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MODERNIZING INDIA'S POWER SECTOR: A COMMENTARY ON THE ELECTRICITY (AMENDMENT) BILL, 2025

Overview

The Electricity Act, 2003 ("Act") was enacted to consolidate the legal framework governing the generation, transmission, distribution, trading, and use of electricity, with the objectives of promoting competition, protecting consumer interests, and ensuring universal access to power. While the Act's structural reforms such as unbundling utilities, introducing open access, and establishing independent regulatory commissions led to significant growth in generation capacity, transmission connectivity, and renewable energy deployment, the distribution sector remains financially and operationally fragile due to chronic revenue shortfalls, delayed tariff revisions, mounting regulatory assets, and deferred subsidy disbursements. In view of India's developmental vision of Viksit Bharat @ 2047, it has become imperative to modernize the statutory framework to reflect evolving sectoral realities. The proposed amendments aim to strengthen fiscal discipline through timely and cost-reflective tariff determination, promote a competitive and consumer-centric market, facilitate the integration of non-fossil energy and storage systems, institutionalize cooperative federalism, and empower regulators to address emerging challenges such as cybersecurity, grid resilience, and market-based procurement, thereby ensuring a financially sustainable, environmentally responsible, and operationally efficient electricity ecosystem aligned with national growth and climate goals.

Key Legislative Reforms and Legal-Policy Implications

1. Financial Viability and Cost-Reflective Tariffs

A central objective of the Electricity (Amendment) Bill, 2025 ("Bill") is to reinforce fiscal discipline and ensure that tariffs within the distribution sector are cost-reflective. This reform embodies the principle articulated by the Hon'ble Supreme Court in **BSES Rajdhani Power Ltd. & Anr. v. Union of India & Ors. (2025 INSC 937)**, which affirmed that tariffs must reflect the actual cost of supply to maintain the financial sustainability of the power sector. Under the amended framework, Regulatory Commissions are mandated to determine tariffs that accurately capture supply costs, while State Governments may continue to provide subsidies only through direct budgetary transfers. To mitigate revenue losses

caused due to delays in tariff determination, Commissions are empowered to fix tariffs suo motu, effective from 1st April each financial year. Collectively, these provisions seek to institutionalize fiscal discipline, secure timely revenue recovery for distribution licensees, and enhance transparency and accountability in subsidy administration.

2. Industrial Competitiveness and Market Efficiency

The Bill empowers the State Commissions, in consultation with State Governments, to grant exemptions to licensees from the Universal Service Obligation in respect of consumers eligible for open access with demand exceeding one megawatt, while ensuring the continuity and reliability of supply through a designated “supplier of last resort”. A phased five-year roadmap is proposed for the progressive rationalization and eventual elimination of cross-subsidies applicable to manufacturing enterprises, railways, and metro systems. The definition of “manufacturing enterprise” is aligned with the Micro, Small and Medium Enterprises Development Act, 2006, ensuring consistency and fairness across industrial categories. Additionally, amendments to Section 9(1) of the Act empower the Central and State Governments to frame rules governing captive generation, thereby facilitating renewable-based self-generation and group captive models that reduce dependency on distribution licensees. These reforms collectively advance competition, rationalize cost structures, and enhance industrial productivity while preserving the financial integrity of distribution networks.

2. Energy Transition and Non-Fossil Commitments

In line with India’s commitment to achieve 500 GW of non-fossil-based capacity by 2030 and approximately 2000 GW by 2047, the Bill incorporates the concepts of renewable energy and energy storage within the statutory framework. Amendments to Sections 2(26a) and 2(50)(k) of the Act explicitly recognize energy storage systems as an integral and essential component of the electricity value chain. This recognition enables such systems to participate in ancillary and balancing services, while mandating their inclusion in grid planning, tariff formulation, and market operations. Amendments to Section 66 of the Act authorise the Central Electricity Regulatory Commission to formulate and implement competitive market instruments such as green certificates, renewable capacity auctions, and market-based procurement mechanisms, thereby expanding the regulatory space to encourage innovation and investment. This alignment with the Energy Conservation (Amendment) Act, 2022 (“**Energy Conservation Act, 2022**”) ensures coherence between environmental objectives and electricity market regulation. By integrating flexibility mechanisms into the



Act, the Bill strengthens India's capacity for renewable absorption, improves system reliability, and enhances investor confidence. However, robust oversight will be essential to prevent market manipulation and to safeguard equitable participation by small and medium renewable producers.

