

Electricity (Amendment) Bill 2020

Key Insights

April 2020

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New Definitions Added/Modified in the Draft

Section 2

New

| Sub-clause | Term | Definition |
|------------|--|---|
| 15(a) | “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 |
| 17 (a) | 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 |
| 24(a) | Electricity Contract Enforcement Authority | means an Electricity Contract Enforcement Authority referred to in sub- section (1) of section 109A |

- Distribution sub-licensee and Electricity Contract Enforcement Authority are new entities proposed to be introduced.
- Cross-border trading guidelines which were earlier published by MoP have now been formalized through this amendment

New Definitions Added/Modified in the Draft

Section 2

Modified

| Sub-Clause | Term | Existing | Modified |
|------------|-------------|--|--|
| 11 | Chairperson | means the Chairperson of the Authority or Appropriate Commission or the Appellate Tribunal, as the case may be | means the Chairperson of the Authority or Appropriate Commission or the Appellate Tribunal <u>or Electricity Contract Enforcement Authority</u> , as the case may be |
| 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 | 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, <u>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</u> |
| 43 | Member | means the Member of the Appropriate Commission or Authority or Joint Commission, or the Appellate Tribunal, as the case may be, and includes the Chairperson of such Commission or Authority or Appellate Tribunal | means the Member of the Appropriate Commission or Authority or Joint Commission, <u>or Electricity Contract Enforcement Authority</u> or the Appellate Tribunal, as the case may be, and includes the Chairperson of such Commission <u>or Electricity Contract Enforcement Authority</u> or Authority or Appellate Tribunal |

- Definitions of Chairperson and Member modified to incorporate Electricity Contract Enforcement Authority
- Franchisee related aspects discussed separately under Section 14.



Promotion of Renewables and Hydro Power

Proposed Amendments

Promotion of Renewables and Hydro Power

Proposed

Section 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 of electricity from renewable sources of energy and prescribe a minimum percentage of purchase of electricity from renewable and hydro sources of energy

Section 86 (1) : Functions of State Commission

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”**

(f) adjudicate upon the disputes **“except matters referred to in section 109A”** between the licensees, and generating companies and to refer any dispute for arbitration; (inserted)

Sub Section (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 under section 3A”**.

Stakeholder Impact

| G | T | D | Con. | Overall |
|---|---|---|------|---------|

Our Assessment

- The preparation and notification of National Renewable Energy Policy is a welcome step towards the promotion of renewable and hydro energy based sources. The amendment will promote investments in hydro and other renewable energy. T & D sectors will be positively impacted as increased availability of hydro will lead to smoother grid operations.
- However, following aspects require further clarification:
 - whether minimum renewable and hydro purchase obligations will be created for each state separately or will have a common target for the entire nation. In case of a common target, select states may not be able to achieve such targets owing to relatively lower RE generation resources in the state.
 - Since solar and wind are of intermittent nature, forecasting and scheduling is a challenge for inter-state RE exchange. The policy should encourage support from POSOCO to disseminate data which is pertinent for RE generators to forecast the generation.
 - For hydro, which is typically used as a peaking generation source, long term transmission charges and grid congestion issues reduce the viability of inter-state hydro power sale. Higher capital cost of hydro stations together with current manner of levying transmission charge on per MW basis makes the landed cost relatively expensive. Therefore, the transmission charges on hydro projects should be rationalised based on their design energy.
 - The states with relatively lower RE sources are also facing liquidity issues in the REC market.
- The National Renewable Energy Policy should consider state-wise constraints such as energy mix, RE resources availability, demand profile, transmission issues and provide enabling provisions for investment and sufficient liquidity in the RE market.
- The Act/Tariff Policy should promote tariff structure that facilitates development/investments in hydro projects that support the grids during peak hours. Storage and pondage based hydro plants occupy a superior position in the load duration curve. Currently the tariffs for both peak and off-peak loads are the same. It is desired that the Act provides a framework to facilitate tariff determination based on the position of the source of power in the load duration curve.

Proposed Amendments

Promotion of Renewables and Hydro Power

Proposed

142 – Punishment for non-compliance of directions by Appropriate Commission
Changes in Sec 142 and now numbered as Sub Section (1) of Section 142

- (1) “In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction “**or order**” issued by the Commission, the Appropriate Commission may 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, which shall not exceed one ~~lakh~~ **crore** rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to ~~six thousand rupees~~ **“upto one lakh rupees”** for every day during which the failure continues after contravention of the first such direction.”

