

Electricity Amendment Act

Clauses/ Sections/ Subsections	Act Key Points	Industry Comments
<u>Section 2/Clause(11)</u>	<p>➤ in clause (11), after the words “or Appropriate Commission” and before the words “or the Appellate Tribunal”, the words “or Electricity Contract Enforcement Authority” shall be inserted;</p>	<ul style="list-style-type: none"> • Proposed introduction of Electricity Contract Enforcement Authority to look into the matters of disputes on contractual matters. This was necessary in the wake of the recent experience of dispute caused by blanket cancellation of RE contracts in the state of Andhra Pradesh. This would create a standalone self-sufficient legal framework for electricity and relieve the stress of existing judicial forums across states. • Would provide a positive signal to investment community, as a dedicated forum dealing with and enforcing sanctity of electricity contracts. • However, it creates an additional layer and multiple touch points for potential challenges and contractual issues, and would need process simplification. <p><u>Request</u> Jurisdiction areas between ECEA/ CERC/SERC should be clearly defined especially. Also should address the petitions covering overlapping issues i.e. a mix of both contractual as well as other regulatory related issues</p>
<u>Section 2- Clause (24a)</u>	<p>“(24a)“Electricity Contract Enforcement Authority” means an Electricity Contract Enforcement Authority referred to in sub-section (1) of section 109A;”;</p>	<p>Proposed introduction of Electricity Contract Enforcement Authority to look into the matters of disputes on contractual matters. This was necessary in the wake of the recent experience of dispute caused by blanket cancellation of RE contracts in the state of Andhra Pradesh. Will give market signal to investment and lender community as the worry w.r.t. states reneging the contract midway or not honouring the contract would be handled under separate dispute redressal forum which will expedite the matters efficiently and with efficacy.</p> <p><u>Request</u> Role/ Jurisdiction between ECEA/ CERC/SERC should be clearly defined especially.</p>

<p>Distribution Licensee Section 2 after clause (17)</p>	<p>➤ Distribution Sub- Licensee - “(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.</p>	<p>Appreciate Ministry’s intention to promote privatization in distribution network and induce efficiencies in operations through retail competition. This would ease the burden of distribution licensees and in order to promote some form of demographic specialization, the distribution licensees, can appoint another entity for distribution of electricity on its behalf, within its area of supply. This would also help in infusing greater efficiency in distribution sector within existing legal framework.</p>
<p>Distribution Franchisee Section 2 after Clause (27)</p>	<p>➤ Franchise- for clause (27), the following clause shall be substituted, namely:- “(27) “franchisee means a person recognized as such and authorized by a distribution licensee to distribute electricity on its behalf in a particular area within his area of supply, under information to the appropriate State Commission. Subject to the provisions of the agreement entered into between the distribution licensee and the franchisee, any reference to a distribution licensee in the Act shall include a franchisee;</p>	<ul style="list-style-type: none"> • However, have an apprehension about proposed provisions differing with the earlier proposed ideology of content and carriage. The Ministry may clarify its viewpoint on the same whether segregation of content and carriage would be taken up as a next step or this is the alternate feasible solution in light. As carrying out content and carriage separation later, would be very difficult in case multiple sub-licensees and franchisees are operational. • Manner of appointment of Distribution Sub-Licensee and procedure for seeking Grant of Permission from State Commission: Details must be provided in Section 15 by suitable amendment; else it will become too complex. Standardization of procedure is required in order to avoid any kind of litigation. • Manner of Appointment of Franchisee and Information to Appropriate Commission: Details must be provided in Section 15 by suitable amendment, else it will become too complex, uniformity for removal of Litigation is required. • Further, Section 16 should also be suitably amended to include any specific terms and conditions pertaining to Distribution Sub-Licensee. • Structural changes in DF should also be proposed in the draft on Franchise framework or contract and appropriate & equitable de-risking should be proposed. Perhaps the provision of information to State Commission is to contain the regulatory uncertainty arising out of franchise status being challenged after distribution licensee is either sold out or post creation of retail-wire segregation if happens • Detailed guideline may be issued by Appropriate Authority covering scope, roles, responsibilities, accountabilities, consideration, method of allocation etc. for sub-licensee and franchisee. With various franchisee models been witnessed in the sector, it would be appropriate to set out a differentiation in the functions of a franchisee and a sub-licensee in the Statement of Reasons. A broad sub-distribution License policy should also be

		<p>concurrently framed under Section 176, detailing the scheme and the time frame for implementation of various phases, if any.</p> <ul style="list-style-type: none"> • Clear Definition of Licensee/ Sub-licensee/ Franchisee, in terms of power/ jurisdiction area should be notified
<p><u>Section 14 – Grant of Licence</u></p>	<ul style="list-style-type: none"> • The Appropriate Commission may, on an application made to it under section 15, grant a licence to any person <ul 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, in any area as may be specified in the licence: <p><u>(Seventh proviso):</u></p> <ul style="list-style-type: none"> • Provided also that in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person, that person shall not be required to obtain any separate licence from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply: (substituted). 	<ul style="list-style-type: none"> • Provided also that transactions involving charging of batteries for electric vehicles by charging stations shall not be construed as distribution, trading or supply to the extent undertaken for the said purpose and subject to such terms and conditions, as may be notified by the Central Government from time to time. • U/s 176 (Power of Central Government to make rules) should be amended to provide Standard Bidding Document for Selection of Sub-Licensee and Franchisee. Distribution being cost intensive, term of license cannot be left at the mercy of the Commission and would have to be for longer period say ≥ 25 years. Similar to Successor licensee of SEB having perpetual license, private licensees should also have perpetual license which can be revoked on non-performance.
<p><u>Section 2 New Definitions</u></p>	<ul style="list-style-type: none"> • Distributed generation” means electricity generation from renewable energy sources or such other sources as may be notified by the Central Government from time to 	<p>Electricity market has been evolved and newer mode of distributed generation from RE (including solar roof-top under net metering, behind the meter solar generation with or without storage) has been introduced in the power market. Therefore, distributed generation sources must be defined in the Act for giving them legal status and promotion.</p>

