ETERNITY:LAW APPRISE

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DRAFT NEP 2026 AND THE ELECTRICITY ACT, 2003: ALIGNMENT, REFORM, AND LITIGATION RISKS

Introduction

The Draft National Electricity Policy, 2026 ("**Draft NEP 2026**"), issued under Section 3 of the Electricity Act, 2003 ("**Act**"), seeks to replace the National Electricity Policy, 2005 ("**NEP 2005**"). It reflects a shift in the electricity sector's priorities, from addressing access and capacity deficits to promoting financial sustainability, efficiency, competitiveness, and Renewable Energy ("**RE**") integration. The Draft NEP 2026 marks a transition from a welfare-oriented framework toward the use of electricity sector reform as a tool for macro-economic governance.

It emphasizes reliability, affordability, cost-reflectivity, competition, renewable integration, environmental responsibility, and financial discipline across the electricity value chain. Tariff rationalization, cross-subsidy reduction, transparent subsidy payments, and enhanced consumer choice are elevated to central policy drivers. While not directly enforceable, Draft NEP 2026 guides tariff policy, regulatory discretion, and subordinate legislation.

Background

Draft NEP 2026 is framed under Section 3 of the Act, replacing the NEP 2005. It seeks to address evolving sectoral challenges:

- Financial sustainability of utilities.
- Efficient grid operation and integration of RE.

Promotion of competition and market-based pricing.

The goals of Draft NEP 2026, such as tariff rationalization, may clash with State subsidy rules under Section 65 of the Act. Section 65 of the Act allows State Electricity Regulatory Commissions ("**SERCs**") to charge cross-subsidy surcharges to open-access consumers to protect DISCOM revenues. Proposed exemptions for industrial, railway, and metro consumers could conflict with this law, potentially leading to regulatory disputes or legal challenges.

Key Provisions

1. Objectives and Regulatory Philosophy

Draft NEP 2026 seeks to:

i. Achieve financial turnaround and commercial viability of the electricity sector.
ii. Ensure adequate, reliable, and quality power supply to meet peak demand.
iii. Provide electricity at competitive prices to support the vision of Viksit Bharat@2047.
iv. Increase non-fossil capacity to meet Nationally Determined Contribution targets.
v. Promote competition in electricity supply.
vi. Raise per capita electricity consumption to 2,000 kWh by 2030 and over 4,000 kWh by 2047.
vii. Strengthen grid resilience to support large-scale renewable integration.
viii. Enhance consumer-centric services and demand-side interventions.
ix. Strengthen dispute resolution mechanisms to reduce financial burden on consumers.

2. Resource Adequacy and System Planning

i. **Structured Mechanism:** Resource adequacy to be ensured at national, State, and utility levels.
ii. **Demand Forecasting:** The Central Electricity Authority ("**CEA**") will prepare national forecasts annually while State Load Dispatch Centres ("**SLDCs**") will conduct State-level forecasts.
iii. **Resource Adequacy Plans (RAPs):** National and State-level RAPs will be developed to maintain reserve margins and ensure grid reliability, supported by appropriate regulatory frameworks.

3. Financial Viability and Industrial Competitiveness

Draft NEP 2026 positions electricity sector reform as a lever to enhance industrial competitiveness:

i. **Tariff Rationalization:** Tariffs will be designed to ensure full cost recovery, with automatic annual revisions and multi-year tariff frameworks.
ii. **Loss Reduction and Subsidy Management:** The target is to reduce Aggregate Technical & Commercial ("**AT&C**") losses to single-digit levels, implement pre-paid subsidies, and achieve solarization of agricultural feeders by 2030.
iii. **Investment Facilitation:** Private investment under Section 63 of the Act will be encouraged, with predictable returns and performance-based incentives.
iv. **Market Competitiveness:** Large consumers with a capacity of 1 MW or more will be exempt from universal service obligations and cross-subsidies, while SERCs frameworks will support market liquidity.