After sub-section (1), the following shall be inserted, namely:-
“(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.”.

Stakeholder Impact

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| G | T | D | Con. | Overall |
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Mercados Assessment

- Most SERCs already have a penal framework for non-compliance to meet the RPO. It is not clear whether the provisions in the amendment will act like a forbearance penalty. In our view, the SERCs will have to amend their regulations to align their framework with the Act.
- Most new renewable projects are selling power to discoms under competitive bidding route. As a result, there is poor liquidity in availability of RECs. Additionally, the problem gets accentuated due to high validity period of 3 years leading to hoarding and latency in REC markets.
- Appropriate Commissions will have to pass corresponding amendments in their Regulations and align with the proposed changes in the Act. For instance CERC Trading License Regulations, 2020.

Proposed Amendments

Promotion of Renewables and Hydro Power

Section 146 – Punishment for non-compliance of orders or directions:

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 may extend to ~~five thousand rupees~~ “one lakh rupees” for every day during which the failure continues after conviction of the first such offence:

Provided that nothing contained in this section shall apply to the orders, instructions or directions issued under section 121.

Section 176: Power of Central Government to make rules

In sub-section (2) after clause (a), the following clauses shall be **inserted**, namely:-

- “(aa) the minimum percentage of purchase of electricity from renewable and hydro sources of energy under section 3A;
- (ab) allowing and facilitating cross border trade of electricity and any matter related to it under sub section (1) of section 49A;
- (ac) laying down the modalities of bundling of renewable energy (including hydro) with thermal energy;
- (ad) Renewable Generation Obligation;**
- (ae) regarding maintaining adequate capacity resources;”

Stakeholder Impact (146)

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| G | T | D | Con. | Overall |
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Mercados Assessment

- There had been several instances where directives/orders of the Commission(s) have not been followed in letter and spirit. Apparently, the proposed amendment in penalty seems to be driven from such experiences.
- Renewable Generation Obligation is a capitalized term in the Amendment. However, the same has not been defined anywhere in the principal Act. The same needs to be elaborated in the Act.



Improvement in Distribution Sector

Improvement in Distribution Sector

Section 14 (Grant of licence)

Existing

The Appropriate Commission may, on an application made to it under section 15, grant a licence to any person

- (a) to transmit electricity as a transmission licensee; or
- (b) to distribute electricity as a distribution licensee; or
- (c) to undertake trading in electricity as an electricity trader, in any area as may be specified in the licence:

.....

Provided also that in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person, that person shall not be required to obtain any separate licence from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply: (substituted)

Proposed

Seventh Proviso to be substituted:

“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:”;

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:”.

Stakeholder Impact

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| G | T | D | Con. | Overall |

Mercados Assessment

- Amendments reflect the current sentiments of the Ministry to facilitate greater private participation in the distribution sector.
- Discoms can develop areas of excellence through fresh investments.
- While the SOR indicates that enabling provisions have been proposed under Sections 126, 135 and 164 to clarify the above issues, however, no changes in such sections have been proposed.
- A relook is required on the manner in which franchisee and distribution sub-licensee are to be appointed and the functions, responsibilities and their functional modalities. A framework capturing such details is required in the Act.
- Detailed guidelines for appointment of licensees/sub-licensees and franchisees are also required



Overall Governance of Sector

Overall Governance of Sector

Section 26 (National Load Despatch Centre)

Existing

- (1) The Central Government may establish a centre at the national level, to be known as the National Load Despatch Centre for optimum scheduling and despatch of electricity among the Regional Load Despatch Centres.
- (2) The constitution and functions of the National Load Despatch Centre shall be such as may be prescribed by the Central Government:
Provided that the National Load Despatch Centre shall not engage in the business of trading in electricity.
- (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.

Proposed Addition

- “(4) the National Load Despatch Centre shall:
 - (a) be responsible for optimum scheduling and despatch of electricity in the country across different regions in accordance with the contracts entered into with the licensees or the generating companies;
 - (b) monitor grid operations;
 - (c) exercise supervision and control over the inter-regional and interstate transmission network; and
 - (d) have overall authority for carrying out real time operations of the national grid.
- (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.
- (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.”.

