

No. 42/6/2011-R&R (Vol-VIII)
Government of India
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,
New Delhi, 17th April, 2020

To

1. Chairperson, Central Electricity Authority, New Delhi.
2. Principal Secretary/Secretary (Energy), All State Governments/UTs.
3. Registrar, Appellate Tribunal for Electricity, New Delhi.
4. Secretary, Central Electricity Regulatory Commission, New Delhi.
5. Secretaries, All SERCs/JERCs.
6. Chairman/CMDs for all PSUs under administrative control of Ministry of Power.
7. CMDs/MDs of DISCOMs/GENCOs/TRANSCOs of all State Governments.
8. DG, Association of Power Producers, New Delhi.
9. President, FICCI, Federation House, Tansen Marg, New Delhi.
10. Head, Prayas (Energy Group), Pune.

Subject: Proposed amendment to Electricity Act, 2003 – regarding.

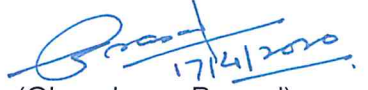
Sir/Madam,

I am directed to say that a draft Bill on the proposed Amendments to Electricity Act has been prepared.

2. The draft Electricity (Amendment) Bill, 2020 along with Statement of Reasons (SOR) are enclosed herewith with the request to provide your comments, if any, to this Ministry within 21 days from the date of this letter. The comments may also be emailed at sandeep.naik68@gov.in and debranjan.chattopadhyay@nic.in.

Yours faithfully,

Encl: As above


(Ghanshyam Prasad)
Chief Engineer (RR & OM)
Tele No. 2371 0389

Copy to:

- i) All Joint Secretaries/Economic Adviser, Ministry of Power.
- ii) PS to Hon'ble Minister, Sr. PPS to Secretary (Power), PPS to AS(R&R), Sr. PPS to Chief Engineer(R&R), PS to Director (R&R)
- iii) Incharge, NIC, Ministry of Power with the request to upload this document on the website of Ministry of Power under heading 'Current Notices'.

Draft for discussion

THE ELECTRICITY (AMENDMENT) BILL, 2020

A Bill further to amend the Electricity Act, 2003

Be it enacted by Parliament in the Seventy Oneth Year of the Republic of India as follows:—

Short title and commencement

1. (1) This Act may be called the Electricity (Amendment) Act, 2020.

(2) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Amendment of Section 1

2. In sub-section (2) of section 1 of the Electricity Act, 2003 (hereinafter referred as “the principal Act”), the words “except the State of Jammu and Kashmir” shall be omitted.

Amendment of Section 2

3. In section 2 of the principal Act, -

(i) 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;

(ii) after clause (15), the following new clause shall be inserted, namely:—

“(15a) “Cross border trade of electricity” means transactions involving import or export of electricity between India and any other country and includes transactions related to passage of electricity through our country in transit between two other countries;”;

(iii) after clause (17), the following clause shall be inserted, namely:-

“(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;”

(iv) after clause (24), the following clause shall be inserted, namely:—

“(24a) “Electricity Contract Enforcement Authority” means an Electricity Contract Enforcement Authority referred to in sub-section (1) of section 109A;”;

(v) 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

Draft for discussion

agreement entered into between the distribution licensee and the franchisee, any reference to a distribution licensee in the Act shall include a franchisee;”;

(vi) for clause (43), the following shall be substituted, namely:-

“(43) "Member" means the Member of the Appropriate Commission or Authority or Joint Commission, or Electricity Contract Enforcement Authority or the Appellate Tribunal, as the case may be, and includes the Chairperson of such Commission or Electricity Contract Enforcement Authority or Authority or Appellate Tribunal;”.

*Amendment of
Section 3*

4. After section 3 of the principal Act, the following section shall be inserted, namely:-

“3A National Renewable Energy Policy - The Central Government may, from time to time, after such consultation with the State Governments, as may be considered necessary, prepare and notify a National Renewable Energy Policy for the promotion of generation of electricity from renewable sources of energy and prescribe a minimum percentage of purchase of electricity from renewable and hydro sources of energy.”.

5. In section to section 14 of the principal Act, -

*Amendment of
Section 14*

i) for the seventh proviso, the following proviso shall be substituted, namely:-

“Provided also that a franchisee shall not be required to obtain any separate license from the appropriate State Commission and such distribution licensee shall continue to remain responsible for distribution of electricity in its area of supply;”;

ii) After the seventh proviso, the following proviso shall be inserted, namely:-

“Provided also that a distribution sub-licensee shall not be required to obtain any separate license from the appropriate State Commission.”.