4. Generation

i. **Renewable Energy:** There will be a rapid expansion of non-fossil fuel capacity, development of hybrid RE-plus-storage projects, promotion of consumer-driven RE, and improved forecasting of renewable generation.
ii. **Thermal Energy:** Coal will continue to be used to ensure energy security, with a focus on improving plant flexibility, efficiency, and cleaner fuel blending.
iii. **Nuclear Energy:** The target is to achieve 100 GW of nuclear capacity by 2047, while supporting private sector participation, small modular reactors, and flexible plant operations.
iv. **Hydro Energy:** Processes will be streamlined for clearances, risks will be mitigated, and there will be an emphasis on storage-based and pumped storage hydro projects.
v. **Captive Generation:** Regulations will be simplified, DISCOMs will be able to procure surplus power, and co-generation will be supported.

5. Energy Storage

i. **Energy Storage System ("ESS") Deployment:** ESS deployment will support the integration of Variable Rewable Energy ("**VRE**"), enable peak load management, and help defer transmission and distribution (T&D) investments.
ii. **Deployment Models:** ESS can be deployed as standalone systems, co-located with generation projects, or at the transmission and distribution level.
iii. **Consumer-Owned Storage:** Consumers will be encouraged to adopt storage solutions to improve the utilization of distributed RE.
iv. **Pumped Storage Projects and Battery Energy Storage Systems ("BESS"):** These projects will be incentivised through competitive bidding and support from the host State.
v. **Regulatory Support:** Co-location of storage with VRE projects and the adoption of market-based mechanisms will be promoted to enhance flexibility and efficiency.

6. Power Markets and Power Purchase Agreement Reform

i. **Market Deepening:** The electricity market will be deepened through bilateral contracts, standardized agreements, capacity markets, and the provision of ancillary services.
ii. **Aggregation and Distributed Energy:** Regulatory frameworks will be established for the aggregation of RE, energy storage, and demand response.
iii. **Open Access:** Long-term open access will be facilitated, cross-subsidies will gradually decline, and regulatory predictability will be ensured.
iv. **Risk Management:** Hedging and forward contracts will be introduced as the electricity markets mature to manage financial and operational risks.

v. **Cost Optimization:** Security-Constrained Economic Dispatch and Security-Constrained Unit Commitment mechanisms will complement market-based power procurement to optimize costs.

7. Transmission

i. **Planning and Implementation:** Transmission expansion will be consumer-driven and demand-oriented, supported by integrated five (5) year and ten (10) year plans, and the development of plug-and-play substations.
ii. **Grid Modernization:** Grid modernisation will include the adoption of Flexible AC Transmission Systems, synchronous condensers, dynamic line rating systems, mechanised construction techniques, and drone-based conductor stringing.
iii. **Regulatory Framework:** A non-discriminatory open access regime will be implemented, along with pricing harmonisation, development of green infrastructure, and cross-border grid integration under the One Sun One World One Grid initiative.
iv. **Right of Way ("RoW") and Compensation:** Uniform and technology-optimized RoW and compensation policies will be adopted to facilitate faster project execution.

8. Distribution

i. **Structural Reform:** Monopoly structures will be gradually phased out through the introduction of multiple licensees, public–private partnership models, and the listing of distribution utilities.
ii. **Financial Discipline:** Financial sustainability will be strengthened through cost-reflective tariffs, reduction of AT&C losses, and timely energy audits.
iii. **Digitalization and Smart Infrastructure:** Distribution systems will be modernised through Geographic Information System mapping, substation automation, and the deployment of smart and prepaid meters.
iv. **Advanced Grid Technologies:** The distribution network will support distributed RE, vehicle-to-grid integration, and the evolution of Distribution System Operators.
v. **Consumer Protection:** Consumer interests will be safeguarded through defined service standards, N-1 redundancy for reliability, underground cabling where feasible, and greater transparency in performance metrics.

9. Consumer Centricity

i. **Reliable Supply:** Consumers will be provided with round-the-clock, high-quality electricity supply.
ii. **Service Standards and Compensation:** Service standards will be monitored by SERCs, with mandatory public disclosure and compensation mechanisms for non-compliance.

iii. **Grievance Redressal:** Robust grievance redressal mechanisms will be implemented through online platforms, virtual hearings, and consumer satisfaction surveys.

iv. **Consumer Engagement:** Consumers will be empowered through digital access to consumption and billing data, along with the establishment of consumer education cells.

v. **Support for Distributed Solutions:** Adoption of rooftop solar systems, energy storage solutions, and energy-efficient appliances will be actively supported.

