



A. SOME IMPORTANT PROVISIONS PROPOSED TO BE NEWLY INTRODUCED TO THE ELECTRICITY ACT, 2003:

SECTION	PROVISION	COMMENTS
2(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:	The proposed amendment seeks to facilitate and develop trade in electricity with other countries. Vide Section 176(ab), the Central Government is proposed to be delegated with the power to prescribe rules and guidelines to facilitate cross border trade of electricity.
2(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;	This is a move towards privatization of power distribution. Further, there is no major distinction between a distribution sub-licensee sought to be introduced vide insertion of this Section and a franchisee defined under Section 2(27) of the Electricity Act, 2003 (“Act”) apart from the fact that a distribution sub-licensee can be appointed only with the prior permission of the appropriate State Electricity Regulatory Commission (“SERC”) whereas a franchisee can be appointed by merely informing the appropriate SERC. Further, there are no specific sections to govern either a franchisee or a distribution sub-licensee which creates uncertainty as to whether the statutory obligation of each of these entities is co-extensive or distinct in any way.
2(24a)	“Electricity Contract Enforcement Authority” means an Electricity Contract Enforcement Authority referred to in sub-section (1) of section 109A;	A new body is proposed to be established for adjudicating upon issues pertaining to Power Purchase Agreements (“PPAs”). We are of the view that the present SERCs are also undertaking this role and therefore, the purpose of creating a new forum is not understood. However, we are of the view that any technical members if appointed from the employees/personnel of distribution licensee should not be appointed as such member or in any important position in SERC of same State.
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	The creation of a National Renewable Energy Policy by the Central Government in consultation with the State Governments is proposed. However, whether such a Central Policy can be applied to all States irrespective of their geographical factors is questionable. Depending on their geographical location, States like Tamil Nadu,



	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.	Maharashtra and Gujarat have abundant wind power whereas States like Andhra Pradesh and Rajasthan have abundant solar power. In such a scenario, making a centralized policy on renewable energy applicable to all States may prove to be detrimental unless such policy will prescribe broad framework to enable States to specify their own State specific policy.
Part XA (Sections 109A to 109N)	Provisions pertaining to Electricity Contract Enforcement Authority	Vide the introduction of a new part i.e Part XA (Sections 109A to 109N), a new body by the name of Electricity Contract Enforcement Authority is sought to be established. This body shall have original jurisdiction to adjudicate upon disputes pertaining to performance of obligations under a contract related to sale, purchase or transmission of electricity. Presently, the Central Commission and the SERCs settle the state level and inter-State PPA disputes, respectively. The reason given for the establishment of this new body is that Electricity Regulatory Commissions (“ERCs”) have multiple responsibilities under the Act such as regulatory functions, tariff fixation issues, grant of licenses etc. However, as to whether such a single body will be able to efficiently and in a time bound manner adjudicate upon PPA disputes arising from across the country which presently gets divided between the various ERCS is quite uncertain. Further, the location of the Electricity Contract Enforcement Authority being Delhi, it would create a logistical issue to the parties involved and would be an additional burden on the exchequer. The present ERCS are well equipped to tackle disputes pertaining to PPAs, hence a new body for the same is not a necessity.

B. COMPARISON BETWEEN SOME OF THE IMPORTANT CHANGES PROPOSED TO THE ELECTRICITY ACT, 2003 AND THE EXISTING PROVISIONS OF THE ELECTRICITY ACT, 2003

SECTION	EXISTING PROVISION	ACTION	PROPOSED AMENDMENT	COMMENTS
2(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;	Definition of franchisee shall be substituted	<i>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</i>	There is no major distinction between a franchisee defined under Section 2(27) of the Act, 2003 and a



			<p><i>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.</i></p>	<p>distribution sub-licensee sought to be introduced vide insertion of Section 2(17a) apart from the fact that a distribution sub-licensee can be appointed only with the prior permission of the appropriate SERC whereas a franchisee can be appointed by merely informing the appropriate SERC. Further, there are no specific sections to govern either a franchisee or a distribution sub-licensee which creates uncertainty as to whether the statutory obligation of each of these entities is co-extensive or distinct in any way.</p>
14	<p>Grant of licence:</p> <p>The Appropriate Commission may, on an application to it under section 15, grant a license to any person-</p> <ol style="list-style-type: none"> 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, <p>in any area as may be specified in the license:</p> <p>.....</p>	<p>Seventh proviso to Section 14 shall be substituted and a new proviso after the seventh proviso shall be inserted</p>	<p>Grant of licence:</p> <p>The Appropriate Commission may, on an application to it under section 15, grant a license to any person-</p> <ol style="list-style-type: none"> 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, <p>in any area as may be specified in the license:</p> <p>.....</p>	<p>Though it is clear that neither the franchisee nor the distribution sub-licensee require a separate license from the appropriate SERC, the deliberate exclusion of the words '<i>such distribution licensee shall continue to remain responsible for distribution of electricity in its area of supply</i>' from the proviso dealing with the distribution sub-licensee hints that the distribution sub-licensee has greater statutory obligations in comparison to that of a franchisee. However, the same have not been specifically laid down</p>