*Amendment of
Section 26*

6. In section 26 of the principal Act, after sub-section (3), the following sub-sections shall be inserted, namely:-

“(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;

Draft for discussion

(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.

(5) The National Load Despatch Centre may give such directions and exercise such supervision and control as may be required for the safety and security of the national grid and for ensuring the stability of grid operation throughout the country.

(6) Every Regional Load Despatch Centre, State Load Despatch Centre, licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall comply with the directions issued by the National Load Despatch Centre.”.

7. *Amendment of Section 28* 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.”.

Amendment of Section 32 **8.** In section 32 of the principal Act, the following proviso shall be inserted in clause (a) of sub-section (2), 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.”.

Amendment of Section 38 **9.** In section 38 of the principal Act, for sub-clause (ii) of clause (d) of sub-section (2) including the provisos, the following shall be substituted, namely:-

“(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.”.

Amendment of Section 39 **10.** In section 39 of the principal Act, for sub-clause (ii) of clause (d) of sub-section (2) including the provisos, the following shall be substituted, namely:-

“(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges, as may be specified by the State Commission and a surcharge, as may be specified by the State Commission under sub-section (2) of section 42, if required by the State Commission to be collected by it.”.

Draft for discussion

Amendment of Section 40

11. In section 40 of the principal Act, for sub-clause (ii) of clause (d) of sub-section (2) including the provisos, the following shall be substituted, namely:-

“(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.”.

Amendment of Section 42

12. In section 42 of the principal Act,

i) for the first proviso to sub-section (2), the following shall be substituted, namely:-

“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:”;

ii) 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:”;

iii) 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:”.

Amendment of Section 49

13. For section 49 of the principal Act, the following shall be substituted, namely:-

“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.”.

14. After section 49 of the principal Act, the following section shall be inserted, namely:-

Draft for discussion

*Amendment of
Section 49*

“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.”.

15. In section 61 of the principal Act-

*Amendment of
Section 61*

i) 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;

ii) in clause (h), after the words “from renewable” and before the words “sources of energy”, the words “and hydro” shall be inserted.

iii) In clause (i) , after the words “ tariff policy”, the words “and National Renewable Energy Policy” shall be inserted.

*Amendment of
Section 62*

16. In section 62 of the principal Act-

i) 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;”;

(i) in sub-section (1), after the word “Provided” in the existing proviso, the word “further” shall be inserted;

(ii) in sub-section (3), after the words “but may”, the words “,subject to provisions of the Tariff Policy,” shall be inserted.

*Amendment of
Section 63*

17. Section 63 of the principal Act shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:-

“(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.”.

*Amendment of
Section 65*

18. In section 65 of the principal Act-

Draft for discussion

i) for the words “and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licence or any other person concerned to implement the subsidy provided for by the State Government:”, the words “the amount of subsidy directly to the consumer and the licensee shall charge the consumers as per the tariff determined by the Commission.” shall be substituted;

ii) proviso to section 65 shall be omitted.

*Amendment of
Section 77*

19. In section 77 of the principal Act –

i) In sub-section (1), after the words “commerce, finance” and before the words “or, management and”, the words “, public policy” shall be inserted;

ii) In clause (b) of sub-section (1), for the word “finance”, the word “law” shall be substituted;

iii) In clause (c) of sub-section (1), after the words “field of”, the word “finance,” shall be inserted and for the word “law”, the words “, public policy” shall be substituted;

iv) sub-section (2) shall be omitted.

*Amendment of
Section 78*

20. Section 78 of the principal Act shall be substituted by the following, namely:–

“78. Constitution of Selection Committee to recommend Members: -

(1) The Central Government shall, for the purposes of selecting the Members of the Appellate Tribunal and the Chairperson and Members of the Central Commission, Electricity Contract Enforcement Authority, State Commissions and Joint Commissions constitute a Selection Committee consisting of –

(a) A person who is, or has been, a Judge of the Supreme Court to be nominated by the Chief Justice of IndiaChairperson;

(b) Secretary-in-charge of the Ministry of the Central Government to be nominated by the Central GovernmentMember;

(c) Chief Secretaries of two State Governments in accordance with sub-section (2)..... Member;

(d) Secretary-in-charge of the Ministry of the Central Government dealing with power.....Member.

(2) For the purposes of clause (c) of sub-section (1), the Chief Secretary of the State Governments in alphabetical order of the states starting with Andhra Pradesh, Arunachal Pradesh shall be the members of the Selection Committee for a period of one year.