10. Grid Operations

i. **Institutional Unbundling:** The functions of the Transmission Service Provider, State Transmission Utility, and SLDCs will be institutionally separated to ensure independence and efficiency.

ii. **Advanced Operations:** Grid operations will be strengthened through Supervisory Control and Data Acquisition ("**SCADA**") and Energy Management Systems, Phasor Measurement Units and Wide Area Measurement Systems, and Artificial Intelligence ("**AI**") /Machine Learning- based forecasting tools.

iii. **Regulatory Frameworks:** Ancillary services markets and deviation settlement mechanisms will be aligned with the norms prescribed by the Central Electricity Regulatory Commission.

iv. **Human Resources:** A skilled workforce will be developed through continuous upskilling, training programmes, and alignment with evolving technical standards.

11. Cybersecurity

i. **National Alignment:** Cybersecurity practices in the power sector will comply with the National Cyber Security Policy, the Information Technology Act, 2000, guidelines issued by the National Critical Information Infrastructure Protection Centre, and the Indian Computer Emergency Response Team.

ii. **CEA Oversight:** CEA will prescribe sector-specific regulations covering cyber threat prevention, detection, response, and recovery.

iii. **Utility Implementation:** Utilities will embed cybersecurity measures across the entire supply chain, with mandatory data localisation requirements.

iv. **Institutional Mechanisms:** The Computer Security Incident Response Team–Power will coordinate incident response, information sharing, and regulatory compliance across the sector.

12. Data Sharing

i. **CEA Role:** CEA will collect, analyse, and publish comprehensive data relating to the power sector.

ii. **Obligations of Entities:** Sector entities will be required to share operational and market-related data, subject to appropriate confidentiality and data protection safeguards.

iii. **Enforcement:** Uniform data-sharing standards will be enforced through a model framework issued by the Forum of Regulators, with provisions for real-time visibility of distributed energy resources.

13. Technology Deployment and Make in India

i. **Critical Technologies:** Indigenous development of critical technologies will be promoted, along with government-to-government partnerships to support technology transfer and strategic cooperation.

ii. **Industry-Academia Collaboration:** Strategic collaborations between industry and academic institutions will be encouraged to enable domestic technology development and deployment.

iii. **Smart Technologies:** Advanced technologies such as AI, Augmented Reality and Virtual Reality, and smart grid solutions will be deployed across generation, transmission, and distribution segments.

iv. **Research & Development and Testing:** Dedicated funding mechanisms and testing infrastructure will be established to support research, development, and large-scale technology adoption.

v. **Indigenization:** Phased manufacturing programmes, vendor ecosystem development, and the adoption of domestically developed SCADA systems and software will be promoted to strengthen self-reliance.

14. Skill Development

i. **Workforce Planning:** Comprehensive workforce planning will be undertaken, including capacity development initiatives and systematic assessment of skill gaps across the power sector.

ii. **Field and Technical Training:** Regular training programmes will be conducted for linemen, system operators, and other technical personnel to enhance operational efficiency and safety.

iii. **Managerial and Regulatory Training:** Focused capacity-building initiatives will be implemented for distribution companies (DISCOMs) and SERCs to strengthen governance and regulatory effectiveness.

iv. **Curriculum Reform:** Undergraduate and postgraduate curricula will be aligned with the evolving needs of the power sector to ensure industry-ready talent.

v. **Cybersecurity Training:** Dedicated training programmes will be introduced to build capacity in information technology and cybersecurity functions.

vi. **Financial Commitment:** Adequate budgetary provisions will be made to ensure sustained enhancement of workforce capabilities.

15. Disaster Management

i. **Resilience Planning:** Hazard-informed resilience planning will be integrated into infrastructure design and development to enhance the ability of the power system to withstand disasters.

ii. **Preparedness & Business Continuity:** State-level emergency response and business continuity plans will be implemented to enable rapid restoration of electricity supply following disruptive events.

iii. **CEA Role:** CEA will identify and map disaster-prone areas, periodically update technical and safety standards, and issue sector-wide guidance on disaster preparedness and response.

iv. **Compliance and Oversight:** Compliance with disaster management requirements will be monitored across generating companies, transmission licensees, and distribution licensees to ensure sector-wide readiness and accountability.