	<p>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:</p> <p>.....</p>		<p><i>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:</i></p> <p><i>Provided also that a distribution sub-licensee shall not be required to obtain any separate license from the appropriate State Commission:</i></p> <p>.....</p>	<p>anywhere which may lead to confusion in the future.</p>
26	<p>National Load Despatch Centre:</p> <ol style="list-style-type: none"> 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: <p>Provided that the National Load Despatch Centre shall not engage in the business of trading in electricity.</p> <ol style="list-style-type: none"> 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>Sub-sections 4, 5 and 6 shall be inserted</p>	<p>National Load Despatch Centre:</p> <ol style="list-style-type: none"> 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: <p>Provided that the National Load Despatch Centre shall not engage in the business of trading in electricity.</p> <ol style="list-style-type: none"> 3. The National Load Despatch Centre shall be operated by a Government company or any authority or corporation established or constituted by or under 	<p>Certain additional functions are proposed to be bestowed on the National Load Despatch Centre in order to ensure safety, security and stability of the national grid.</p>



			<p>any Central Act, as may be notified by the Central Government.</p> <p>4. <i>The National Load Despatch Centre shall</i></p> <ul style="list-style-type: none"><i>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;</i><i>b. monitor grid operations;</i><i>c. exercise supervision and control over the inter-regional and inter- state transmission network; and</i><i>d. have overall authority for carrying out real time operations of the national grid.</i> <p>5. <i>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.</i></p> <p>6. <i>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.</i></p>	
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28(3)(a)	<p>Functions of Regional Load Despatch Centre:</p> <ol style="list-style-type: none"> 1. 2. 3. The Regional Load Despatch Centre shall – <ol style="list-style-type: none"> (a) be responsible for optimum scheduling and despatch of electricity within the region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region; 	<p>Proviso shall be inserted in clause (a) of sub-section (3) of Section 28</p>	<p>Functions of Regional Load Despatch Centre:</p> <ol style="list-style-type: none"> 1. 2. 3. The Regional Load Despatch Centre shall – <ol style="list-style-type: none"> (a) be responsible for optimum scheduling and despatch of electricity within the region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region; <p style="color: red;"><i>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.</i></p>	<p>The amendment seeks to formalize a payment security mechanism which was introduced by circular dated June 28, 2019 by Ministry of Power. Further, it proposes to empower the State Load Despatch Centres to oversee this requirement prior to scheduling and despatch of electricity. The proposal of payment security as prerequisite would be a welcome safeguard for all power generators as it will help protect the sanctity of contracts. Lack of payment security mechanism has resulted in a huge accumulation of unpaid dues.</p>
32(2)(a)	<p>Functions of State Load Despatch Centres :</p> <ol style="list-style-type: none"> 1. 2. The State Load Despatch Centre shall – <ol style="list-style-type: none"> (a) be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State; 	<p>Proviso to be inserted in clause (a) of sub-section (2) of Section 32</p>	<p>Functions of State Load Despatch Centres :</p> <ol style="list-style-type: none"> 1. 2. The State Load Despatch Centre shall – <ol style="list-style-type: none"> (a) be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State; 	<p style="text-align: center;"><i>Same as above</i></p>



			<i>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.</i>	
38(2)(d)(ii)	<p>Central Transmission Utility and functions: (1)</p> <p>(2) The functions of the Central Transmission Utility shall be – </p> <p>(d) to provide non-discriminatory open access to its transmission system for use by-</p> <p>i. any licensee or generating company on payment of the transmission charges; or</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>Provided that such surcharge shall be utilized for the purpose of meeting the requirement of current level cross-subsidy:</p> <p>Provided further that such surcharge and cross subsidies shall be progressively</p>	Sub-clause (ii) of clause (d) of sub-section (2) of Section 38 shall be substituted	<p>Central Transmission Utility and functions: (1)</p> <p>(2) The functions of the Central Transmission Utility shall be – </p> <p>(d) to provide non-discriminatory open access to its transmission system for use by-</p> <p>i. any licensee or generating company on payment of the transmission charges; or</p> <p>ii. <i>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.</i></p>	The surcharge is proposed to be specified by the SERCs as against the existing provision which provides that the surcharge shall be specified by the Central Commission. Further, the addition of words “to be collected by it” does not seem to fit here as such surcharge is collected by the distribution licensee.



	<p>reduced in the manner as may be specified by the Central Commission:</p> <p>Provided also that the manner of payment and utilization of the surcharge shall be specified by the Central Commission:</p> <p>Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.</p>			
39(2)(d)(ii)	<p>State Transmission Utility and functions:</p> <p>1)</p> <p>2) The functions of the State Transmission Utility shall be –</p> <p>(d) to provide non-discriminatory open access to its transmission system for use by –</p> <p>i. any licensee or generating company on payment of the transmission charges; or</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</p>	<p>Sub-clause (ii) of clause (d) of sub-section (2) of Section 39 shall be substituted</p>	<p>State Transmission Utility and functions:</p> <p>1)</p> <p>2) The functions of the State Transmission Utility shall be –</p> <p>(d) to provide non-discriminatory open access to its transmission system for use by –</p> <p>i. any licensee or generating company on payment of the transmission charges; or</p> <p>ii. <i>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</i></p>	<p>The addition of words “to be collected by it” does not seem to fit here as such surcharge is collected by the distribution licensee.</p>