(3) Secretary-in-charge of the Ministry of the Central Government dealing with Power shall be the Convener of the Selection Committee.

Draft for discussion

(4) The Central Government shall, within a period of one month from the date of occurrence of any vacancy by reason of death, resignation or removal of a Member of the Appellate Tribunal, or the Chairperson or a Member of the Central Commission or the Electricity Contract Enforcement Authority and within a period of twelve months before the superannuation or end of tenure of the Member of the Appellate Tribunal or Chairperson or Member of the Central Commission or Electricity Contract Enforcement Authority, make a reference to the Selection Committee for filling up of the vacancy.

(5) The State Government shall, within a period of one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson or a Member and within a period of twelve months before the superannuation or end of tenure of the Chairperson or Member, make a reference to the Selection Committee for filling up of the vacancy.

(6) The proceedings of the Selection Committee shall be held in Delhi or such other places as the Central Government may notify.

(7) The Selection Committee shall finalise the selection of the Chairperson and Members referred to it under sub-sections (4) and (5) and make a recommendation for every vacancy referred to it within three months of the receipt of the reference.

(8) Before recommending any person for appointment as Member of the Appellate Tribunal, or the Chairperson or other Member of the Appropriate Commission or Electricity Contract Enforcement Authority, the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as the Chairperson or Member.

(9) No appointment of the Chairperson or other Member shall be invalid merely by reason of any vacancy other than that of the Chairperson in the Selection Committee.”.

21. In section 79 of the principal Act –

Amendment of Section 79

i) in clause (f) of sub-section (1) of section 79 of the principal Act, after the words “to adjudicate upon disputes”, the words “except matters referred to in section 109A” shall be inserted;

ii) after clause (j) in sub-section (1), the following clause shall be inserted, namely:-

“(ja) To regulate cross border trade of electricity in accordance with the provisions of this Act and rules made there under;”.

Draft for discussion

iii) In sub section (4) after words “tariff policy published under section 3”, the words “and National Renewable Energy Policy under section 3A” shall be inserted.

*Amendment of
Section 82*

22. In section 82 of the principal Act-

- i) in the second proviso to sub-section (1), for the words “section 85”, the words “section 78” shall be substituted;
- ii) in sub-section (4), for the word “three” appearing after the words “not more than”, the word “four” shall be substituted;
- iii) in sub-section (5), for the words “section 85” appearing after the words “the Committee referred to in”, the words “section 78” shall be substituted;
- iv) after sub-section (6), the following sub-section shall be inserted, namely:-

“(7) If there is no chairperson and member in a State Commission to perform its functions, the Central Government may, in consultation with the state government concerned, entrust its functions to any other State Commission or Joint Commission, as it deems proper.”.

23. In section 84 of the principal Act –

*Amendment of
Section 84*

- i) sub-section (1) shall be substituted by the following, namely:-

“(1)The Chairperson and the Members of the State Commission shall be persons having adequate knowledge of, or experience in, or shown capacity in, dealing with, problems relating to engineering, law, economics, commerce, finance, public policy or management and shall be appointed in the following manner, namely:-

- (a) one person having qualifications and experience in the field of engineering with specialization in generation, transmission or distribution of electricity;
- (b) one person having qualifications and experience in the field of law;
- (c) two persons having qualifications and experience in the field of finance, economics, commerce, public policy or management.”;

- ii) sub-section (2) shall be omitted.

24. Section 85 of the principal Act shall be omitted.

*Deletion of
Section 85*

25. In section 86 of the principal Act –

*Amendment of
Section 86*

i) in clause (f) of sub-section (1) after the words “to adjudicate upon disputes”, the words “except matters referred to in section 109A” shall be inserted;

ii) in clause (e) of sub-section (1), after the words “from renewable”, the words “and hydro” shall be inserted and after the words “a distribution licensee”, the words “;“as may be prescribed by the Central Government from time to time” shall be inserted.

iii) In sub section (4) after words “tariff policy published under section 3”, the words “and National Renewable Energy Policy under section 3A” shall be inserted.

*Amendment of
Section 90*

26. In section 90 of the principal Act, the proviso to sub section (3) shall be omitted.

*Amendment of
Section 92*

27. In section 92 of the principal Act, after sub-section (5), the following sub-section shall be added, namely: –

“(6) Where before or during the course of a proceeding, the Appropriate Commission comes to a conclusion that the Electricity Contract Enforcement Authority has the sole authority and jurisdiction to adjudicate a matter, it shall refer the same to the Electricity Contract Enforcement Authority for its orders”.