<p><u>Obligated Entities</u></p> <p><u>Renewable Purchase Obligation</u></p> <p><u>Renewable Generation Obligation:</u></p> <p><u>Deemed Generation</u></p>	<p>time for end use at or near the place of generation connected behind the meter of the consumer of the licensee.</p> <ul style="list-style-type: none"> • Obligated Entity” means (i) licensee authorized to supply electricity to the consumer or (ii) the captive user of the captive power plant other than based on renewable energy sources or (iii) the open access consumer, as the case may be. 	<ul style="list-style-type: none"> • A separate provision for new technology-based generation sources should be added With technology advancement, new sources of alternate energy may be developed with time, such as fuel cells-based generation, tidal power, beta voltaic etc. All energy sources should be recognized through a separate provision for providing any regulatory support as and when they are in use. <p>SERCs has different defined the obligated entities. eg: A few SERCs has defined only grid connected Captive plants as obligated entity and few as Grid Connected Captive plants and includes co-generation. This created ambiguity in the implementation and interpretation among the stakeholders. A uniform definition of obligated entity should be follow:</p> <ul style="list-style-type: none"> • Renewable Purchase Obligation means such minimum percentage of the purchase of electricity from Renewable Energy Sources to be procured by every obligated entity in a manner as may be prescribed by the Central Government from time to time. Amendments have proposed the formulation of National Renewable Energy Policy or the promotion of RE and specify minimum percentage of RPO. So far, national polices such as Tariff Policy has been referred as a guiding document for the SERC and leaves the enforcement to the SERC jurisdiction. <u>For an efficient enforcement definition of RPO should be added in the Act.</u> • Renewable Generation Obligation means the Renewable Energy Generation capacity required to be established or its equivalent capacity required to be procured from Renewable Energy Sources or any instrument representing renewable energy, as the case may be, and sale of such energy along with the electricity generated from conventional source of energy by a generating company establishing a conventional source of energy based generating plant. • Deemed generation means reduced generations which are due to the reasons not under the control of generating company and is justified to protect the `Return` on investment made by the generating company. This Deemed generation benefit however shall not be admissible incase total generation during the year is equal to more than the Design energy.
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<p><u>Section 3 Renewable and Hydro Energy / Section 3A - National Renewable Energy Policy</u></p>	<p>➤ The Central Government may, from time to time, after such consultation with the State Governments, as may be considered necessary, prepare and notify a National Renewable Energy Policy for the promotion of generation of electricity from renewable sources of energy and prescribe a minimum percentage of purchase of electricity from renewable and hydro sources of energy and prescribe a minimum percentage of purchase of electricity from renewable and hydro sources of energy.”</p>	<p>Welcome the proposition of National Renewable Energy Policy towards promotion of RE which includes large hydro. Inclusion of such policy in the Act would not only strengthen the investor sentiments but promotion of hydro with other RE sources would help SLDC/NLDC in maintaining smoother grid operations.</p> <p><u>Suggestions</u></p> <ul style="list-style-type: none"> • Act must define RE and other sources including large hydro as part of it and not a separate entity in each provision. Definition should also include generation from any other foreseeable source of renewable energy generation (battery storage to be excluded though) • To promote RE in all intents and purposes the provisions/exemptions applicable to solar and wind must equally be available to Hydro. • Appreciate the concept of RPO and HPO proposed by the Ministry. While maintaining the definition of RE to be inclusive of Hydro, a separate percentage of procurement must apply to all the categories viz. Solar, Non-Solar and Hydro Purchase, given the capital-intensive nature of Hydro investments, which also calls for separate computation of prices for hydro RECs to comply with Obligations. • The Act should also outline financial compensation mechanism to RE projects where backdown at behest of distribution licensee happens, except in case of grid emergency. • RE (including Hydro) projects have a lower PLF compared to thermal plants and Transmission Charges levied on capacity basis in its present form renders them expensive and unviable in most of the cases. Hence, Transmission charges on energy terms should be promoted going ahead to enhance viability and promote investments. • NREP should consider state-wise constraints such as energy mix, RE resources availability, demand profile, transmission issues and provide enabling provisions for investment and sufficient liquidity in the RE market. • Prescribe a minimum percentage of purchase of electricity from renewable and hydro sources of energy as a guidelines for Appropriate Commission to determine the renewable purchase obligation.