16. Energy Efficiency

i. **Agriculture:** Minimum energy performance standards will be prescribed and enforced for agricultural pump sets to improve efficiency and reduce energy consumption.

ii. **Buildings:** The Energy Conservation and Sustainable Building Code will be enforced, along with the promotion of district cooling systems and on-site RE generation.

iii. **Appliances:** Progressive upgrades in appliance energy efficiency standards will be implemented, supported by efficiency-based public procurement norms.

iv. **Industries and Micro, Small, and Medium Enterprises ("MSMEs"):** Industrial units and MSMEs will be encouraged to transition to the Carbon Credit Trading Scheme and adopt energy-efficient technologies.

17. Environmental Sustainability

i. **E-Mobility:** Expansion of electric vehicle charging infrastructure will be supported through conducive tariff structures and promotion of advanced e-mobility technologies.

ii. **Waste-to-Energy and Residue Management:** Municipal solid waste and agricultural residues will be converted into energy to reduce environmental burden and support circular economy objectives.

iii. **Sustainable Solar and BESS:** Environmentally responsible practices will be promoted for waste disposal and recycling of critical minerals used in solar panels and battery energy storage systems.

iv. **Industrial and Municipal Waste Utilization:** The use of refuse-derived fuel and recovery of energy from industrial effluents and municipal waste streams will be encouraged.

18. Financing

i. **Investment Requirements:** An estimated investment of approximately Rs. 50 lakh crore will be required by 2032, and about Rs. 200 lakh crore by 2047, across the generation, transmission, and distribution sectors.
ii. **Stable Revenue Streams:** Predictable and enforceable revenue streams will be ensured for investors through robust open access and captive generation frameworks.
iii. **Dedicated Funding Platforms:** Dedicated financing platforms, including the National Bank for Financing Infrastructure and Development, the National Investment and Infrastructure Fund, and suitable risk-mitigation instruments, will be leveraged to mobilise capital.
iv. **Climate Finance:** Concessional and blended financing mechanisms will be promoted to support the transition towards net-zero emissions.

Implications

i. **Regulatory:** The Draft NEP 2026 requires careful alignment with Section 65 of the Act and other statutory provisions, as exemptions proposed for industrial consumers may give rise to regulatory disputes or litigation.
ii. **Financial:** Timely tariff reforms, cost-reflective pricing, and a gradual reduction of cross-subsidies are essential to ensure the financial viability of the power sector.
iii. **Market:** Expansion of open access, competitive procurement mechanisms, ancillary services, and aggregation models will deepen electricity markets, but will require strong and effective regulatory oversight.
iv. **Technological:** Emphasis on RE, energy storage, smart grids, cybersecurity, and the Make in India initiative will enhance system resilience and strengthen strategic autonomy.
v. **Consumer:** A strong focus on service quality, efficient grievance redressal mechanisms, and digital empowerment will enhance consumer participation and satisfaction.
vi. **Investment:** Policy stability, transparent regulatory frameworks, and effective risk-mitigation instruments are critical to attracting sustained private and international investment.

Conclusion

The Draft NEP 2026 presents a coherent, market-oriented, and forward-looking framework aligned with the vision of *Viksit Bharat@2047*. Its effective implementation will depend on close statutory alignment, regulatory autonomy, and carefully calibrated transition mechanisms. Anchored in RE integration, grid modernization, efficient distribution, consumer empowerment, and robust market design, Draft NEP 2026 seeks to:

- Strengthen the financial sustainability of the power sector;
- Enable large-scale integration of RE supported by storage and advanced grid operations;
- Promote technology indigenization, skill development, energy efficiency, and environmental sustainability; and

Foster investor confidence through predictable and enforceable revenue streams.

With timely execution, meaningful stakeholder engagement, and strong regulatory oversight, Draft NEP 2026 has the potential to significantly advance India's energy transition while supporting economic growth, industrial competitiveness, and national self-reliance.