*Insertion of new
Chapter*

28. After PART X of the principal Act, the following part shall be inserted, namely:-

“PART XA

ELECTRICITY CONTRACT ENFORCEMENT AUTHORITY

109A. Establishment of Electricity Contract Enforcement Authority.-

(1) 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.

(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 or transmission of electricity, provided that it shall not have any jurisdiction over any matter related to regulation or determination of tariff or any dispute involving tariff.

(3) Every contract between a generation company and a licensee shall be filed with the Appropriate Commission within 30 days of the said contract having been concluded.

109B. Application to Electricity Contract Enforcement Authority and order thereon - (1) Any person aggrieved in any matter referred to in section 109A may prefer an application to the Electricity Contract Enforcement Authority.

Draft for discussion

(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:

Provided that the Electricity Contract Enforcement Authority may entertain an application after the expiry of the said period of six months if it is satisfied that there is sufficient cause for not filing it within that period.

(3) Every application received under sub section (1) shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed.

(4) On receipt of an application or matter under sub-section (6) of section 92, the Electricity Contract Enforcement Authority may, after giving the parties to the application an opportunity of being heard, determine whether a valid contract subsists between the parties and whether any party is in violation of any of its obligations under the contract.

(5) Upon a finding that there has a violation/breach of obligation under a contract by a party or parties, the Electricity Contract Enforcement Authority shall direct that the said parties immediately perform their obligation under the contract and may direct the payment of costs on account of the breach of contract or non-fulfilment of obligations of the contract and any further amount it may deem fit as compensation.

(6) The Electricity Contract Enforcement Authority shall send a copy of every order made by it to the parties to the application as the case may be.

(7) The Electricity Contract Enforcement Authority 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 endeavor to dispose it finally within one hundred and twenty days from the date of its receipt:

Provided that where any application could not be disposed off within the said period of one hundred and twenty days, the Electricity Contract Enforcement Authority shall record its reasons in writing for not disposing of the matter within the said period.

109C. Composition of Electricity Contract Enforcement Authority- (1) The Electricity Contract Enforcement Authority shall consist of the following –

- a) a Chairperson;
- b) two or more Judicial Members as may be prescribed by the Central Government from time to time; and
- c) three or more Technical Members, as may be prescribed by the Central Government from time to time.

(2) Subject to the provisions of this Act,

- a) the jurisdiction of the Electricity Contract Enforcement Authority may be exercised by Benches thereof;
- b) a Bench may be constituted by the Chairperson of the Electricity Contract Enforcement Authority with two or more Members of the Electricity Contract Enforcement Authority as the Chairperson of the Electricity Contract Enforcement Authority may deem fit:

Provided that every Bench shall include at least one Judicial Member and one Technical Member;

Draft for discussion

- c) the Benches of the Electricity Contract Enforcement Authority shall ordinarily sit in Delhi and such other places as the Central Government may, in consultation with the Chairperson of the Electricity Contract Enforcement Authority, notify;
- (d) the Central Government shall, in consultation with the Chairperson of the Electricity Contract Enforcement Authority, notify the areas in relation to which each Bench of the Electricity Contract Enforcement Authority may have exercise jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson of the Electricity Contract Enforcement Authority may transfer a Member of the Electricity Contract Enforcement Authority from one Bench to another Bench.

Explanation.- For the purposes of this section, a Judicial Member shall include the Chairperson of the Electricity Contract Enforcement Authority.

109D. Qualification for appointment of Chairperson and Members of Electricity Contract Enforcement Authority.- (1) A person shall not be qualified for appointment as the Chairperson of the Electricity Contract Enforcement Authority or a Member of the Electricity Contract Enforcement Authority unless he-

- (a) in the case of the Chairperson of the Electricity Contract Enforcement Authority, is, or has been a Judge of a High Court; and
- (b) in the case of a Judicial Member of the Electricity Contract Enforcement Authority, is, or has been a District Judge or Additional District Judge for a minimum period of seven years; and
- (c) in the case of a Technical Member of the Electricity Contract Enforcement Authority,-
 - i. is, or has been, an officer of the rank of Additional Secretary or above for at least one year in the Ministry or Department of the Central Government dealing with power or any other sector of infrastructure; or
 - ii. is, or has been, a person of ability and standing, having adequate knowledge or experience in dealing with the matters relating to electricity generation, transmission, distribution and regulation, or economics, finance, public policy, commerce, or management with experience in infrastructure related matters.

(2) The Chairperson and Members of the Electricity Contract Enforcement Authority shall be appointed by the Central Government on the recommendation of the Selection Committee referred to in section 78.