	<p>surcharge thereon, as may be specified by the State Commission:</p> <p>Provided that such surcharge shall be utilized for the purpose of meeting the requirement of current level cross-subsidy:</p> <p>Provided further that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission:</p> <p>Provided also that the manner of payment and utilization of the surcharge shall be specified by the State Commission:</p> <p>Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.</p>		<p><i>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.</i></p>	
40(c)(ii)	<p>Duties of transmission licensees:</p> <p>It shall be the duty of a transmission licensee- (c) to provide non-discriminatory open access to its transmission system for use by –</p> <p>i. any licensee or generating company on payment of the transmission charges; or</p>	<p>Though the draft amendment states that sub-clause (ii) of clause (d) of sub-section (2) including the provisos shall be substituted,</p>	<p>Duties of transmission licensees:</p> <p>It shall be the duty of a transmission licensee- (c) to provide non-discriminatory open access to its transmission system for use by –</p>	<p>The provisions pertaining to utilization of cross subsidy and its progressive reduction have been proposed to be deleted. We presume the roadmap for reduction shall be included in the National Tariff Policy which is also proposed to be made binding by amendment proposed in Section 61.</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>Provided that such surcharge shall be utilized for the purpose of meeting the requirement of current level cross-subsidy:</p> <p>Provided further that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the Appropriate Commission:</p> <p>Provided also that the manner of payment and utilization of the surcharge shall be specified by the Appropriate Commission:</p> <p>Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.</p>	<p>there is neither sub-section (2) nor clause (d) to such sub-section in Section 40. We believe it's a typographical error and its should have been sub-clause (ii) of clause (c) which shall be substituted</p>	<p>i. any licensee or generating company on payment of the transmission charges; or</p> <p>ii. <i>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.</i></p>	
42(2)	<p>Duties of distribution licensees and open access: 1)</p>	<p>The first and third provisos to sub-section (2) shall be</p>	<p>Duties of distribution licensees and open access: 1)</p>	<p>The phasing out of surcharge and cross subsidies is proposed to be undertaken by SERCs as per the Tariff Policy, thereby making Tariff Policy binding.</p>



	<p>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:</p> <p>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:</p> <p>Provided further that such surcharge shall be utilized to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:</p> <p>Provided also that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission:</p> <p>Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use:</p>	<p>substituted and an additional proviso shall be added after fourth proviso</p>	<p>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:</p> <p><i>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:</i></p> <p>Provided further that such surcharge shall be utilized to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:</p> <p><i>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:</i></p> <p>Provided also that such surcharge shall not be leviable in case open access is provided to a</p>	<p>However, a sunset clause on applicability of cross subsidy would have been helpful.</p> <p>Further like deemed approval of power purchase agreements, deemed approval of open access if not processed in specified period would be useful.</p>
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	<p>Provided also that the State Commission shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003, by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt.</p>		<p>person who has established a captive generating plant for carrying the electricity to the destination of his own use:</p> <p><i>Provided also that the manner of payment and utilization of the surcharge shall also be specified by the State Commission:</i></p> <p>Provided also that the State Commission shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003, by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt.</p>	
49	<p>Agreement with respect to supply or purchase of electricity:</p> <p>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>	<p>Section 49 shall be substituted</p>	<p><i>Agreement with respect to supply or purchase or transmission of electricity:</i></p> <p><i>(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.</i></p> <p><i>(2) Where the Appropriate Commission has allowed open access to certain consumers under section 42, such consumers, notwithstanding the provisions</i></p>	<p>The pre-requisite of payment security is sought to be formalized which was introduced in the Circular dated June 28, 2019 of Ministry of Power.</p>



			<p style="color: red;">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>	
61(g), 61(h) and 61(i)	<p>Tariff regulations:</p> <p>The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely :-</p> <p>.....</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;</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>	Clauses g, h and i shall be amended	<p>Tariff regulations:</p> <p>The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely :-</p> <p>.....</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>(h) the promotion of co-generation and generation of electricity from renewable and hydro sources of energy;</p> <p>(i) the National Electricity Policy and tariff policy and National Renewable Energy Policy:</p>	<p>This proposed amendment by including Tariff Policy in the Act is proposing to make such Policy force of law, which was also held by Hon’ble Supreme Court in <i>Energy Watchdog Vs Central Electricity Regulatory Commission (2017) 14 SCC 80</i>. Further, it also requires the SERCs to be guided by the National Renewable Energy Policy among the various guiding factors to be considered while determining the tariff. The inclusion of hydro will assist the unutilized hydro resource and however, whether separate renewable purchase obligation pertaining to hydro will be provided is not clear.</p>
62(1)(d) and 62(3)	<p>Determination of tariff:</p>	A proviso shall be added after clause (d) in sub-section (1) and	<p>Determination of tariff:</p>	<p>The proposed amendment aims at eliminating the inclusion of subsidy while determining the tariff and provides for direct transfer of subsidy</p>



	<p>(1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –</p> <p>(d) retail sale of electricity:</p> <p>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.</p> <p>(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.</p>	<p>sub-section (3) shall be amended</p>	<p>(1)The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –</p> <p>(d) retail sale of electricity:</p> <p><i>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,</i></p> <p>Provided <i>further</i> 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.</p> <p>(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may <i>subject to provisions of the Tariff Policy</i> 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.</p>	<p>to consumers eligible for it. This is welcome change and shall reduce certain amount of litigation pertaining to the subsidies.</p>
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63	<p>Determination of tariff by bidding process:</p> <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>Section 63 shall be numbered as sub-section (1) and a new sub-section (2) along with proviso shall be added</p>	<p>Determination of tariff by bidding process:</p> <ol style="list-style-type: none"> 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. <i>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:</i> <p style="text-align: center;"><i>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.</i></p>	<p>A time limit of sixty (60) days has been prescribed for the adoption of tariff determined through bidding process. Further in case of failure of the ERC to do so, it shall be deemed to have been adopted by the concerned ERC. This is a welcome change and a similar approach ought to be taken towards open access applications which are not decided by the distribution licensees/Nodal agencies within stipulated time.</p>
65	<p>Provision of subsidy by State Government:</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</p>	<p>Section 65 shall be amended</p>	<p>Provision of subsidy by State Government:</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</p>	<p>This proposed amendment seeks to introduce direct benefit transfer of subsidy to the consumer by the State Government which is welcome change.</p>