JHARKHAND HIGH COURT STRIKES DOWN VALUE-BASED ELECTRICITY DUTY: KEY TAKEAWAYS

Case Name: Pali Hill Breweries Private Limited vs. State of Jharkhand & Ors.
Case No.: W.P.(T) No. 3228 of 2021 (with connected writ petitions)
Court: High Court of Jharkhand, Ranchi
Date of Judgment: January 05, 2026

Introduction

In a significant judgment, the Jharkhand High Court ("**High Court**") in ***Pali Hill Breweries Private Limited vs. State of Jharkhand & Ors.*** struck down the Jharkhand Electricity Duty (First Amendment) Act, 2021 ("**JED First Amendment, 2021**") and the Electricity Duty Rules, 2021 ("**ED Rules, 2021**") as unconstitutional.

The Hon'ble Court reaffirmed the principle under Article 265 of the Constitution of India, 1950 ("**Constitution**") that no tax can be imposed or collected without clear legal authority. It held that under the Bihar Electricity Duty Act, 1948 ("**BEDA**" / "**Act**") (as applicable to Jharkhand), electricity duty could be levied only on the basis of units of electricity consumed. The State's attempt to levy duty on a value-based formula linked to "net charges," without amending the charging provision, was held to be invalid. The Hon'ble High Court also found that the JED First Amendment, 2021 involved excessive delegation, as it allowed the State Government to change tax rates and consumer categories by notification without any guiding legislative policy. However, the Hon'ble High Court upheld the Jharkhand Electricity Duty (Amendment) Act, 2021 ("**JED Second Amendment, 2021**") as it restored a unit-based levy for captive power plants. The judgment reinforces the constitutional limits on State taxing powers and clarifies the law on delegation and the levy of electricity duty.

Factual Background

The case arises from the statutory scheme of the Act, which was adopted by the State of Jharkhand after its formation in 2000. Under Section 3(1) of the Act, electricity duty could be levied only on the basis of units of electricity consumed or sold, ensuring a clear and uniform method of taxation.

In 2021, vide the JED First Amendment, 2021, the State amended the Act to permit levy of electricity duty on a value-based basis linked to "net charges" instead of units of consumption. This change resulted in a sharp increase in electricity duty for consumers. In *Pali Hill Breweries Private Limited vs. State of Jharkhand & Ors.*, the duty payable increased nearly tenfold despite no increase in electricity consumption.

Captive Power Plants ("**CPPs**") were particularly affected, as the concept of "net charges" has no application where electricity is generated for self-use. The situation was further aggravated when the State notified the ED Rules, 2021, vide notification dated April 01, 2022, giving them retrospective effect from July 07, 2021, to operationalize the value-

-based levy. These developments led to widespread objections and litigation, requiring the Hon'ble High Court to examine whether the State's actions were consistent with constitutional limits on taxation and legislative delegation.

Issues

1. Whether electricity duty could be levied on "net charges" without amending the charging provision of the Act.
2. Whether the proviso inserted by the JED First Amendment, 2021 amounted to excessive delegation of legislative power.
3. Whether the levy violated Articles 14 (Equality Before Law) and 265 (Taxes Not to Be Imposed Save By Authority of Law) of the Constitution
4. Whether the ED Rules, 2021 were ultra vires and illegally retrospective.
5. Whether the JED Second Amendment, 2021 imposing 50 paise per unit on CPPs was arbitrary or excessive, or confiscatory in nature.

Findings and Analysis

1. Levy on "Net Charges" and Article 265 of the Constitution

The Hon'ble Court held that the charging section is the foundation of a taxing statute. Section 3(1) of the Act expressly provides that electricity duty can be levied only on the units of electrical energy consumed or sold. In the absence of any amendment to this charging provision, the State could not lawfully change the tax base from units of consumption to the value of electricity.

Relying on ***Govind Saran Ganga Saran v. Commissioner of Sales Tax, 1985 Supp SCC 205***, and ***Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company, (2018) 9 SCC 1***, the Hon'ble High Court reiterated that a valid taxing statute must clearly specify the taxable event, the measure of tax, the rate of tax, and the person liable to pay the tax. The concept of "net charges," being undefined and variable, failed to meet these essential requirements and was therefore held to be unconstitutional under Article 265 of the Constitution.

2. Excessive Delegation of Legislative Power

The Hon'ble High Court struck down the proviso to Section 3(1) of the JED First Amendment, 2021 on the ground of excessive delegation, holding that the fixation of tax rates and the classification of taxable categories constitute essential legislative functions. The impugned proviso authorized the executive to alter the Schedule by notification, without laying down any policy guidelines, prescribing minimum or maximum limits, or incorporating procedural safeguards.