Stakeholder Impact

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| G | T | D | Con. | Overall |
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Mercados Assessment

- Role of NLDC was earlier defined vide MoP notification dated 2nd March 2005 and was not a part of the Act. This gap has been addressed in the Amendment.
- The Act empowers NLDC to carry out pan India optimization through SCED and further encourage MBED.
- Additional responsibilities related to outage planning, national grid planning, coordination with RPC for optimum utilization of natural resources have not been covered.

Overall Governance of Sector

Other key amendments

- **82 – Constitution of State Commission**

Sub Section (4)- The State Commission shall consist of not more than ~~three~~ **four** Members, including the Chairperson.

- **Insertion after sub-section (6)**

“(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.”.

- **84 – Qualifications for appointment of Chairperson and Members of State Commission**

Sub Section (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 commerce, economics, law or management~~ **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:-**

- **(a) one person having qualifications and experience in the field of engineering with specialization in generation, transmission or distribution of electricity;**
 - **(b) one person having qualifications and experience in the field of law;**
 - **(c) two persons having qualifications and experience in the field of finance, economics, commerce, public policy or management.**
- Sub-section (2) is now omitted :- ~~(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: Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of that High Court.~~

- **85 – Constitution of Selection Committee to select Members of State Commission - DELETED**

- **86 – Functions of State Commission**

(f) adjudicate upon the disputes **“except matters referred to in section 109A”** between the licensees, and generating companies and to refer any dispute for arbitration;

Overall Governance of Sector

Other key amendments

92 – Proceedings of Appropriate Commission

After sub-section (5), the following subsection shall be added, namely: –

- “(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”.

Section 111 - Appeal to Appellate Tribunal

- (1) 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 112 – Composition of Appellate Tribunal

- (1) The Appellate Tribunal shall consist of a Chairperson and ~~three other Members~~ “such number of other Members, not less than seven, as may be prescribed by the Central Government”.

121 – Power of Appellate Tribunal

Changes in Sec 121 and now numbered as Sub Section (1) of Section 121

- The Appellate Tribunal may, after hearing the Appropriate Commission or “Electricity Contract Enforcement Authority or” other interested party, if any, from time to time, issue such orders, instructions or directions as it may deem fit, to any Appropriate Commission “Electricity Contract Enforcement Authority” for the performance of its statutory functions under this Act.

After sub-section (1), the following subsection shall be added, namely: –

- “(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 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”.

Stakeholder Impact

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| G | T | D | Con. | Overall |

Mercados Assessment

- U/s 78, Central Committee shall select members in all bodies, will boost talent in the sector’s adjudication process across country.
- Adjudication system is strengthened in SERCs & ATE by addition in member(s);
- The revised qualification conditions will bring in more expertise on table
 - 1 – GTD experience
 - 1 – Law background
 - 2 – Fin/ Eco/ Comm/ Public Policy/ Mgmt;
- In case of Commission being vacant, temporary arrangement is provided by equivalent rank from other state;
- Issues around concurrent nature of power between Federal and State Structure are deliberated subsequently.



Commercial Discipline

Commercial Discipline Proposed Amendments

Proposed

Section 28 and 32 : Payment Security to be checked prior to scheduling and despatch by RLDCs and SLDCs
the following proviso shall be inserted in clause (a) of sub-section (3)

"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"

Stakeholder Impact

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| G | T | D | Con. | Overall |
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Mercados Assessment

- Formalization of recently notified circular dated June 28, 2019 through proposed amendment.
- Big Positive for generators who will have payment guarantees

Key issues to be further addressed:

- There have been instances where clauses related to payment security have not been provided in recent contracts/RFPs. Instead of “as agreed upon by the parties to the contract”, the Act should make clauses relating to adequate payment security mandatory in every PPA/PSA.
- After the recent order mandating LCs, it has been observed that multiple generators are giving the consent for scheduling irrespective the implementation of payment security (i.e. LC) as per their contract, due to coercive behavior by licensees. The Act should provide enabling clauses to identify and prohibit such behavior of the licensees.