	<p>direct, as a condition for the licence or any other 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>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 :</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>	
77	<p>Qualifications for appointment of Members of Central Commission</p> <p>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> <ol style="list-style-type: none"> 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 finance; c. two persons having qualifications and experience in the field of economics, commerce, law or management: 	<p>Sub-section (2) shall be deleted and sub-section (1) shall be amended to the extent provided herein</p>	<p>Qualifications for appointment of Members of Central Commission</p> <p>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, <i>public policy</i> or, management and shall be appointed in the following manner, namely :-</p> <ol style="list-style-type: none"> 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 <i>finance law</i>; c. two persons having qualifications and experience in the field of <i>finance</i>, economics, commerce, <i>law public policy</i> or management: 	<p>Sub-section (2) is proposed to be omitted whereby the power conferred on Central Government to have right to appoint Chairperson shall stand withdrawn. The Selection Committee constituted under Section 78 is proposed as sole body for recommending the Chairperson or Members of the Central Commission as well as the SERCs.</p>



	<p>Provided 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: Provided that no appointment under this sub-section shall be made except after consultation with the Chief justice of India.</p>		<p>Provided 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: Provided that no appointment under this sub-section shall be made except after consultation with the Chief justice of India.</p>									
78	<p>Constitution of Selection Committee to recommend Members :-</p> <p>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 –</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">(a) Member of the Planning Commission incharge of the energy sector</td> <td style="width: 30%;">Chairperson</td> </tr> <tr> <td>(b) Secretary-in-charge of the Ministry of the Central Government dealing with the Department of the Legal Affairs</td> <td>Member</td> </tr> </table>	(a) Member of the Planning Commission incharge 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	Section 78 shall be substituted	<p>Constitution of Selection Committee to recommend Members :-</p> <p>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, <u>Electricity Contract Enforcement Authority, State Commissions and Joint Commissions</u> constitute a Selection Committee consisting of –</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">(a) A person who is, or has been, a Judge of the Supreme Court to be nominated by the Chief Justice of India</td> <td style="width: 30%;">Chairperson</td> </tr> <tr> <td>(b) Secretary-in-charge of the Ministry of the Central Government to be</td> <td>Member</td> </tr> </table>	(a) A person who is, or has been, a Judge of the Supreme Court to be nominated by the Chief Justice of India	Chairperson	(b) Secretary-in-charge of the Ministry of the Central Government to be	Member	<p>Section 78 is proposed to be amended with the intention to do away with multiple Selection Committees for the Central Commission and the SERCs and instead have a single Selection Committee for all the ERCs. This proposal is a favorable change as it reduces the multiplicity of Selection Committees and ensures that the Chairperson and Members of all ERCs go through the same level of screening prior to their appointment. However, it may be considered to provide appropriate time frame to ensure that the new Chairperson and/or Members are appointed prior to retirement of the incumbent to ensure that the functioning of forums is not disturbed</p>
(a) Member of the Planning Commission incharge 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											
(a) A person who is, or has been, a Judge of the Supreme Court to be nominated by the Chief Justice of India	Chairperson											
(b) Secretary-in-charge of the Ministry of the Central Government to be	Member											