		<ul style="list-style-type: none"> • Potential for renewable energy of the concerned state should be taken in to account. • NERP contents and clauses could be defined in consultation with industry • NERP must clearly define RPO/ HPO, REC/ HEC, RPO/HPO Trajectory, Deemed RE generation and RGO • Provision equitable distribution of transmission cost between conventional and RE sources of energy incl Hydro. Transmission charges should be energy based rather than per unit basis.
<p>After sub-section (3) of Section 26 Powers of NLDC</p>	<p>In section 26 of the principal Act, after sub-section (3), the following subsections shall be inserted, namely:</p> <p>“(4) the National Load Despatch Centre shall: (a) be responsible for optimum scheduling and despatch of electricity in the country across different regions in accordance with the contracts entered into with the licensees or the generating companies; (b) monitor grid operations; (c) exercise supervision and control over the inter-regional and inter state transmission network; and (d) have overall authority for carrying out real time operations of the national grid.</p> <p>(5) The National Load Despatch Centre may give such directions and exercise such supervision and control as may be required for the safety and security of the national grid and for ensuring the stability of grid operation throughout the country.</p>	<p>Proposed Amendment is systematic step towards further strengthening of “One Nation One Grid” regime and National agency monitoring it on real time; however, we feel that Central Electricity Authority shall have their operational reporting. This will create a standalone line of hierarchy on similar grid functions and thus help in segregating SLDC to act as independent body less subservient to transmission or distribution utilities.</p> <p>Suggestions</p> <ul style="list-style-type: none"> • There are no provisions under the proposed amendment act, wherein an aggrieved party can challenge the decisions of the NLDC. Such clause may be added. • Additional function of NLDC should be added to for analysis of monthly curtailment by the SLDCs. It will make SLDCs more accountable for optimum grid management and irrational curtailment under influence of the State Government, will be eliminated. • Propose inclusion of Cross Border Trade of Electricity within functions of NLDC and accordingly proposing following amendment to clause 4 (c) of the proposed amendment “(c) Exercise supervision and control over the cross border, inter-regional and interstate transmission network” • Role of NLDC in following aspects need to be defined. <ul style="list-style-type: none"> - Monitoring/Implementation of any other market mechanisms such as MBED, SCED, Ancillary Market etc, which are expected to come-up in future. - Monitoring/Managing collective transactions including Real Time market through Power exchanges

	<p>(6) Every Regional Load Despatch Centre, State Load Despatch Centre, licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall comply with the directions issued by the National Load Despatch Centre.”</p>	
<p><u>Section 28</u> <u>Payment</u> <u>security</u> <u>mechanism</u> <u>(PSM)</u></p>	<p><u>In section 28</u> of the principal Act, the following proviso shall be inserted in clause (a) of sub-section (3), namely:-</p> <p>"Provided that no electricity shall be scheduled or despatched under such contract unless adequate security of payment, as agreed upon by the parties to the contract, has been provided."</p>	<p>Appreciate the intention of this amendment to provide legal mandate for enforcement of payment security, however, the same can be misused by DISCOMS. May selectively choose power to be scheduled from various generators. As per the present mechanism, Generators are providing their availability on a day ahead basis. Concerned LDCs will ask the generator for a declaration that L/C is in place before the same gets scheduled. In case of RE generators, if DISCOM has not opened L/C, LDCs cannot schedule the power. This is a loss to the RE generator as unlike conventional power where fixed costs are covered, RE generators revenue realization is dependent only on energy sale. If the power is not scheduled, there will be no revenue for RE generator. Considering the above lacuna, MNRE in its notification had clarified that it should be considered as deemed generation.</p> <p><u>Suggestion</u></p> <p>The sections should be modified to include deemed generation in case of non - opening of L/Cs by DISOCMS under the contract.</p> <p><u>Proposed additional proviso</u></p> <p><i>In section 32 of the principal Act, the following 2nd proviso shall be inserted in clause (a) of sub-section (2), namely:</i></p> <p><i>“Provided further that in case of Renewable Energy Generators, if electricity is not scheduled security of payment under the contract, the same will be treated as Deemed Generation and payment should be made as per the tariff agreed in the Contract for such electricity”</i></p>
<p><u>Section 28</u> <u>(3)(a)</u> <u>Function of</u></p>	<p>The Regional Load Despatch Centre shall,</p> <p>a) be responsible for optimum scheduling and despatch of electricity within the</p>	<p>Appreciate Ministry’s intent to bring discipline in the sector to ensure timely payments and honouring of contracts. However, a “security of payment” is part of signed contract/PPA,</p>

<p><u>Regional Load Despatch Centre</u></p> <p><u>Section 32 (2)(a) Function of State Load Despatch Centre</u></p>	<p>region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region;</p> <p>The State Load Despatch Centre shall 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>	<p>which might not be the case for every existing transaction depending upon mutual consent of counterparties.</p> <p>In section 28 of the Principal Act, the following proviso shall be inserted in clause (a) of sub-section (3), namely:- "Provided that no electricity shall be scheduled or despatched under such contract unless adequate security of payment, as agreed upon by the parties to the contract, has been provided."</p>
<p>Section 32 – Payment Security Mechanism</p>	<p><u>In section 32</u> of the principal Act, the following proviso shall be inserted in clause (a) of sub-section (2), namely:-</p> <p>“Provided that no electricity shall be scheduled or despatched under such contract unless adequate security of payment, as agreed upon by the parties to the contract, has been provided.”</p>	<p>The following 2nd proviso shall be inserted in clause (a) of sub-section (2), namely:-</p> <ul style="list-style-type: none"> - A separate proviso for RE should be suitable added to protect the return of investment and “MUST RUN” status. In case of non-scheduling of power, Generator should be allowed for the Deemed Generation, for the number of days when Discom did not provide scheduling due to lack of payment security. - Contracts covered under Section 49 1 of the existing Act should not be covered in this. - Separate provision for RPO, RGO and HPO should be added: "Provided that no electricity shall be scheduled or dispatched to any Obligated Entity if it has not fulfilled its RPO, RGO and HPO compliance as set by the National Renewable Energy Policy”. - A separate provision for mandatory reporting of monthly curtailments should be added <p><u>Concern:</u></p> <ul style="list-style-type: none"> • Proposed amendment restricts the flow of power in case of inadequate security of payment, as agreed upon by the parties to the contract. <ul style="list-style-type: none"> - Wind and solar project has been given the “MUST RUN’ status. - Providing payment security mechanism is the responsibility of the procure or the distribution licensee. Upon his ability to provide it, RE generator should not be penalized