(3) Before appointing any person for appointment as Chairperson or other Member of the Electricity Contract Enforcement Authority, the Central Government shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as such Chairperson or Member.

109E. Term of Office and Terms and Conditions of service.- The Chairperson of the Electricity Contract Enforcement Authority or a Member of the Electricity Contract Enforcement Authority shall hold office as such for a term of five years from the date on which he enters upon his office:

Draft for discussion

Provided that such Chairperson or other Member shall not be eligible for reappointment in the same capacity as the Chairperson or a Member in the Electricity Contract Enforcement Authority;

Provided further that no Chairperson of the Electricity Contract Enforcement Authority or Member of the Electricity Contract Enforcement Authority shall hold office after attaining the age of sixty-seven years.

109F. Vacancies.-If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson of the Electricity Contract Enforcement Authority or a Member of the Electricity Contract Enforcement Authority, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Electricity Contract Enforcement Authority from the stage at which the vacancy is filled.

109G. Resignation and Removal.- (1) The Chairperson of the Electricity Contract Enforcement Authority or a Member of the Electricity Contract Enforcement Authority may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson of the Electricity Contract Enforcement Authority or a Member of the Electricity Contract Enforcement Authority shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of term of office, whichever is the earliest.

(2) The Chairperson of the Electricity Contract Enforcement Authority or a Member of the Electricity Contract Enforcement Authority shall not be removed from his office except by an order of the Central Government on the ground of proved misbehavior or incapacity after an inquiry made by Chairperson of the Appellate Tribunal in which the Chairperson or a Member of the Electricity Contract Enforcement Authority concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges.

109 H. Member to act as Chairperson in certain circumstances.- (1) In the event of the occurrence of any vacancy in the office of the Chairperson of the Electricity Contract Enforcement Authority by reason of his death, resignation or otherwise, the senior-most Member of the Electricity Contract Enforcement Authority shall act as the Chairperson of the Electricity Contract Enforcement Authority until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chairperson of the Electricity Contract Enforcement Authority is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member of the Electricity Contract Enforcement Authority shall discharge the functions of the Chairperson of the Electricity Contract Enforcement Authority until the date on which the Chairperson of the Electricity Contract Enforcement Authority resumes his duties.

109I. Officers and other employees of Electricity Contract Enforcement Authority.- (1) The Central Government shall provide the Electricity Contract Enforcement Authority with such officers and other employees as it may deem fit.

(2) The officers and other employees of the Electricity Contract Enforcement Authority shall discharge their functions under the general superintendence of the Chairperson of the Electricity Contract Enforcement Authority.

(3) The salaries and allowances and other terms and conditions of service of the officers and other employees of the Electricity Contract Enforcement Authority shall be such as may be prescribed by the Central Government.

(4) The Chairperson of Electricity Contract Enforcement Authority shall exercise such financial and administrative powers as may be prescribed by the Central Government.

109 J. Procedure and powers of Electricity Contract Enforcement Authority.- (1) The Electricity Contract Enforcement Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Electricity Contract Enforcement Authority shall have powers to regulate its own procedure.

(2) The Electricity Contract Enforcement Authority shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:-

- a) summoning and enforcing the attendance of any person and examining him on oath;
- b) requiring the discovery and production of documents;
- c) receiving evidence on affidavits;
- d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;
- e) issuing commissions for the examination of witnesses or documents;
- f) reviewing its decisions;
- g) dismissing an application on default or deciding it ex parte;
- h) setting aside any order of dismissal of an application on default or any order passed by it ex parte;
- i) pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard; and
- j) any other matter which may be prescribed by the Central Government.

(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 limited to powers of attachment and sale of property, arrest and detention in prison and appointment of a receiver.

(4) Notwithstanding anything contained in sub-section (3), the Electricity Contract Enforcement Authority may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

(5) All proceedings before the Electricity Contract Enforcement Authority shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Electricity Contract Enforcement

Draft for discussion

Authority shall be deemed to be a civil court for the purposes of section 345 and 346 of the Code of Criminal Procedure, 1973.

109 K. Distribution of business amongst Benches and transfer of cases from one Bench to another Bench.- (1) Where Benches are constituted, the Chairperson of the Electricity Contract Enforcement Authority may, from time to time, by notification, make provisions as to the distribution of the business of the Electricity Contract Enforcement Authority amongst the Benches and also provide for the matters which may be dealt with by each Bench.

(2) On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson of the Electricity Contract Enforcement Authority may transfer any case pending before one Bench, for disposal, to any other Bench.