	(c) Chairperson of the Public Enterprises Selection Board	Member			<table border="1"> <tr> <td data-bbox="1381 305 1723 378"><i>nominated by the Central Government</i></td> <td data-bbox="1723 305 1991 378"></td> </tr> <tr> <td data-bbox="1381 378 1723 521"><i>(c) Chief Secretaries of two State Governments in accordance with sub-section (2)</i></td> <td data-bbox="1723 378 1991 521"><i>Member</i></td> </tr> <tr> <td data-bbox="1381 521 1723 667"><i>(d) Secretary-in-charge of the Ministry of the Central Government dealing with power</i></td> <td data-bbox="1723 521 1991 667"><i>Member</i></td> </tr> </table>	<i>nominated by the Central Government</i>		<i>(c) Chief Secretaries of two State Governments in accordance with sub-section (2)</i>	<i>Member</i>	<i>(d) Secretary-in-charge of the Ministry of the Central Government dealing with power</i>	<i>Member</i>	<p>and litigation does not pile up on account of vacancy.</p>
<i>nominated by the Central Government</i>												
<i>(c) Chief Secretaries of two State Governments in accordance with sub-section (2)</i>	<i>Member</i>											
<i>(d) Secretary-in-charge of the Ministry of the Central Government dealing with power</i>	<i>Member</i>											
(d) a person to be nominated by the Central Government in accordance with sub-section (2)	Member	(e) a person to be nominated by the Central Government in accordance with sub-section (3)	Member	<p>2. <i>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 Pradesh shall be the members of the Selection Committee for a period of one year.</i></p> <p>3. <i>Secretary-in-charge of the Ministry of the Central Government dealing with Power shall be the Convener of the Selection Committee.</i></p> <p>4. <i>The Central Government shall, within a period of 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 or the <u>Electricity Contract Enforcement Authority</u> and within a period of <u>twelve months before the superannuation</u> or end of tenure of the Member of the Appellate Tribunal or Chairperson or Member of the Central Commission or <u>Electricity Contract Enforcement Authority</u>, make a</i></p>								
(f) Secretary-in-charge of the Ministry of the Central Government dealing with power	Member	<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 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>8. Before recommending any person for appointment as Member of the Appellate Tribunal or the Chairperson or other Member of the Central Commission, 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><i>reference to the Selection Committee for filling up of the vacancy.</i></p> <p>5. <i>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.</i></p> <p>6. <i>The proceedings of the Selection Committee shall be held in Delhi or such other places as the Central Government may notify.</i></p> <p>7. <i>The Selection Committee shall finalise the selection of the Chairperson and Members referred to it under sub-sections (4) and (5) and make a recommendation for every vacancy referred to it within three months of the receipt of the reference.</i></p> <p>8. <i>Before recommending any person for appointment as Member of the Appellate Tribunal, or the Chairperson or other Member of the <u>Appropriate Commission or Electricity Contract Enforcement Authority</u>, 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.</i></p>	
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	<p>9. No appointment of the Chairperson or other Member shall be invalid merely by reason of any vacancy in the Selection Committee: Provided that nothing contained in this section shall apply to the appointment of a person as the Chairperson of the Central Commission where such person is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court.</p>		<p>9. <i>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.</i></p>	
79	<p>Functions of Central Commission: 1. The Central Commission shall discharge the following functions, namely: (f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration; (j) to fix the trading margin in the inter-State trading of electricity, if considered, necessary; (k) to discharge such other functions as may be assigned under this Act. (4) In discharge of its functions, the Central Commission shall be guided by the National Electricity Policy,</p>	<p>Sub-section (4) and clause (f) to sub-section (1) to be amended and a new clause (ja) to be added to sub-section (1).</p>	<p>Functions of Central Commission: 1. The Central Commission shall discharge the following functions, namely: (f) to adjudicate upon disputes <i>except matters referred to in section 109A</i> involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration; (j) to fix the trading margin in the inter-State trading of electricity, if considered, necessary; <i>(ja) to regulate cross border trade of electricity in accordance with the provisions of this Act and rules made there under;</i> (k) to discharge such other functions as may be assigned under this Act.</p>	<p>The duty to regulate cross border trade of electricity is conferred on the Central Commission and the disputes pertaining to performance of obligations under a contract related to sale, purchase or transmission of electricity are expressly excluded from the jurisdiction of the Central Commission. Presently, inter-State disputes with respect to PPAs are dealt by the Central Commission. Depriving the Central Commission of this jurisdiction with the intention to establish a separate body to deal with PPA disputes from the whole of India is an additional burden to the exchequer and not a practically sound option. It may not only lead to delay in resolving such disputes it will cause inconvenience to the parties.</p>



	National Electricity Plan and tariff policy published under section 3.	 (4) In discharge of its functions, the Central Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under section 3 <i>and National Renewable Energy Policy under section 3A.</i>	
82	<p>Constitution of State Commission:</p> <p>1. Every State Government shall, within six months from the appointed date, by notification, constitute for the purpose of this Act, a Commission for the State to be known as the (name of the State) Electricity Regulatory Commission:</p> <p style="padding-left: 40px;">Provided that</p> <p style="padding-left: 40px;">Provided further that the Chairperson and other Members of the State Commission appointed, before the commencement of this Act under the Electricity Regulatory Commissions Act, 1998 or under the enactments specified in the Schedule, may on the recommendations of the Selection Committee constituted under sub-section (1) of Section 85 be allowed to opt for the terms and conditions under this Act by the concerned State Government.</p> <p>.....</p>	<p>Certain words to be substituted in the second proviso to sub-section (1), sub-section (4) and sub-section (5). <i>Further, the proposed amendment suggests that a new sub-section (7) be inserted after sub-section (6). However, there is no existing sub-section (6) in section 82. Hence, the new sub-section is inserted as sub-section (6).</i></p>	<p>Constitution of State Commission:</p> <p>1. Every State Government shall, within six months from the appointed date, by notification, constitute for the purpose of this Act, a Commission for the State to be known as the (name of the State) Electricity Regulatory Commission:</p> <p style="padding-left: 40px;">Provided that</p> <p style="padding-left: 40px;">Provided further that the Chairperson and other Members of the State Commission appointed, before the commencement of this Act under the Electricity Regulatory Commissions Act, 1998 or under the enactments specified in the Schedule, may on the recommendations of the Selection Committee constituted under sub-section (1) of section 85 <i>section 78</i> be allowed to opt for the terms and conditions under this Act by the concerned State Government.</p> <p>.....</p>	<p>The proposed amendment intends to increase the maximum number of members of the State Commission from three to four. Most interestingly in cases where there is no Chairperson or Member in any SERC to perform its functions, it is proposed that the Central Commission may in consultation with the concerned SERC entrust its function to any other SERC or Joint Commission. With such a provision in place, in case vacancies are not filled in timely manner the petitions can be filed with other State Commission if entrusted. However, the practical difficulty in filing petition before other State Commission which itself may take time to be entrusted cannot be avoided. It is therefore our view that the vacancies should be filled in time bound manner.</p>