		<ul style="list-style-type: none"> • Bilateral contracts for supply of power under open access are agreed mutually between the parties. Therefore, should not be covered in this clause.
<p>Section 61 - Tariff Regulations</p>	<p>➤ The terms and conditions for the determination of tariff :</p> <ul style="list-style-type: none"> - in clause (g), the word “progressively” shall be omitted and for the words “specified by the Appropriate Commission” the words “as provided in the Tariff Policy” shall be substituted; - In clause (h), after the words “from renewable” and before the words “sources of energy”, the words “and hydro” shall be inserted. - In clause (i), after the words “tariff policy”, the words “and National Renewable Energy Policy” shall be inserted. <p>Section 61/Clause (h) – “the promotion of co-generation and generation of electricity from renewable including hydro sources of energy.” - the promotion of co-generation and generation of electricity from renewable sources of energy"</p>	<ul style="list-style-type: none"> • The proposed amendment seeks to direct the SERCs to eliminate any form of cross subsidization in tariff and provide cost reflective tariff with immediate effect. The regulatory assets shall be minimized. Parameters should apply independently and differently in each and every State by SERCs. • With explicit intent of reducing cross-subsidies as per Tariff Policy will ensure strict compliances and uniformity across country. Though the CSS levels will vary across states but the confidence that the same will be reducing further would give regulatory certainty <p>Concerns :</p> <ul style="list-style-type: none"> • The proposed amendment has given right opportunity to include the recommendation of Hon’ble APTEL w.r.t. following: <ul style="list-style-type: none"> - <i>ERCs must ensure that Annual Revenue Requirements and tariff determination takes place annually</i> - <i>Tariff should be decided well before 1st April and should be applicable for the year so that licensees remain vigilant to follow time schedule for filing application for tariff determination</i> - <i>State must initiate suo-moto proceedings, in wake of delay in submission of application by licensee</i> - <i>Truing up should be annual exercise</i> • <i>Regulatory Assets shall not be the business as usual practice and wherever it has been created in order to protect tariff shocks, it must be amortised over specified period.</i> <p>Section 61 (h) – “the promotion of co-generation and generation of electricity from renewable including hydro sources of energy.”</p> <ul style="list-style-type: none"> • In place of “and hydro” it should be "including hydro" as now hydro has been declared as party of renewable energy. • Proposed amendment to Section 176 (ac) also uses including hydro – “<i>laying down the modalities of bundling of renewable energy (including hydro) with</i>”

		Hydro is considered as renewable source now, therefore included will achieve the objective of declaring hydro as renewable source.
<p><u>Section 62 & 65 - Tariff Determination</u></p>	<p>Section 62: Determination of Tariff Read with Section 65: Provision of Subsidy by State Government</p> <p>➤ in sub-section (1) after clause (d), the following proviso shall be inserted before the existing provisions, namely:- “Provided that the Appropriate Commission shall fix tariff for retail sale of electricity without accounting for subsidy, which, if any, under section 65 of the Act, shall be provided by the government directly to the consumer;”;</p> <p>(i) in sub-section (1), after the word “Provided” in the existing proviso, the word “further” shall be inserted;</p> <p>(ii) in sub-section (3), after the words “but may”, the words “,subject to provisions of the Tariff Policy,” shall be inserted.</p> <p>➤ Amendment Proposed by MOP: in sub-section (1) after clause (d), the following proviso shall be inserted before the existing provisions, namely: - “Provided that the Appropriate Commission shall fix tariff for retailsale of electricity without accounting for subsidy,</p>	<p>The proposed amendment would ensure:</p> <ul style="list-style-type: none"> - That there is no shortfall or adverse impact in the revenue stream of Discoms on account of delay in disbursal of subsidy /adjustment of dues by State Government against outstanding dues of State Utilities. - Adequacy and timeliness of subsidy to the target consumers - Collection efficiency of Discoms and cash flow would improve. <p>While it is welcome step of direct benefit transfer (DBT) for subsidy payment to customers, DBT should be implemented phased manner. Reasonable heads up Time to be given for DBT implementation, for Discoms to effectively plan and prepare.</p> <p><u>Details of policy may cover the following:</u></p> <ul style="list-style-type: none"> • Direct Benefit Transfer (DBT) should be post payments by consumers and that too on Aadhar card basis only i.e. if someone has multiple connections, DBT should be only on one connection. However, any dispute on delay in subsidy payment to consumers or issues related to tenants & landlord on such amount etc. should not pass on to Licensees. • Tariffs for such designated group of consumers should be stipulated at least a certain percentage of the average cost of supply. In some of the states, Subsidized categories – Agricultural, domestic, BPL consumers etc. – are mostly unmetered and are billed on average basis. Universal metering must be the pre-requisite for the success of DBT mechanism. • Payment of subsidy to consumer by Govt. (through DBT) should be processed only after getting confirmation of receipt of billed amount by the DISCOMs. • This amendment plays subsidy disbursement by respective state government through DBT mechanism and tariff setting will be more scientific and it can help SERCs to move towards Cost to Serve methodology rather than Cost of Supply