109 L. Decision to be by majority.- If the Members of the Electricity Contract Enforcement Authority of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson of the Electricity Contract Enforcement Authority who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Electricity Contract Enforcement Authority and such point or points shall be decided according to the opinion of the majority of the Members of the Electricity Contract Enforcement Authority who have heard the case, including those who first heard it.

109 M. Right of parties to take assistance of legal practitioner.- A person preferring an application to the Electricity Contract Enforcement Authority under this Act and any other party to the case may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Electricity Contract Enforcement Authority, as the case may be.

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 sixty days from the date of communication of the decision or order of the Electricity Contract Enforcement Authority to him:

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 sixty days.”

*Amendment of
Section 110*

29. In section 110 of the principal Act, after the words “or the Appropriate Commission” and before the words “under this Act”, the words “or the Electricity Contract Enforcement Authority” shall be inserted.

*Amendment of
Section 111*

30. In sub-section (1) of section 111 of the principal Act, after the words “by the Appropriate Commission” and before the words “under this Act, the words “or an order made by the Electricity Contract Enforcement Authority” shall be inserted.

*Amendment of
Section 112*

31. In sub-section (1) of section 112 of the principal Act, for the words “three other Members”, the words “such number of other Members, not less than seven, as may be prescribed by the Central Government” shall be substituted.

Draft for discussion

*Amendment of
Section 119*

32. In section 119 of the principal Act, after sub-section (3), the following sub-section shall be added, namely:-

“(4) The Chairperson of Appellate Tribunal shall exercise such financial and administrative powers as may be prescribed by the Central Government.”.

*Amendment of
Section 120*

33. For clauses (g) and (h) to sub-section (2) of section 120 of the principal Act, the following clauses shall be substituted, namely:-

“(g) dismissing an appeal or an application on default or deciding it *ex-parte*;

(h) setting aside an order of dismissal of an appeal or an application on default or an order passed by it *ex-parte*.”.

*Amendment of
Section 121*

34. (1) Section 121 of the principal Act shall be numbered as sub-section (1) thereof.

(2) In the sub-section (1) as so numbered, after the words “the Appropriate Commission or” and before the words “or other interested party, the words “Electricity Contract Enforcement Authority or” shall be inserted and after the words “to any Appropriate Commission” and before the words “for the performance”, the words “or Electricity Contract Enforcement Authority” shall be inserted;

(3) After sub-section (1) as so numbered, the following sub-section shall be inserted, namely:-

“(2)The Appellate Tribunal shall have the same jurisdiction, powers and authority to take action on wilful disobedience to any of its judgment, decree, direction, order or other process or wilful breach of an undertaking given to a it, as a High Court under the provisions of the Contempt of Courts Act, 1971 (70 of 1971) on its own motion or on a motion made by the Advocate General or such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer or the Advocate General, and a reference in the Contempt of Courts Act, 1971 to a High Court shall be construed as including a reference to the Appellate Tribunal.”.

35. (1) Section 142 of the principal Act shall be numbered as sub-section (1) thereof.

(2) In the sub-section (1) as so numbered-

(i) after the words “thereunder, or any direction”, the words “or order” shall be inserted;

(ii) for the word “lakh”, the word “crore” shall be substituted;

Draft for discussion

(iii) for the words “to six thousand rupees”, the words “upto one lakh rupees” shall be substituted.

(3)After sub-section (1) as so numbered in section 142, the following shall be inserted, namely:-

“(2) Notwithstanding anything contained in sub-section (1), in case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person, with effect from such date as may be notified by the Central Government, has not purchased power from renewable or hydro sources of energy as specified by it using its powers under the Act, the Appropriate Commission shall after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, a sum calculated at the rate of fifty paise per kilowatt-hour for the shortfall in purchase in the first year of default, one rupees per kilowatt-hour for the shortfall in purchase in the second successive year of default and at the rate of two rupees per unit for the shortfall in purchase continuing after the second year.”.

*Amendment of
Section 146*

36. In section 146 of the principal Act, for the words “lakh”, the word “crore” and for the words “five thousand rupees”, the words “one lakh rupees” shall be substituted.