	<p>(4) The State Commission shall consist of not more than three Members, including the Chairperson.</p> <p>(5) The Chairperson and Members of the State Commission shall be appointed by the State Government on the recommendation of a Selection Committee referred to in section 85.</p>		<p>(4) The State Commission shall consist of not more than three <i>four</i> Members, including the Chairperson.</p> <p>(5) The Chairperson and Members of the State Commission shall be appointed by the State Government on the recommendation of a Selection Committee referred to in section 85 <i>section 78</i>.</p> <p><i>(6) 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.</i></p>	
84	<p>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, 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>Sub-section (1) shall be substituted and sub-section (2) shall be omitted</p>	<p>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, commerce, economics, law or management.</p> <p><i>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:-</i></p>	<p>The qualifications for appointment of Chairperson and Members of SERCs is proposed to be changed with the intention to have uniform qualifications for the Central Commission as well as the SERCs. However, the proposal to delete the requirement of integrity for the Chairperson and Members of the SERCs is worrisome as an individual with moral turpitude should not be allowed to sit in judgment. Also the term “adequate” may be defined in terms of number of years.</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>3. The Chairperson or any other Member of the State Commission shall not hold any other office.</p> <p>4. The Chairperson shall be the Chief Executive of the State Commission.</p>		<p><i>a. one person having qualifications and experience in the field of engineering with specialization in generation, transmission or distribution of electricity;</i></p> <p><i>b. one person having qualifications and experience in the field of law;</i></p> <p><i>c. two persons having qualifications and experience in the field of finance, economics, commerce, public policy or management.</i></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>3. The Chairperson or any other Member of the State Commission shall not hold any other office.</p> <p>4. The Chairperson shall be the Chief Executive of the State Commission.</p>	
85	Constitution of Selection Committee to select Members of State Commission	Section 85 shall be omitted	Constitution of Selection Committee to select Members of State Commission	Section 85 is proposed to be deleted in order to have only a single Selection Committee in place for all ERCs.



86	<p>.....</p> <p>Functions of State Commission</p> <p>1. The State Commission shall discharge the following functions, namely:</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) 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>Sub-section (4) and clauses (e) and (f) to sub-section (1) shall be amended to the extent provided herein</p>	<p>.....</p> <p>Functions of State Commission</p> <p>1. The State Commission shall discharge the following functions, namely:</p> <p>(e) promote co-generation and generation of electricity from renewable <i>and hydro</i> 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 <i>as may be prescribed by the Central Government from time to time</i>;</p> <p>(f) adjudicate upon the disputes <i>except matters referred to in section 109A</i> 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 <i>and National Renewable Energy Policy under section 3A</i>.</p>	<p>Adjudication of disputes pertaining to performance of obligations under a contract related to sale, purchase or transmission of electricity are expressly excluded from the jurisdiction of the SERCs. Presently, the state level disputes with respect to PPAs are dealt by the SERCs. Depriving the SERCs of this jurisdiction with the intention to establish a separate body to deal with PPA disputes from the whole of India is an additional burden to the exchequer and not a practically sound option as detailed above. It would rather be worth considering to make circuit bench of Appellate Tribunal permanent and have four regional benches to reduce load of present benches and have swift disposal of appeals.</p>
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90	<p>Removal of Member:</p> <ol style="list-style-type: none"> 1. No Member shall be removed from office except in accordance with the provisions of this section. 2. 3. The Central Government or the State Government, as the case may be, may, in consultation with the Chairperson of the Appellate Tribunal suspend any Member of the Appropriate Commission in respect of whom a reference has been made to the Chairperson of the Appellate Tribunal, under sub-section (2) until the Central Government or the State Government, as the case may be, has passed orders on receipt of the report of the Chairperson of the Appellate Tribunal, on such reference: <p>Provided that nothing contained in this section shall apply to the Chairperson of the Appropriate Commission who, at the time of his appointment as such is a sitting Judge of the Supreme Court or the chief Justice of a High Court or a Judge of a High Court.</p>	<p>Proviso to sub-section (3) shall be omitted</p>	<p>Removal of Member:</p> <ol style="list-style-type: none"> 1. No Member shall be removed from office except in accordance with the provisions of this section. 2. 3. The Central Government or the State Government, as the case may be, may, in consultation with the Chairperson of the Appellate Tribunal suspend any Member of the Appropriate Commission in respect of whom a reference has been made to the Chairperson of the Appellate Tribunal, under sub-section (2) until the Central Government or the State Government, as the case may be, has passed orders on receipt of the report of the Chairperson of the Appellate Tribunal, on such reference: <p><i>Provided that nothing contained in this section shall apply to the Chairperson of the Appropriate Commission who, at the time of his appointment as such is a sitting Judge of the Supreme Court or the chief Justice of a High Court or a Judge of a High Court.</i></p>	<p>This is introduced to remove the anomaly as the removal should not depend on designation.</p>
92	<p>Proceedings of Appropriate Commission</p> <ol style="list-style-type: none"> 1. The Appropriate Commission shall meet at the head office or any other place at such time 2. 3. 4. 	<p>Sub-section (6) shall be added to Section 92</p>	<p>Proceedings of Appropriate Commission</p> <ol style="list-style-type: none"> 1. The Appropriate Commission shall meet at the head office or any other place at such time 2. 3. 4. 	<p>The proposal to include sub-section (6) is in line with the proposal to establish an Electricity Contract Enforcement Authority which shall have the original jurisdiction to adjudicate upon disputes pertaining to performance of</p>



	5.		5. 6. <i>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”</i>	obligations under a contract related to sale, purchase or transmission of electricity. However, this proposal is not a practically sound option as elaborated in the comment section of Section 109A.
112	Composition of Appellate Tribunal : 1. The Appellate Tribunal shall consist of a Chairperson and three other Members.	Sub-section (1) shall be amended	Composition of Appellate Tribunal : The Appellate Tribunal shall consist of a Chairperson and three other Members <i>such number of other Members, not less than seven, as may be prescribed by the Central Government.</i>	The strength of the Appellate Tribunal is sought to be increased to a minimum of eight members including the Chairperson which is a good move. Establishing regional benches of the Appellate Tribunal should also be considered by the Ministry in order to make the Appellate Tribunal more accessible to the parties involved and reduce load of present benches.
120	Procedure and powers of Appellate Tribunal: 1. 2. The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely: (g) dismissing a representation of default or deciding it <i>ex parte</i> ;	Clauses (g) and (h) to sub-section (2) of section 120 shall be substituted	Procedure and powers of Appellate Tribunal: 1. 2. The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely: <i>(g) dismissing an appeal or an application on default or deciding it ex parte;</i>	The additional powers proposed to be introduced are welcome.