Relying on **Kunj Bihari Lal Butail v. State of Himachal Pradesh, (2000) 3 SCC 40**, and ***Devi Dass Gopal Krishnan & Ors. v. State of Punjab & Ors., 1967 SCC OnLine SC 108***, the Hon'ble High Court held that giving such wide and unguided powers to the executive, without clear legislative policy, guidelines, or safeguards, violated Article 14 of the Constitution and the doctrine of separation of powers. The Hon'ble High Court observed that this amounted to an impermissible delegation of essential legislative functions in matters of taxation.

3. Vagueness and Arbitrariness of "Net Charges"

The Hon'ble High Court noted that the term "net charges" was not defined either in the parent Act or in the amending legislation. As a result, different distribution utilities interpreted the term in different ways, especially because tariffs, rebates, and surcharges vary across consumers. This led to unequal electricity duty being imposed on similarly placed consumers, making the levy arbitrary and violative of Article 14 of the Constitution.

4. Captive Power Plants and Practical Applicability

In the case of CPPs, the Hon'ble High Court ruled that the levy based on "net charges" was fundamentally impractical and could not be effectively applied, given that no electricity is sold and no tariff-based billing or charges arise between the CPPs and the consumer. The Hon'ble High Court further held that tying the electricity duty to the tariffs fixed by the Ld. Jharkhand State Electricity Regulatory Commission amounted to an impermissible sub-delegation of legislative authority to the executive and/or the regulatory body.

5. Invalidity of the Electricity Duty Rules, 2021

The ED Rules, 2021 were quashed on several grounds. First, it is a settled principle that subordinate legislation cannot survive once the parent statutory provision is declared unconstitutional. Second, the imposition of a tax or fiscal burden with retrospective effect is impermissible unless expressly authorized by the statute. Third, Section 10 of the parent Act did not confer any power upon the State to frame rules with retrospective operation.

In support of these conclusions, the Hon'ble High Court relied upon ***Union of India v. Martin Lottery Agencies Ltd., (2009) 12 SCC 209***, and ***Federation of Indian Mineral Industries v. Union of India, (2017) 16 SCC 186***, wherein the Hon'ble Supreme Court held that retrospective subordinate legislation is ultra vires unless clearly sanctioned by the enabling statute.

6. Validity of the 2022 Amendment

The Hon'ble High Court upheld the JED Second Amendment, 2021 insofar as it applied to CPPs, holding that it restored a unit-based levy consistent with Section 3(1) of the Act. The Hon'ble High Court further observed that fixation of tax rates is a matter of economic policy and that courts should exercise judicial restraint unless a levy is shown to be manifestly arbitrary or unconstitutional. The increase in electricity duty from 5 paise to 50 paise per unit, after a period of nearly eleven (11) years without revision, was therefore not held to be confiscatory.

Conclusion

The judgment in ***Pali Hill Breweries Private Limited vs. State of Jharkhand & Ors.*** reinforces that the State cannot impose taxes arbitrarily and that financial considerations cannot override the law or constitutional protections.

The Hon'ble High Court issued the following operative directions:

i. The JED First Amendment, 2021 and ED Rules, 2021 were set aside as ultra vires and unconstitutional;
ii. all electricity bills raised pursuant to the JED First Amendment, 2021 and the ED Rules, 2021 were quashed;
iii. any excess electricity duty collected thereunder is required to be refunded or adjusted against future bills;
iv. CPPs are liable to pay electricity duty only in accordance with the JED Second Amendment, 2021 with effect from February 17, 22; and
v. distribution licensees are at liberty to seek reimbursement from the State for any amounts refunded or adjusted.

The Hon'ble High Court, by striking down the value-based electricity duty imposed without amending the charging provision, reaffirmed that taxing statutes must be strictly construed and that essential legislative functions cannot be delegated to executive notifications. At the same time, its approval of the JED Second Amendment, 2021 reflects judicial restraint in fiscal policy so long as statutory and constitutional limits are respected. The ruling has significant implications for electricity duty regimes and delegated taxation across States, reiterating that taxes can be imposed only with clear authority of law.

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