	<p>which, if any, under section 65 of the Act, shall be provided by the government directly to the consumer.</p>	
<p><u>Section 63 - Determination of tariff by bidding process</u></p>	<p>➤ “(2) The Appropriate Commission shall, after receipt of application complete in all respects, adopt the tariff so determined under sub-section (1), in a timely manner but not later than sixty days from the date of application: Provided that on expiry of sixty days from the date of application, if it is not decided by the Appropriate Commission, the tariff shall be deemed to have been adopted by the Appropriate Commission.”.</p>	<p>The bill provides additional proviso provides for adoption of tariff within 60 days from receipt of application by Appropriate Commission. This is a welcome step as timely adoption of tariff is need of the hour. It is seen under ISTS bids, while tariff under PPA is adopted by Central commission, there were delays in adopting tariff under PSA of respective buying entities. We suggest that time line should be mentioned filing application for tariff adoption before Appropriate Commission. Accordingly, we suggest the following proviso to be added.</p>
<p><u>Section 109 A to E - Electricity Contract Enforcement Authority</u></p>	<p>➤ The Central Government shall, by notification, establish an Electricity Contract Enforcement Authority to exercise the powers conferred on, and discharge the functions assigned to, it under the Act.</p>	<p>New authority established for sole authority and jurisdiction on contracts related to sale, purchase and transmission of electricity (excluding tariff, which remains with regulatory commission). Needs more clarification in contract approval process by the two authorities i.e. the enforcement authority and the regulatory commission. Clarification needed on how not to dilute the role of regulatory commission.</p> <p><u>Request</u> Jurisdiction areas between ECEA/ CERC/SERC should be clearly defined especially. Should address the petitions covering overlapping issues i.e. a mix of both contractual as well as other regulatory related issues</p>
<p><u>Part XA/109</u></p>	<p>PART XA ELECTRICITY CONTRACT ENFORCEMENT AUTHORITY 109A. Establishment of Electricity Contract</p>	<p>ECEA</p> <ul style="list-style-type: none"> • Shall have the sole authority and jurisdiction to adjudicate upon matters regarding performance of obligations under a contract related to sale, purchase or transmission of

<p>Enforcement Authority. - 109B. Application to Electricity Contract Enforcement Authority and order thereon 109C. Composition of Electricity Contract Enforcement Authority 109D. Qualification for appointment of Chairperson and Members of Electricity Contract Enforcement Authority 109E. Term of Office and Terms and Conditions of service 109F. Vacancies 109G. Resignation and Removal 109H. Member to act as Chairperson in certain circumstances 109I. Officers and other employees of Electricity Contract Enforcement Authority. 109 J. Procedure and powers of Electricity Contract Enforcement Authority. - 109 K. Distribution of business amongst Benches and transfer of cases from one Bench to another Bench Decision to be by majority.- 109 M. Right of parties to take assistance of legal practitioner. 109 N. Appeal to Appellate Tribunal</p>	<p>electricity, provided that it shall not have jurisdiction over any matter related to regulation or determination of tariff or any dispute involving tariff</p> <ul style="list-style-type: none"> • Every contract between generation company and a licensee shall be filed with the appropriate commission within 30 days of the said contract having been concluded • ECEA shall have the same powers as are vested in civil court under the Code of Civil Procedure, 1908. • ECEA shall deal with the application filed before it under sub-section (1) and any matter referred to it under sub-section (6) of section 92 as expeditiously as possible and endeavour to dispose it finally within one hundred and twenty days from date of its receipt. <p>Section 109A.(3) Clarity is required on what type of contracts have to be submitted before the Appropriate Commission. Whether Short Term PPA, Addendums & subsequent amendments to Original PPA, Contracts with Trader, Agreement between Distribution Licensee and Distribution Sub-Licensee etc. are also to be submitted.</p> <p>109A. Establishment of Electricity Contract Enforcement Authority</p> <ul style="list-style-type: none"> • There has been lot of ambiguities w.r.t ECEA, clarifications on following points are needed for full clarity. • Introduction of ECEA is fraught with severe litigation on jurisdiction issue. Since most of the dispute issues are pertaining to tariff only, we expect almost all cases heading into jurisdiction dispute. • It will be prudent to clearly segregate the tariff issues from contractual issues for effective implementation of ECEA. <p>Section 109 A(2) Notwithstanding anything contained in this Act or any other law in force, the Electricity Contract Enforcement Authority shall have the sole authority and jurisdiction to adjudicate upon matters regarding performance of obligations under a contract related to sale, purchase, trading, transmission, trading or power management of electricity, or refer any</p>
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dispute for arbitration, provided that it shall not have any jurisdiction over any matter related to regulation or determination of tariff. ~~or any dispute involving tariff.~~

- In a contract every dispute will involve tariff or interpretation of clauses which impact tariff or commercial risk allocation between parties which forms the basis of tariff therefore “*any dispute involving tariff*” to be removed to achieve the every objective of the amendment.
- Electricity Contract Enforcement Authority shall have the power to refer any dispute to arbitration as well, same as in Section 79 and 86 with State Commission and Central Commission.
- Trading to be included in the section to avoid any confusion whether sale includes trading or not

Section 109A (3) Suggested changes

Every contract between a generation company and a licensee, or between the licensees shall be filed with the ~~Appropriate Commission~~ Electricity Contract Enforcement Authority within 30 days of the said contract having been concluded.

- Inclusion of “*or between the licensees*” will ensure jurisdiction over a contract between a trading licensee and a distribution licensee & transmission licensee and trading/distribution licensee.

***ECEA should be the forum for resolution of all contractual disputes .**

Section 109B (2)

Every application under sub-section (1) shall be filed within a period of six months from the non-performance of the obligation under the contract. This should be **deleted**.

- Such a provision will not be in consonance with the Limitation Act, which prescribed a period of 3 years for initiation of legal proceedings wrt contractual disputes.

Section 109B.(3)

Clarity is required on who shall prescribe the application fee for cases before Electricity Contract Enforcement Authority.