	<p>(h) setting aside any order of dismissal or any representation for default or any order passed by it <i>ex parte</i>;</p> <p>(i) any other matter which may be prescribed by the Central Government.</p>		<p><i>(h) setting aside an order of dismissal of an appeal or an application on default passed by it ex parte;</i></p> <p>(i) any other matter which may be prescribed by the Central Government.</p>	
121	<p>Power of the Appellate Tribunal</p> <p>The Appellate Tribunal may, after hearing the Appropriate Commission 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 for the performance of its statutory functions under this Act.</p>		<p>Power of the Appellate Tribunal</p> <p>1. The Appellate Tribunal may, after hearing the Appropriate Commission or <i>Electricity Contract Enforcement Authority</i> 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 <i>or Electricity Contract Enforcement Authority</i> for the performance of its statutory functions under this Act.</p> <p>2. <i>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 it, as 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</i></p>	<p>The power of the Appellate Tribunal is proposed to be enhanced so as to bestow upon it the power to initiate contempt proceedings for wilful disobedience of its judgment, decree, direction or order.</p>



			<i>the Contempt of Courts Act, 1971 to a High Court shall be construed as including a reference to the Appellate Tribunal.”</i>	
142	<p>Punishment for non-compliance of directions by Appropriate Commission</p> <p>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 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 rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.</p>		<p>Punishment for non-compliance of directions by Appropriate Commission</p> <p><i>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.</i></p> <p><i>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</i></p>	<p>The ceiling limit of the penalty for non-compliance of directions or order of the ERCs is proposed to be increased from Rs.100,000 (Rupees One Lakh) to Rs. 1,00,00,000 (Rupees One Crore) and the further penalty for each day in case of continuing failure is proposed to be increased from Rs. 6,000 (Rupees Six Thousand) to Rs. 100,000 (Rupees One Lakh). This increase in penalty would serve as a deterrent against such non-compliance.</p> <p>Further, the proposal to penalise non-compliance of Renewable Purchase Obligations (“RPO”) including hydro power would be an important step towards ensuring RPO compliance by obligated entities.</p>



			<p style="color: red;">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>	
146	<p>Punishment for non-compliance of orders or directions</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 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>Punishment for non-compliance of orders or directions</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 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>There is a proposal to increase the ceiling amount of penalty for failure to comply with any order or direction given under the Act or for contravention of the provisions of this Act. Such increased penalty shall ensure compliance.</p>



	Provided that nothing contained in this section shall apply to the orders, instructions or directions issued under section 121.		Provided that nothing contained in this section shall apply to the orders, instructions or directions issued under section 121.	
176	<p>Power of Central Government to make rules:</p> <p>1.</p> <p>2. In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:</p> <p>a. the time within which the objection and suggestions on the draft National Electricity Plan to be invited by the Authority under the proviso to sub-section (4) of section 3;</p> <p>d. the constitution and functions of the National Load Despatch Centre under sub-section (2) of section 26;</p> <p>p. the form in which and time at which the Central Commission shall prepare its budget under section 106;</p> <p>q. the form and the manner of verifying such form, and fee for filing appeal under sub-section (2) of section 111;</p> <p>r.</p> <p>s. the salary and allowances and other conditions of service of the officers and employees of the</p>		<p>Power of Central Government to make rules:</p> <p>1.</p> <p>2. In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:</p> <p>a. the time within which the objection and suggestions on the draft National Electricity Plan to be invited by the Authority under the proviso to sub-section (4) of section 3;</p> <p><i>aa. the minimum percentage of purchase of electricity from renewable and hydro sources of energy under section 3A;</i></p> <p><i>ab. Allowing and facilitating cross border trade of electricity and any matter related to it under sub section (1) of section 49A;</i></p> <p><i>ac. laying down the modalities of bundling of renewable energy (including hydro) with thermal energy;</i></p> <p><i>ad. Renewable Generation Obligation;</i></p>	The Central Government is proposed to be conferred with some additional rule making powers pertaining to cross border trade of electricity, RPO etc.



