4) of section 109I</p> <p>“(qa) the number of Members to be included in the Appellate Tribunal under sub section 1 of section 112;”;</p> <p>“(sa) exercise of financial and administrative powers by the Chairperson of Appellate Tribunal under sub section 4 of section 119”.</p>	
<p><u>Existing provision of Section 178</u></p> <p>(1) The Central Commission may, by notification make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.</p>	<p><u>Proposed provision of Section 178</u></p> <p>“(1) The Central Commission may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act in respect of the functions assigned to it in the Act.”</p>	<ul style="list-style-type: none"> • There has been disputes on jurisdiction of CERC to adjudicate matters having interstate wherein the jurisdiction was not clear, the proposed amendment empowers CERC to adjudicate such matters by specifying regulations to deal the same.
<p><u>Existing Provision of Section 181</u></p> <p>(i) payment of the transmission charges and a surcharge under subclause (ii) of clause(d) of sub-section (2) of section 39</p> <p>(j) reduction 1[***] of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (d) of sub-section (2) of section 39;</p> <p>(k) manner and utilisation of payment and surcharge under the fourth proviso to sub-clause(ii) of clause (d) of sub- section (2) of section 39;</p> <p>(l) payment of the transmission charges and a surcharge under subclause (ii) of clause (c) of section 40;</p> <p>(m) reduction 1[***] of surcharge and cross subsidies under second proviso</p>	<p><u>Proposed Provision of Section 181</u></p> <p>(i) payment of the transmission charges and a surcharge under subclause (ii) of clause(d) of sub-section (2) of section 39</p> <p>(j) reduction 1[***] of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (d) of sub-section (2) of section 39;</p> <p>(k) manner and utilisation of payment and surcharge under the fourth proviso to sub-clause(ii) of clause (d) of sub-section (2) of section 39;</p> <p>(l) payment of the transmission charges and a surcharge under subclause (ii) of clause (c) of section 40;</p> <p>(m) reduction 1[***] of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (c) of section 40;</p> <p>(n) the manner of payment of surcharge under the fourth proviso to sub-clause (ii) of clause (c) of section 40</p>	<ul style="list-style-type: none"> • The proposed amendments remove the right of SERCs to frame regulations w.r.t. Surcharge • This facilitates a streamlining of regulatory ordeal w.r.t. open access and provides more certainty, it was observed in past that SERC in complicity with DISCOMs attempted to place applicability of surcharge in regulations to provide enforceability even over APTEL as the same may not contradict regulations, such attempt to create regulatory inconsistencies and uncertainty would be contained to large extent • Proposed amendment withdraws role of SERC in specifying surcharges and the associated modalities w.r.t. open access

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<p>to sub-clause (ii) of clause (c) of section 40;</p> <p>(n) the manner of payment of surcharge under the fourth proviso to sub-clause (ii) of clause (c) of section 40</p> <p>(p) reduction 2[***] of surcharge and cross-subsidies under the third proviso to sub-section (2) of section 42;</p> <p>(zc) the manner of reduction of cross-subsidies under clause (g) of section 61;</p> <p>(zp) any other matter which is to be, or may be, specified</p>	<p>“(oa) determination and payment of surcharge and wheeling charges under the first proviso to sub-section (2) of section 42;”</p> <p>(p) (p) reduction 2[***] of surcharge and cross-subsidies under the third proviso to sub-section (2) of section 42;</p> <p>“reduction in surcharge and cross subsidies, as may be provided for in the Tariff Policy under the third proviso to sub-section (2) of section 42;”</p> <p>“(pa) the manner of payment and utilization of the surcharge under the fifth proviso to sub-section (2) of section 42;”</p> <p>(zc) the manner of reduction of cross subsidies under clause (g) of section 61;</p> <p>(zp) any other matter which is to be, or may be, specified</p>	