Commercial Discipline

Proposed Amendments

New Section: “Part XA – Electricity Contract Enforcement Authority (ECEA)”

109A – Establishment of ECEA

- ECEA shall have the sole authority and jurisdiction to adjudicate upon matters regarding performance of obligations under a contract related to sale, purchase or transmission of electricity, except for any matter related to regulation or determination of tariff or any dispute involving tariff;
- Every contract between a generation company and a licensee shall be filed with the Appropriate Commission within 30 days of said contract having concluded;

109B – Application to ECEA and order thereon

- Any person aggrieved in any matter referred to in section 109A may prefer an application to ECEA;
- Application shall be filed within a period of 6 months from non-performance of obligation under contract;
- Applications to be disposed off within 120 days in normal course

109C – Composition of ECEA

- Composition : One chairperson, ≥ 2 Judicial Members (JM), ≥ 3 Technical Members (TM);
- Benches : Jurisdiction of ECEA may be exercised by benches with ≥ 2 members with atleast 1 JM & 1 TM;

109J – Procedure and Powers of ECEA

- (1) Shall be guided by principles of natural justice and shall have powers to regulate its own procedure;
- (2) Powers same as vested in a civil court under Code of civil procedure 1908
- (3) ECEA order shall be executable by it as a decree of civil court and have all powers but limited to powers of attachment and sale of property, arrest and detention in prison and appointment of a receiver;
- (4) Notwithstanding anything contained in (3), ECEA may transmit any order made by it to a civil court having local jurisdiction & such civil court shall execute the order as if it were a decree made by that court.
- (5) All proceedings before ECEA shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the IPC and ECEA shall be deemed to be a civil court for the purposes of section 345 and 346 of the Code of Criminal Procedure, 1973

109L – Decision to be by majority (Members who have heard the case, including those who first heard it)

109N – Appeal to ATE – Aggrieved by decision or order, appeal may be filed before ATE within 60 days of order

Stakeholder Impact

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| G | T | D | Con. | Overall |

Mercados Assessment

- Significant dilution in powers of SERCs.
- The intention behind the establishment of the proposed Authority is apparently the unilateral termination of PPAs by discoms. Ministry has persistently advocated that sanctity of PPAs have to be maintained.
- Setting up this Special Forum is perceived to be positive for IPPs who are facing termination related issues, inordinate delay in payments of verified energy bills, non-operationalisation of PPAs, unilateral tariff re-negotiation proceedings by discoms, deliberate delay in payment of change in law claims of both thermal and renewable developers and other contractual issues which are likely to be expeditiously resolved by this Authority.
- States are however expected to vociferously oppose this amendment.



Tariff Rationalisation

Open Access and other Tariff Related matters

Sections 38, 39, 40

Existing

Section 38. (Central Transmission Utility and functions): ----

.....
(d) to provide non-discriminatory open access to its transmission system for use by-
(i) any licensee or generating company on payment of the transmission charges; or
(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:

Section 39. (State Transmission Utility and functions): ----

.....
(d) to provide non-discriminatory open access to its transmission system for use by-
(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:

Section 40. (Transmission Licensees): --

--
It shall be the duty of a transmission licensee –
.....
(d) to provide non-discriminatory open access to its transmission system for use by-
(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:

Proposed

sub-clause (ii) of clause (d) of subsection (2) including the provisos, the following shall be substituted

(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.

(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.

sub-clause (ii) of clause (d) of subsection (2) including the provisos, the following shall be substituted

(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, as may be specified by the Appropriate Commission.

Stakeholder Impact

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| G | T | D | Con. | Overall |
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Mercados Assessment

- Amendment provides clarity on the authority for determination of surcharge for open access consumers.
- The proposed Amendment has omitted all existing provisos which suggested that such surcharges could have been used for cross subsidisation.

Open Access and other Tariff Related matters

Section 42 (Duties of distribution licensee and open access)

Existing

Section 42. (Duties of distribution licensee and open access): ---

(2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Proviso-1: Provided that such open access shall be allowed on payment of a surcharge in addition to the charges for wheeling as may be determined by the State Commission:

Proviso-3: Provided also that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission:

Proposed

First Proviso to be substituted with the following:

“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 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:”;

Third Proviso to be substituted with the following:

“Provided also that such surcharge and cross subsidies shall be progressively reduced by the State Commission in the manner as may be provided in the Tariff Policy:”;

Fourth Proviso to be inserted:

“Provided also that the manner of payment and utilization of the surcharge shall also be specified by the State Commission:”.