Section 109B(4)

It is contrary to the Supreme Court Ruling in PTC India vs CERC case, wherein it was ruled that

	<p>➤ Section 109 J (2) (i) – Pass any interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard in any proceeding before it as it may consider appropriate.</p>	<p>Regulation overrides Contracts. The jurisdictional areas between CERC/SERC and such body should be clearly defined especially and also should address to petitions covering overlap issues i.e. both contract combined with other regulatory related issues.</p> <p>Clarity is required on the matters requiring Arbitration under Section 158. Overriding Provision of Arbitration & Resolution Act shall not apply to this to extent not prescribed under this provision of transfer of pending cases.</p> <p>Section 109B.(7) It is proposed that Appropriate Commission shall have the powers to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate while referring such relevant matter to Electricity Contract Enforcement Authority. Law of Limitation could be relaxed for initial period.</p> <p>109 J. Procedure and powers of Electricity Contract Enforcement Authority.-</p> <p>(3) An order made by the Electricity Contract Enforcement Authority under this Act shall be executable by it as a decree of civil court and, for this purpose, the Electricity Contract Enforcement Authority shall have all the powers of a civil court including but not limited to powers of attachment and sale of property, arrest and detention in prison and appointment of a receiver.</p> <p>Section 109 J (2) (i) Pass any interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard in any proceeding before it as it may consider appropriate. <i>“After providing the parties concerned an opportunity to be heard” as provided in Section 109 (J) 2(i) is self-contradictory to the power of Electricity Contract Enforcement Authority to any decide any application ex-parte (as provided in Section 109 J (2) (g) [g) dismissing an application on default or deciding it ex parte]</i></p> <p>Electricity Contract Enforcement Authority shall have power to provide interim protection to any party (s) against irreparable harm</p>
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		<p><u>Section 109J/Sub-section 3</u> An order made by the Electricity Contract Enforcement Authority under this Act shall be executable by it as a decree of civil court and, for this purpose, the Electricity Contract Enforcement Authority shall have all the powers of a civil court including but limited to powers of attachment and sale of property, arrest and detention in prison and appointment of a receiver.</p> <p>109 N. Appeal to Appellate Tribunal Any person aggrieved by any decision or order of the Electricity Contract Enforcement Authority, may, file an appeal to the Appellate Tribunal within forty five days from the date of communication of the decision or order of the Electricity Contract Enforcement Authority to him:</p> <p>Provided that the Appellate Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding forty five days.</p> <ul style="list-style-type: none"> • The period for preferring an appeal against the order of ECEA to APTEL may be considered to be reduced to 45 days instead of 60 days (as presently specified in the draft), so as to maintain uniformity with the appeal timelines provided for appeal against the order of CERC/ SERC to APTEL. Additionally this shall ensure the finality of decision is achieved at the earliest
<p><u>Section 142, 146 - Punishment for non-compliance of orders and directions</u></p>	<p><u>Section 142</u></p> <ul style="list-style-type: none"> ➤ Section 142 of the principal Act shall be numbered as sub-section (1) thereof. ➤ In the sub-section (1) as so numbered - - after the words “thereunder, or any direction”, the words “or order” shall be inserted; - for the word “lakh”, the word “crore” 	<p>Based on the severity of non-compliance the penalty need to be increased. One crore penal provision will not act as a deterrent for discoms or generators. Thus it is recommended that</p> <ul style="list-style-type: none"> • In the first year, penalty should be equivalent to the forbearance price for REC/ HEC. • The penalty on defaulting entities for the second year should be to the tune of 0.50 paise p/kWh in addition to the forbearance price (as applicable in first year). It is thus linked to linked to a multiplier of forbearance price of RECs as determined by CERC • Even more stringent penalty is proposed for defaulters in the third year – Rs. 1.50 p/kWh In addition to the forbearance price (as applicable in first year).

	<p>shall be substituted; - for the words “to six thousand rupees”, the words “upto one lakh rupees” shall be substituted.</p>	<p>Section 142 subclause 1: Penalty level for non-compliance by Discoms for meeting RPO/HPO should be such that it’s sufficiently deterrent so that Discoms do not indulge in such non-compliance by paying a small penalty. For example – any new hydro station tariff would be around Rs. 4.50 kwh/hour , where as if power is available in IEX/PXIL etc say @ 3 Rs/kwh. Discoms would prefer to pay penalty of 50 paise or One rupee still not comply.</p> <p>The penalty should be higher to push discoms towards the target consumption mix – so for first year it can be kept at the price at which REC I traded in the market and for subsequent years at a premium thereto.</p> <p>The use of fund collected through this penalty may be specified as ‘promotion of renewable energy’. If the penalty collected is not utilised for the promotion of the renewable energy it would not serve the desired purpose.</p>
<p><u>OA Transmission charges, Surcharge and Cross subsidy surcharge - Section 38,39,40,42.</u></p>	<p><u>In section 38 of the principal Act, for sub-clause (ii) of clause (d) of subsection (2) including the provisos, the following shall be substituted, namely:-</u> <u>“(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges, as may be specified by the Central Commission and a surcharge, as may be specified by the State Commission under sub-section (2) of section 42, if required by the Appropriate Commission to be collected by it.”.</u> <u>In section 39 of the principal Act, for sub-clause (ii) of clause (d) of subsection (2) including the provisos, the following shall be substituted, namely:-</u> <u>“(ii) any consumer as and when such open access is provided by the State Commission</u></p>	<p>The proposed amendment eliminates the regulatory uncertainty w.r.t. surcharge determination by Central Commission, which is the domain of state commission. The intent seems to club the transmission charges and surcharges by Appropriate Commission. It provides clarity regarding withdrawal of powers for levying of any surcharge by DISCOMs or transmission utilities unless the same is required by Commissions. This helps in application of reactive energy surcharge, grid support surcharges etc.</p> <p><u>Concerns and Suggestions:</u></p> <ul style="list-style-type: none"> • The reduction in cross-subsidy surcharge for OA consumers will result in high tariff for domestic consumers or subsidy may be given by SERC for domestic consumers. • The payment of cross subsidy surcharge is covered under Section 42 (2) as the cross subsidy element is finally reflected in the consumer tariff payable to distribution companies. Since there is already provision of payment of such cross subsidy surcharge, additional provision under Section 38 and 39 may create some misunderstanding and the same may be levied in addition to the surcharge payable under Section 42 (2). • In section 40 of the Pprincipal Act, for sub-clause (ii) of clause (d) (c) of subsection (2) including the provisos, the following shall be substituted, namely:

	<p><u>under sub-section (2) of section 42, on payment of the transmission charges, as may be specified by the State Commission and a surcharge, as may be specified by the State Commission under sub-section (2) of section 42, if required by the State Commission to be collected by it.”.</u> <u>In section 40 of the principal Act, for sub-clause (ii) of clause (d) of subsection (2) including the provisos, the following shall be substituted, namely:-</u> <u>“(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge, as may be specified by the Appropriate Commission.”.</u></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, as may be specified by the Appropriate Commission”.</p> <p><i><u>No clause (d) exists in Sub-section 2 of Section 40, therefore, clause (d) seems to have been indicated erroneously in place of (c). However, through the use of term “Appropriate Commission” it indicates that the determination of Open access surcharge may be handed over to CERC in certain cases for Open access allowed by SERC.</u></i></p>
<p><u>Section 42</u> <u>Removal of open access capacity restrictions for EV charges and Duties of distribution licensee and open access: Proviso 2</u></p>	<p>First Proviso - “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:”; For the third proviso to sub-section (2), the following shall be substituted, namely:- “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:”</p>	<ul style="list-style-type: none"> • Section 42 of the Act talks about levying of surcharge on the open access transactions and there are different opinions on levy of additional Surcharge specially for Captive transactions under open access. The matter sub-judice with Supreme Court (MSEDCL v/s Wardha Power) though APTEL has clarified that surcharge is not applicable on captive transactions. The intent of Law is clear that no surcharge should be levied on open access power supply under captive transactions. <u>Accordingly, we propose the following change:</u> Provided also that such “any” 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:” • The Appropriate Commission should be given a mandate under the Tariff Policy to devise a trajectory for the distribution licensees with an objective that the tariff progressively reflects the cost of supply of electricity and tariffs are brought within $\pm 20\%$ of the average cost of supply within a specific timeframe. This trajectory for gradual reduction in cross

	<p>After the fourth proviso to sub-section (2), the following proviso shall be inserted, namely: - “Provided also that the manner of payment and utilization of the Surcharge shall also be specified by the State Commission</p>	<p>subsidy should be announced upfront and reviewed by the Regulator on a regular basis. Addition of the new provisions help removing ambiguity w.r.t. modalities and open access charges recovery by discom, which now need regulatory approval to be in practice.</p> <ul style="list-style-type: none"> • The reduction in cross-subsidy surcharge for OA consumers will result in high tariff for domestic consumers or subsidy may be given by SERC for domestic consumers. • Open Access is allowed only if the load at one point is more than 1MW. This is not conducive if EV is to be pure green. As a separate tariff category has been created by Regulators for EV charging station, it is suggested to allow Open Access for EV Charging station irrespective of the load. With the current EV adoption it is not possible to meet 1MW criteria at one location, and therefore, power cannot be sourced from Renewable energy like solar under open access. Alternatively, Open access criteria of 1MW can be allowed to be met by aggregating the demand across boundary of Discom by same charge point operator. This enabling provision will promote more and more EV adoption. Section 42 should be amended suitably in line with the above suggestions. • Provided also that such surcharge shall be eliminated in a time bound manner (one year is suggested) in the manner as may be specified by the Tariff Policy. Electricity being a concurrent subject, state commission has levied variety of charges on open access transaction such as grid support charges, parallel operation charges, high cross subsidy surcharges and additional surcharges etc. This makes open access unviable and defies the objective of the Act itself. • “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. Welcome step of cost reflective tariff, simplification of tariff structure, and progressively reducing the surcharge and cross-subsidies. • First Proviso - “Provided that such open access shall be allowed on payment of a surcharge, and charges for wheeling, as applicable, 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
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Central Commission under section 38, if applicable:” The proposed amendment in first proviso leads to interpretation of mandatory imposition of wheeling charges. It is important to note that for open access consumers which are directly connected to transmission utilities or through dedicated transmission line and are not using any distribution infrastructure, such wheeling charges should not be applicable.

- **Fourth Proviso** may be deleted. The second proviso to section 42(2) already stipulates about the utilisation of the surcharge to meet the requirement of current level of cross subsidy within the area of supply of the distribution licensee. As such the proposed amendment by adding a new fourth proviso is not required.
- It specifies allowing open access upon payment of explicit surcharge, wheeling charges and transmission charges.
- The proposed amendment delinks the discretion of state commission to reduce CSS progressively. It mandates the SERC to abide by Tariff Policy to reduce the CSS. However, whether the policy directions can be mandatorily being adopted when it is voluntary to state commission is something need deliberation.
- This subsides the discretionary power of SERCs in order to define the CSS and way forward to reduce the same.
- Addition of the new provisions helps remove ambiguity w.r.t. modalities and open access charges recovery by Discom in a coercive manner, which will now need regulatory approval to be levied
- Though the proposed amendment is positive for Open Access framework, however, it raises concern as below: **The proposed amendment need to clarify what the word ‘surcharges’ would mean for to avoid future varying interpretation by Distribution Licensees to deny open access**
- State Commission is an appropriate authority for the appointments & establishment of these Forums. Distribution Licensee itself is a respondent before these Forums. Hence it is