37. In sub-section (2) of section 176 of the principal Act-

*Amendment of
Section 176*

i) after clause (a), the following clauses shall be inserted, namely:-

“(aa) the minimum percentage of purchase of electricity from renewable and hydro sources of energy under section 3A;

(ab) allowing and facilitating cross border trade of electricity and any matter related to it under sub section (1) of section 49A;

(ac) laying down the modalities of bundling of renewable energy (including hydro) with thermal energy;

(ad) Renewable Generation Obligation;

(ae) regarding maintaining adequate capacity resources;”

ii) after clause (d), the following clause shall be inserted, namely:-

“(da) payment security mechanism under section 49;”;

iii) after clause (p), the following clauses shall be inserted, namely:-

Draft for discussion

“(pa) the form, the manner of verifying the form, and fee for filing the application under sub-section (4) of section 109B;

(pb) the number of Judicial and Technical Members to be included in the Electricity Contract Enforcement Authority under sub-section (1) of section 109C;

(pc) the salaries and allowances and other terms and conditions of service of the officers and other employees of the Electricity Contract Enforcement Authority under sub-section (3) of section 109I;

(pd) the exercise of financial and administrative powers by the Electricity Contract Enforcement Authority under sub-section (4) of section 109I;”;

iv) after clause (q), the following clause shall be inserted, namely:-

“(qa) the number of Members to be included in the Appellate Tribunal under sub section 1 of section 112;”;

v) after clause (s), the following clause shall be inserted, namely:-

“(sa) exercise of financial and administrative powers by the Chairperson of Appellate Tribunal under sub section 4 of section 119”.

*Amendment of
Section 178*

38. (1) In section 178 of the principal Act, for sub-section (1), the following shall be substituted, namely:-

“(1) The Central Commission may, by notification, make regulations in respect of the functions assigned to it in the Act.”

(2) In sub-section (2) of section 178 of the principal Act-

i) after clause (a), the following clause shall be inserted, namely:-

“(aa) Cross border trade of electricity, if any, under sub section (2) of section 6A;”;

ii) in clause (j), the words “and a surcharge” shall be omitted;

iii) clause (k) shall be omitted;

iv) in clause (l), the words “and a surcharge” shall be omitted;

v) clauses (m), (r) and (ze) shall be omitted.

39. (1) In section 181 of the principal Act, for sub-section (1), the following shall be substituted, namely:-

Draft for discussion

“(1) The State Commissions may, by notification, make regulations in respect of the functions assigned to it in the Act.”

(2) In sub-section (2) of section 181 of the principal Act-

i) in clause (i), the words “and a surcharge” shall be omitted;

ii) clauses (j), (k), (l), (m) and (n) shall be omitted;

iii) after clause (o), the following clause shall be inserted, namely:-

“(oa) determination and payment of surcharge and wheeling charges under the first proviso to sub-section (2) of section 42;”;

iv) for clause (p), the following shall be substituted, namely:-

“reduction in surcharge and cross subsidies, as may be provided for in the Tariff Policy under the third proviso to sub-section (2) of section 42;”;

v) after clause (p), the following clause shall be inserted, namely:-

“(pa) the manner of payment and utilization of the surcharge under the fifth proviso to sub-section (2) of section 42;”;

vi) clauses (zc) and (zp) shall be omitted.

Statement of Objects and Reasons to “The Electricity (Amendment) Bill, 2020”

The Electricity Act, 2003 (36 of 2003) (hereinafter referred as “the 2003 Act”) was enacted to consolidate the earlier Electricity Laws, namely, the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998. It contains provisions *inter-alia* measures conducive to the development of electricity industry promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies, constitution of Central Electricity Authority, Regulatory Commission and establishment of Appellate Tribunal and for matters connected therewith and incidental thereto.

2. Electricity is one of the most critical components of infrastructure which is essential for sustained growth of the Indian economy and welfare of nations. The 2003 Act have brought in huge direct investments, public private partnerships, market development, transparent tariff mechanism etc.; which have enables several reforms, laws and regulations, multifarious contracts and complex disputes. But the electricity sector is seized with few critical issues which have weakened the commercial and investment activities in the electricity sector that needs to be addressed immediately to ensure sustainable growth of the country. It has been felt that the few provisions of the Act are unable to cope with the rapid development of the electricity.

Establishment of Electricity Tribunal and strengthening of APTEL

3. The 2003 Act recognizes the contracts for supply and purchase of electricity but it is not specifically dealing with the issues related to performance of the contract. Strength of contracts enables investment in the electricity sector. Non-performance of the contract may create uncertainty, upset investment decisions and adversely affect investment environment and ease of doing business. Electricity Regulatory Commissions established have been entrusted with multiple responsibilities under the Electricity Act such as regulatory functions, tariff fixation issues, grant of licenses etc with limited powers for adjudication of dispute. Consequently, enforceability of performance of the contracts remains an issue to be addressed.