Stakeholder Impact

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| | | | Subsidising | |
| G | T | D | Con. | Overall |
| | | | Subsidized | |

Mercados Assessment

- An upfront clarity in SOR will streamline the open access charges to be levied to various consumers. For instance, clarity may be provided regarding applicability of wheeling charges whether they are to be essentially paid or the same are to be paid only if applicable.
- Tariff rationalisation will reduce tariff for industrial and commercial consumers and vice versa for other subsidised categories.
- The proposed amendment of Section 42 provides that State Commission will determine the manner of payment and utilisation of such surcharge.

Tariff and other related matters

Section 61 (Tariff regulations)

Existing

- (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;
- (h) the promotion of co-generation and generation of electricity from renewable sources of energy;
- (i) the National Electricity Policy and tariff policy:

Proposed

- (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;
- (h) the promotion of co-generation and generation of electricity from renewable and hydro sources of energy;
- (i) the National Electricity Policy and tariff policy and National Renewable Energy Policy:

Stakeholder Impact

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|---|---|---|-------------|---------|
| | | | Subsidising | |
| G | T | D | Con. | Overall |
| | | | Subsidized | |

Mercados Assessment

- Pursuant to the Supreme court judgment in Energy Watchdog, Tariff Policy carries the force of law and will have a binding impact on the Discoms/other obligated entities.
- Revision in Tariff Policy will be required to provide the roadmap for reduction in cross subsidies for all States.
- Currently, the amendment only talks about cost to supply and does not provide whether the same shall be the average cost or voltage wise cost to serve.
- The resultant impact will reduce tariffs for subsidizing categories and vice versa for agricultural and domestic consumers and may have socio-economic impact on the States.

Tariff and other related matters

Section 62 (Determination of tariff)

Existing

Section 62. (Determination of tariff): --- (1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –

....

(d) retail sale of electricity:
Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

.....

(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

Proposed

Section 62. (Determination of tariff): --- (1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –

....

(d) retail sale of electricity:
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;

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

.....

(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may, **subject to provisions of the Tariff Policy**, differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

Stakeholder Impact

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| G | T | D | Con. | Overall |

Mercados Assessment

- The SERCs will have to approve full cost recovery tariff schedules (FCRTS) in the tariff orders.
- Tariff Rationalisation will get expedited under the aegis of Tariff Policy

Tariff and other related matters

Section 63. (Determination of tariff by bidding process)

Existing

Section 63. (Determination of tariff by bidding process):

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.

Proposed

Section 63. (Determination of tariff by bidding process):

(1) 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.

(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.

Stakeholder Impact

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| G | T | D | Con. | Overall |
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Mercados Assessment

- Positive for generators and transmission licensees under TBCB.
- Proposed amendment seeks to address the concerns around delays at Appropriate Commissions in passing tariff adoption orders expeditiously.
- Tariff adoption application to be deemed approved upon expiry of 60 days from filing application, if Appropriate Commission does not finalise the order.

Tariff and other related matters

Section 65. (Provision of subsidy by State Government)

Existing

Section 65. (Provision of subsidy by State Government):

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 person concerned to implement the subsidy provided for by the State Government:

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.

Proposed

Section 65. (Provision of subsidy by State Government):

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 person concerned to implement the subsidy provided for by the State Government:~~ the amount of subsidy directly to the consumer and the licensee shall charge the consumers as per the tariff determined by the Commission.

~~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.~~

Stakeholder Impact

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Mercados Assessment

- Very positive development for the sector.
- DBT is being introduced which would ensure adequacy and timeliness of subsidy to the target consumers.
- Payment of subsidy should only be pursuant to confirmation of receipt of billed amount by the discoms
- Collection efficiency of discoms is bound to increase thereby improving their cash flow cycles.
- Camouflaging of losses will reduce significantly.



Power Procurement

Procurement of Power

Section 49 (Agreement with respect to supply or purchase of electricity)

Existing

Section 49. (Agreement with respect to supply or purchase of electricity):
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.

Stakeholder Impact

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| G | T | D | Con. | Overall |
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Proposed

Section 49. (Agreement with respect to supply or purchase or transmission of electricity).-
(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.

(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.”.