4. Infrastructure and Technology Reforms

The Bill establishes an "Electric Line Authority" to ensure continuity of right-of-way powers following the repeal of the Indian Telegraph Act, 1885. By embedding these powers within the Electricity Act, it creates a uniform legal framework for the laying, operation, and maintenance of electricity infrastructure, thereby reducing delays and expediting project implementation, while ensuring fair compensation and transparent grievance redressal for affected landowners. The Bill also permits shared use of distribution networks under the supervision of Regulatory Commissions to enhance capital efficiency and prevent redundant investments. Further, it empowers the Central Electricity Authority ("CEA") to formulate a national cybersecurity framework for critical power infrastructure, requiring utilities to adopt certified cybersecurity standards to strengthen grid resilience and operational accountability.

5. Regulatory Governance and Accountability

The integrity of the regulatory process is reinforced through explicit statutory provisions enabling the removal of members of Regulatory Commissions for willful violation or gross negligence. These provisions also authorize reciprocal references between the Central and State Governments to the Chairperson of the Appellate Tribunal for Electricity for disciplinary examination. This reform codifies the judicial principles laid down in *Govinda Menon v. Union of India* (1967) and reaffirmed in *BSES Rajdhani Power Ltd. (Supra)*, establishing a higher standard of accountability within the regulatory architecture. By fortifying institutional independence and ethical transparency, the amendment enhances public confidence in regulatory governance.

6. Cooperative Federalism and Delegated Decision-Making

To strengthen and operationalize cooperative federalism, the Bill introduces a statutory framework under Section 25 of the Act for delegated approval of transmission systems. It empowers the Central and State Governments to authorize designated agencies—such as Central Transmission Utility of India Limited, CEA, or State Transmission Utilities—to approve inter-State and intra-State transmission projects, thereby streamlining infrastructure development, reducing administrative delays, and formalizing effective existing practices of delegation. Furthermore, amendments to Sections 79 and 86 of the Act institutionalize structured coordination between the Central and State Commissions through the



Forum of Regulators and the proposed National Power Committee, enabling harmonization of tariffs, market rules, and grid codes, and thereby promoting regulatory coherence and collaborative policy formulation across jurisdictions.

7. Consumer Protection and Market Transparency

The Bill strengthens consumer protection by mandating time-bound resolution of complaints and compensation for service deficiencies under Sections 42 and 57 of the Act. It promotes digital grievance redressal platforms and unified service portals, improving accessibility and accountability across licensees. A new provision, Section 73(ba) of the Act, directs the CEA to maintain a national electricity data registry covering generation, transmission, and pricing information. This initiative enhances transparency, enables data-driven regulation, and fosters informed participation by consumers and market stakeholders.

Conclusion

The Bill represents a pivotal moment in India's power sector reform trajectory. By embedding cost-reflective tariffs, rationalizing cross-subsidies, integrating non-fossil energy systems, and reinforcing regulatory accountability, the Bill constructs a forward-looking framework for a resilient, competitive, and consumer-centric electricity market.

Additionally, to ensure consistency across related legal frameworks, the Bill harmonizes the Electricity Act with the Energy Conservation Act, 2022, the Right to Fair Compensation and Transparency in Land Acquisition Act, 2013, the Digital Personal Data Protection Act, 2023, and the Telecommunication Act, 2023. Its transitional provisions provide for phased implementation of tariff reforms, cross-subsidy reduction, and market instruments, ensuring regulatory preparedness and minimizing disruption during the transition period. The emphasis on coordinated rulemaking across Ministries and regulatory bodies underscores the government's commitment to a coherent and adaptive legal ecosystem.

Its success will hinge upon disciplined implementation by State Commissions, fiscal prudence by Governments, and active cooperation among stakeholders. If effectively realised, the reforms will restore financial stability, accelerate clean energy integration, and elevate India's electricity sector to global standards of transparency, reliability, and sustainability.



JUDICIAL SCRUTINY OF REGULATORY RECTIFICATION: APTEL'S RULING IN BYRNIHAT INDUSTRIES ASSOCIATION CASE

Case Name: Byrnihat Industries Association & Ors. vs. Meghalaya State Electricity Regulatory Commission & Meghalaya Power Distribution Corporation Ltd.

Case No.: Appeal No. 129 of 2025 and connected matters

Court: Appellate Tribunal for Electricity, New Delhi

Order Date: October 31, 2025

Introduction

The Hon'ble Appellate Tribunal for Electricity ("**APTEL**" / "**Tribunal**"), in its judgment dated October 31, 2025, examined the scope of regulatory discretion and the importance of procedural compliance under the Electricity Act, 2003 ("**Act**"). The appeal arose from the Tariff Order dated March 24, 2025 ("**Tariff Order**"), and the Corrigendum Order dated June 18, 2025 ("**Corrigendum Order**"), issued by the Ld. Meghalaya State Electricity Regulatory Commission ("**MSERC**" / "**Commission**"), which revised the open access charges applicable to industrial consumers.