		<p>necessary that the Forums should be established by the third party or independent authority to avoid any misuse or abuse by the appointing authority. The State Commission is an appropriate authority for the appointments & establishment of these Forums. Hence, request that these Forums should be established by state commissions & not by the distribution licensees. Necessary changes in the provisions should be done accordingly. Strong provisions for non-compliance of the orders passed by consumer grievances redressal forums should be made.</p>
<p><u>Section 49 - Agreement with respect to supply or purchase or transmission of electricity</u></p>	<p>“49. Agreement with respect to supply or purchase or transmission of electricity).- (1)A generating company or a licensee may enter into an agreement with a licensee for supply, purchase or transmission of electricity on such terms and conditions, as may be agreed upon by them, including tariff and adequate security of payment consistent with the provisions of this Act. (2) Where the Appropriate Commission has allowed open access to certain consumers under section 42, such consumers, notwithstanding the provisions contained in clause (d) of sub-section (1) of section 62, may enter into an agreement with any person for supply or purchase of electricity on such terms and conditions (including tariff) as may be agreed upon by them.” Section-49 is proposed to be amended to include a new provision to allow a generating company to enter into agreement with a licensee for supply,</p>	<ul style="list-style-type: none"> • This provision enables DISCOMs to enter into bilateral contracts including the tariff for bulk supply or purchase or transmission of electricity. However, there must be an assurance from the Regulatory Commission that the power procured through these bilateral contracts should be allowed in the ARR of DISCOMs. • A new route is being proposed for power tie-up by generating companies with licensees (DISCOMs) through a bilateral agreement (PPA) on negotiated tariff basis, which is in addition to the existing power tie-up routes under Section-62 (Regulated Tariff) and Section-63 (Competitive Bid Tariff). This would essentially result in customization of bilateral PPAs in sync with the specific requirements of generating companies and DISCOMs, thereby deviating from the standard provisions under Section-62 and Section-63 PPAs. • This is a departure from the current Tariff Policy, which advocates power tie-up through competitive bidding route only. • Further, it is not clear, whether such negotiated tariff under these bilateral PPAs would be subjected to regulatory approvals, tariff determination/ adoption, prudence check and dispute resolution under Section-79(1) and Section-86(1). • As such, it is requested that this proposed provision may be suitably worded addressing the above concerns to avoid any confusions arising out of its vague interpretation at a later stage.

	<p>purchase or transmission of electricity on mutually agreed upon terms and conditions.</p> <p>After section 49 of the principal Act, the following section shall be inserted, namely:-</p> <p>“49A: Cross Border Trade of Electricity - (1) The Central Government may prescribe rules and issue guidelines for allowing and facilitating cross border trade of electricity in accordance with the provisions of this Act. (2) The Central Government may require the Central Commission to make regulations for cross border trade of electricity.”.</p>	<p>The proposed amendment expands the scope of existing provisions to include not only the open access agreements but also the contracts w.r.t. supply, purchase and also for transmission of electricity. The proposed provisions enforce the contractual obligations of payment security mechanism in all such kind of transactions not only in open access but also in contracts of generator with licensees.</p> <p>- <i>After Section 49:</i>Central Government Guidelines regarding Provisions for Banking Transaction, PX Transactions and Trilateral transactions under Cross Border Trade of Electricity may also be specified.It is suggested that the proviso may be inserted as under: “ Provided that in case of any ambiguity or conflict between the laws, rules and regulations of the neighbouring countries and that of India, the Indian laws, rules and regulations will take precedence, within the territory of India, for the purpose of cross border trade of electricity with India. This amendment provides statutory status to cross-border regulations of CERC which was issued to abide by MOP guidelines”.</p> <p>The proposed amendment goes long way ensuring payment security mechanism in all the electricity contract. Since the proposed amendment mandates the payment security mechanism to be the pre-requisite for scheduling and despatch, therefore this will help in enforcing cost recovery discipline in all nature of electricity contracts.</p>
<p>Section 49. (Agreement with respect to supply or purchase of electricity):</p>	<p>Where the Appropriate Commission has allowed open access to certain</p> <ul style="list-style-type: none"> • 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><u>Comments:</u> 62 (1) (a) of the EA 2003, allows power purchase between generator and a licensee of between two licensee, if contract duration is less than 1 year.</p> <p>The proposed amendment through 49 (1) is a deviation from and dilutes the accepted principles of Section 62 and 63 w.r.t procurement of power.</p> <p>Amended act should remove such ambiguities.</p> <p>Proposed amendment allows agreement with the licensee including tariff and Open Access charges are regulated and notified by SERCs. Similarly, transmission service agreements, long</p>

		<p>term open access agreements are notified by the nodal agency. Proposed amendment exposed these to the interpretation of licensee and is in direct conflict with the:</p> <p>Section 61- Tariff Regulation Section 62- Determination of tariff Section 63- Determination of tariff by bidding process</p>
<p><u>Section 49 A</u> <u>- Cross</u> <u>Border Trade</u> <u>of Electricity</u></p>	<p>➤ 49A: Cross Border Trade of Electricity – (1) The Central Government may prescribe rules and issue guidelines for allowing and facilitating cross border trade of electricity in accordance with the provisions of this Act. (2) The Central Government may require the Central Commission to make regulations for cross border trade of electricity.</p>	<p>This proposed amendment provides statutory status to cross-border regulations of CERC which was issued to abide by MOP guidelines</p> <p><u>Concerns:</u></p> <ul style="list-style-type: none"> • What will be the statutory status of existing and ongoing cross-border trade of electricity? • Whether the ongoing contracts which do not have provisions of payment security mechanism need to be modified to include such amendment, or can a clause be added to grandfather in earlier cross border contracts to avoid future disputes and challenges?