Mercados Assessment

- In the principal Act, (Section 62(1)(a) first proviso) licensee to licensee contracts are allowed for period <1 year. Current Amendment seeks to enhance the scope of licensee to licensee contracts.
- It appears that proposed amendment is again moving towards Section 62 contracts which is a departure from the current Tariff Policy. Apparently, bilateral contracts may get facilitated with this proposal.
- Procurement of power under this route would however be subject to approval from SERC under Section 86(1)(b).
- It is expected consumer forums would strongly oppose this proposal.
- Flexibility in power purchase and sale agreements between licensees may lead to development of agreements customized as per requirements of the States. For instance, inter-state Banking which is recognized by CERC as ‘transactions for inter-State exchange of electricity between two grid connected entities either directly or through a Trading Licensee’. Earlier such contracts had no enabling provision in the Act and hence many States did not adopt banking transactions.
- In view of increased renewable energy penetration, this flexibility may allow licensees, sub-licensees to balance their generation portfolio similar to Balance Responsible Parties Mechanism followed in Europe.



Does the Proposed
amendment violate the
Federal structure by
Centralisation of
power?

A State's perspective

Does the Proposed amendment violate the Federal structure by Centralisation of power? A State's perspective



Federal Vs State Jurisdiction on Power Sector related matters

As per the Constitution of India, “Electricity” is a subject found as Item 38 of List III (Concurrent) of the Seventh Schedule, whereby both the Central and State Governments have the power to make laws on this subject. However, with the proposed amendments, it is evidently clear that the roots of a Federal Structure forming a part of the ‘Basic Structure’ of the Constitution is apparently being violated and meddled with, by Centralizing the power and usurping the same from the States without having any repugnancy in the State Laws vis-à-vis the Central Act. The current bill may raise questions on the intent of the legislature which should bend towards decentralization of powers, in order to make the system and structure more efficient. It is perceived that the States may vehemently oppose the current amendments.

Appointment of Members

There has been a considerable change in the Procedure for appointment of the Members of the State Commissions, wherein Section 78 and 85 of the principal Act has been replaced, giving rise to the following issues :

(a) The reason for taking away the power from the State machinery in the appointment of a Member in its State, not only takes away the autonomy from the State machinery, but also fails to provide a rationale for such distrust in the State mechanism. Such an amendment in the principal Act reeks of arbitrariness and centralization of power, specially when the criteria and qualifications for the appointment of the Member is already laid down in the Act and the appointments are made accordingly.

(b) It also appears that the power to make this important decision is being taken away from the Experts of the Industry (Chairman, CERC/CEA) and is being given to the hierarchical Union structure. By having a Supreme Court Judge and 2 Secretaries of the Central Government along with Chief Secretaries of two states (of another State) in itself shows the clear intention towards centralization of Power.

(c) There is more likelihood of Centralization of Power and lack of transparency if the same Selection Committee is made to appoint all the members of all the Electricity Forums from the Centre to the State levels and the powers held by these 5 members may result into biased streamlining of appointments.

Other Issues

It is also pertinent to point out that as per Section 109J (3), the language of the Section is ambiguous to the extent of “including but limited to” as the Section covers all the powers as per Order 21 (dealing with execution) of the Civil Procedure Code, 1908 that are used for the purpose of execution. So whether these powers are “included” in the powers of ECEA or are “limited to” that extend needs to be clarified and the language of the Statute book should be made free from ambiguity.



Other Suggestions

Inadvertent terms/observations in the Draft Amendments

- Section -2 : Definition of Distribution sub-licensee makes inadvertent reference to “sub distribution licensee”
- Section -2: Reference of “Our country” in the definition of “Cross Border trade of electricity” needs to be corrected to “Territory of India including Sea”.
- **Section 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 of electricity from renewable **and hydro** sources of energy and prescribe a minimum percentage of purchase of electricity from renewable and hydro sources of energy

(and hydro can be added in the amendment)

- There are multiple references to “appropriate State Commission” which should be referred as “Appropriate Commission”. The existing Act provides definition of Appropriate Commission. Appropriate State Commission is not defined in the Act.
- Section -42 Proviso (3) Provides that such surcharge and cross subsidies shall be progressively reduced by the State Commission in the manner as **may** be provided in the Tariff Policy:”. The word “May” should be omitted since Section 61 clearly provides that SERC has to ensure that the tariff **Progressively** reflects the cost of supply of electricity and also, reduces and eliminates cross-subsidies within the period to be ~~specified by the Appropriate Commission~~ **as provided in the Tariff Policy**
- **Renewable Generation Obligation** is a capitalized term in the Amendment. However, the same has not been defined anywhere in the principal Act. A definition needs to be provided in the final notification.

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