The Appellants i.e., Byrnihat Industries Association, Pioneer Carbide Pvt. Ltd., and Maithan Alloys Ltd. are Extra High Tension ("**EHT**") industrial consumers procuring power through open access. They challenged (a) the Corrigendum Order which levied a Cross Subsidy Surcharge ("**CSS**") of Rs. 1.02/kWh and (b) the Additional Surcharge included in the Tariff Order, alleging lack of due process, stakeholder consultation, and evidentiary basis.

Facts of the Case

In its original Tariff Order, the Ld. Commission determined the Annual Revenue Requirements and open access charges, recording the CSS for EHT consumers as 'nil.' Subsequently, through the Corrigendum Order, the Ld. Commission excluded the Distribution Wheeling Charges from component "D" of the CSS formula, thereby increasing the CSS to Rs. 1.02 per kWh. The Ld. Commission characterized this modification as a mere clerical correction.

The Appellants contended that the alteration was substantive in nature rather than clerical and thus mandated the issuance of public notice and the conduct of a hearing in accordance with Regulation No. 21 of the MSERC (Conduct of Business) Regulations, 2007. They further challenged the levy of the Additional Surcharge, asserting that the Meghalaya Power Distribution Corporation Limited ("**MePDCL**") had failed to establish the existence of stranded capacity or any unrecovered fixed costs attributable to open access consumers, a statutory precondition under Section 42(4) of the Act and Regulation No. 25 of the MSERC (Open Access) Regulations, 2012 ("**Open Access Regulations, 2022**").



Issues

1. Whether the Corrigendum Order, which imposed a CSS, was legally sustainable in the absence of a public notice, stakeholder consultation, and adherence to the prescribed procedural requirements under the applicable regulations.
2. Whether the levy of the Additional Surcharge was consistent with the statutory and regulatory framework, particularly with respect to the evidentiary requirement of demonstrating stranded capacity or unrecovered fixed costs as mandated under Section 42(4) of the Act and Regulation No. 25 of the Open Access Regulations, 2012.

Findings and Analysis

1. Corrigendum Order and CSS

The Hon'ble Tribunal held that the Corrigendum Order materially altered consumer liabilities and thereby transcended the limited scope of rectification powers available under Regulation No. 22.2 of the MSERC (Multi-Year Tariff) Regulations, 2014 and Section 152 of the Code of Civil Procedure, 1908. The Hon'ble Tribunal observed that rectification powers are confined to correcting accidental slips, clerical errors, or omissions, and cannot be invoked to introduce or modify substantive determinations.

Since the modification effectively reimposed a CSS, which had earlier been recorded as 'nil' in the original Tariff Order, the Tribunal concluded that such a change was substantive in nature and thus required adherence to due process, including issuance of public notice and stakeholder consultation in accordance with the MSERC (Conduct of Business) Regulations, 2007. Accordingly, the Corrigendum Order was set aside, and the matter was remanded to the MSERC for fresh determination after conducting a public hearing and following the prescribed regulatory procedure.

2. Additional Surcharge

Referring to Clause No. 8.5.4 of the National Tariff Policy, 2016 and its earlier decision in ***Lord Chloro Alkali Ltd. vs. Rajasthan Electricity Regulatory Commission in Appeal No. 282 of 2016***, reaffirmed that an Additional Surcharge may be levied only where the distribution licensee establishes, through verifiable and empirical data, the existence of stranded capacity or unrecovered fixed costs attributable to open access consumers.

The Hon'ble Tribunal noted that the MePDCL had failed to furnish any empirical evidence or substantiating data to demonstrate such stranded capacity. On the contrary, MePDCL was found to be selling surplus power on power exchanges, thereby negating the premise of financial burden or asset stranding.

The Hon'ble Tribunal held that the Ld. Commission's reliance on assumptions and generalized reasoning, in the absence of analytical assessment or supporting data, constituted non-compliance with Section 42(4) of the Act. Consequently, the levy of the Additional Surcharge was quashed, and the matter was remanded back to the Ld. Commission for fresh determination, based on verifiable data, reasoned analysis, and after



due public consultation.

Conclusion

Hon'ble Tribunal reaffirmed that transparency, procedural compliance, and evidence-based decision-making are foundational principles of tariff determination under the Act. The Hon'ble Tribunal held that both the Corrigendum Order (pertaining to the CSS) and the Additional Surcharge were legally unsustainable owing to the absence of due process, stakeholder consultation, and evidentiary substantiation.

Accordingly, the matters were remanded to the Ld. Commission for reconsideration in accordance with law, to be conducted after ensuring stakeholder participation, data-backed analysis, and adherence to procedural safeguards. The judgment underscores that the rectificatory powers of a regulatory commission are confined to correcting patent errors apparent on record and cannot be invoked to effect substantive modifications, as such actions would violate the principles of natural justice enshrined under Section 86(3) of the Act. It further affirms that any levy under Section 42 of the Act must be grounded in demonstrable, verifiable data rather than assumptions or presumptions.



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