	<p>Appellate Tribunal under sub-section (30 of section 119;</p>		<p><i>ae. regarding maintaining adequate capacity resources;</i></p> <p>b.</p> <p>c.</p> <p>d. the constitution and functions of the National Load Despatch Centre under sub-section (2) of section 26;</p> <p><i>da. payment security mechanism under section 49;</i></p> <p>p. the form in which and time at which the Central Commission shall prepare its budget under section 106;</p> <p><i>pa. the form, the manner of verifying the form, and fee for filing the application under sub-section (4) of section 109B;</i></p> <p><i>pb. the number of Judicial and Technical Members to be included in the Electricity Contract Enforcement Authority under sub-section (1) of section 109C;</i></p> <p><i>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;</i></p> <p><i>pd. the exercise of financial and administrative powers by the Electricity Contract Enforcement Authority under sub-section (4) of section 109I;</i></p>	
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			<p>q. the form and the manner of verifying such form, and fee for filing appeal under sub-section (2) of section 111;</p> <p><i>qa. the number of Members to be included in the Appellate Tribunal under sub section 1 of section 112;</i></p> <p>r.</p> <p>s. the salary and allowances and other conditions of service of the officers and employees of the Appellate Tribunal under sub-section (30) of section 119;</p> <p><i>sa. exercise of financial and administrative powers by the Chairperson of Appellate Tribunal under sub section 4 of section 119.</i></p>	
178	<p>Powers of Central Commission to make regulations:</p> <ol style="list-style-type: none"> 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. 2. In particular and without prejudice to the generality of the power contained in sub-section 91), such regulations may provide for all or any of the following matters, namely: <ol style="list-style-type: none"> a. period to be specified under the first proviso to section 14; 		<p>Powers of Central Commission to make regulations:</p> <ol style="list-style-type: none"> 1. <i>The Central Commission may, by notification, make regulations in respect of the functions assigned to it in the Act.</i> 2. In particular and without prejudice to the generality of the power contained in sub-section 91), such regulations may provide for all or any of the following matters, namely: <ol style="list-style-type: none"> a. period to be specified under the first proviso to section 14; aa. <i>Cross border trade of electricity, if any, under sub section (2) of section 6A;</i> 	<p>The Central Commission is proposed to be conferred with the power to make regulations with respect to cross border trade of electricity. Its power to make regulations for reduction of surcharge and cross subsidies is proposed to be withdrawn as the amendments suggest cross subsidy to be reduced as per the Tariff Policy under Section 3.</p>



	<p>j. payment of the transmission charges and a surcharge under sub-clause (ii) of clause (d) of sub-section (2) of section 38;</p> <p>k. reduction of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (d) of sub-section (2) of section 38;</p> <p>l. payment of transmission charges and a surcharge under sub-clause (ii) of clause (c) of section 40;</p> <p>m. reduction of surcharge and cross subsidies under the second proviso to sub-clause (ii) of clause (c) of section 40;</p> <p>r. the manner of reduction of cross subsidies under clause (g) of section 61;</p> <p>ze. Any other matter which is to be, or may be, specified by regulations</p>		<p>j. payment of the transmission charges and a surcharge under sub-clause (ii) of clause (d) of sub-section (2) of section 38;</p> <p>k. reduction of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (d) of sub-section (2) of section 38;</p> <p>l. payment of transmission charges and a surcharge under sub-clause (ii) of clause (c) of section 40;</p> <p>m. reduction of surcharge and cross subsidies under the second proviso to sub-clause (ii) of clause (c) of section 40;</p> <p>r. the manner of reduction of cross subsidies under clause (g) of section 61;</p> <p>ze. Any other matter which is to be, or may be, specified by regulations.</p>	
181	<p>Power of State Commissions to make regulations:</p> <p>1. The State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.</p> <p>2. In particular and without prejudice to the generality of the power contained in sub-section (1), such</p>		<p>Power of State Commissions to make regulations:</p> <p>1. The State Commissions may, by notification, make regulations in respect of the functions assigned to it in the Act.</p> <p>2. In particular and without prejudice to the generality of the power contained in sub-section (1), such</p>	<p>The SERCs too are proposed to be conferred with some additional regulation making powers.</p>



	<p>regulations may provide for all or any of the following matter, namely:</p> <ul style="list-style-type: none"> i. payment of the transmission charges and a surcharge under sub-clause (ii) of clause (d) of sub-section (2) of section 39; j. reduction of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (d) of sub-section (2) of section 39; k. manner and utilization of payment and surcharge under the fourth proviso to sub-clause (ii) of clause (d) of sub-section (2) of section 39; l. payment of the transmission charges and a surcharge under sub-clause (ii) of clause (c) of section 40; m. reduction of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (c) of section 40; n. the manner of payment of surcharge under the fourth proviso to sub-clause (ii) of clause © of section 40; 		<p>regulations may provide for all or any of the following matter, namely:</p> <ul style="list-style-type: none"> i. payment of the transmission charges and a surcharge under sub-clause (ii) of clause (d) of sub-section (2) of section 39; j. reduction of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (d) of sub-section (2) of section 39; k. manner and utilization of payment and surcharge under the fourth proviso to sub-clause (ii) of clause (d) of sub-section (2) of section 39; l. payment of the transmission charges and a surcharge under sub-clause (ii) of clause (c) of section 40; m. reduction of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (c) of section 40; n. the manner of payment of surcharge under the fourth proviso to sub-clause (ii) of clause (c) of section 40; o. proportion of revenues from other business to be utilized for reducing the transmission and wheeling charges under proviso to section 41; 	
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	<p>o. proportion of revenues from other business to be utilized for reducing the transmission and wheeling charges under proviso to section 41;</p> <p>p. reduction 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><i>oa. determination and payment of surcharge and wheeling charges under the first proviso to sub-section (2) of section 42;</i></p> <p><i>p. reduction in surcharge and cross- subsidies, <u>as may be provided for in the Tariff Policy</u> under the third proviso to sub-section (2) of section 42;</i></p> <p><i>pa. the manner of payment and utilization of the surcharge under the fifth proviso to sub-section (2) of section 42;</i></p> <p><i>zc. The manner of reduction of cross-subsidies under clause (g) of section 61;</i></p> <p><i>zp. Any other matter which is to be, or may be, specified.</i></p>	
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Date: April 28, 2020

Place: Mumbai

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