In view of above, it is proposed to establish a Electricity Contract Enforcement Authority having which shall be sole authority and having original jurisdiction to adjudicate upon matters regarding specific performance of contracts related to purchase or sale of power between a generating company and a licensee or between licensees; and contracts related to transmission of electricity between a generating company and a licensee or between licensees. Orders of the Electricity Authority shall be executable as a decree of civil court. The Appeal against orders of the Electricity Tribunal shall be

heard by Appellate Tribunal for Electricity. It is proposed to strengthen the Appellate Tribunal in terms of strength of Members and powers of Tribunal.

Selection Committee for Chairperson and Members of Commission and Qualifications

4. As per existing provisions of Electricity Act there are multiple Committees for selection to the posts of Chairpersons and members of APTEL, the Central Commission and State Commission. This requires constitution of multiple selection committees for every vacancy occurs. It is proposed to have a single selection committee for selection for the posts of Chairperson and Members of the Appellate Tribunal and all Regulatory Commissions. This will bring uniformity in selection process. Appointments shall continue to be done by respective State Governments or Central Government. Further, the qualification for appointments of Chairperson and Members of Central and State Commission are proposed to be made uniform as they are entrusted with the similar responsibilities under the Act.

National Renewable Energy Policy

5. It is proposed that the Central Government may after 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.

Payment Security Mechanism

6. Unlike other commodity delivered by the contracted parties, the dispatch of electricity is being undertaken by load dispatch centre through scheduling. The 2003 Act do not recognizes the any watch or monitoring on payment security mechanism for such dispatch of electricity. The load dispatch centre is scheduling electricity without payment security mechanism. Presently, there is huge accumulation of unrealized revenues. It is proposed to empower load dispatch centre to oversee the payment security mechanism before scheduling dispatch of electricity and to be made mandatory considering sanctity of the existing contracts unless it is waived by the parties to contract themselves. Further, it is pertinent to note that unrealized revenues will cause impediments in economic cycle in the country.

Cost reflective Tariff, Simplification of Tariff Structure & Cross Subsidy

7. The 2003 Act mandated the regulatory Commissions to determine the tariff after receipt of the subsidies but there is no provision for fixation tariff with fair cost. Over the period, the regulatory Commissions have been recognizing cost but defer it to recover in future period and also factoring the subsidies based on commitment. Consequently, the tariff determined is not cost reflective and resulted in weakening the financial health of the distribution companies due to under recovery of the prudent cost. It also hampers the transparency in cost reflective tariff as mandated under the 2003 Act. In view of above, it is felt that provisions related to tariff determination may be expanded and strengthen by imposing certain restriction on deferring revenue recovery. Hence the tariff should reflect the cost of supply of electricity and cross-subsidies to be reduced.

Subsidy

8. Section 65 mandates the state government to grant subsidy to any consumer or class of consumers, but there is no corresponding provisions about the treatment of subsidies in the tariff determined by the state commissions. It is proposed that state commissions to determine tariff for retail sale of electricity without any subsidy under section 65 of the Act.

Function to CERC related to Cross Border Trade of Electricity

9. In view of the emerging requirement to regulate the cross border transactions of electricity with other countries, the central commission has been empower to oversee the cross border transactions.

Dealing situations in case of Non Functional SERC due to vacancies

10. In order to address the issue of non-functioning due to vacuum in the state commission it is proposed to empower other state commissions including joint commissions to discharge functions of such state commission.

Deemed adoption of Tariff discovered through competitive Bid

11. Timely adoption of tariff discovered under competitive bids as per section 63 of the Act is important to avoid cost escalations and impacts sustainability of the project. It is propose to address the time taken for adoption of tariff and identify time line for the same.

Penalties and RPO- HPO

12. In order to ensure strict compliance of the provisions of the Electricity Act and orders of the commission, it is to strengthen section 142 and section 146 of the Electricity Act with increased penalties. Hydro sources of energy have been recognized as renewable sources of energy. It is proposed to expand the scope of renewable power purchase obligations to include Hydro sources. To harmonize the national level commitments for environment protection, it is proposed to empower the State Commissions to specify the RPO as per RPO trajectory prescribed by the Central government from time to time;

Distribution sub-license and Franchise

13. The Distribution licensee can recognize and authorize a person as "Distribution sub-licensee" to distribute electricity on its behalf in a particular area within its area of supply, with the permission of the appropriate State Commission. Enabling provisions have been made to address the situations to deal the issues in sections 126, 135, and 164, when a distribution licensee proposes to undertake distribution of electricity for a specific area within his area of supply through another person.

The proposed amendment seeks to achieve the above objectives.
