

## Electricity Act, 2003 Amendment 2020 [Draft]

The Ministry of Power on 17<sup>th</sup> Apr, 2020 issued draft for amendment to the Electricity Act, 2003. A brief summary of the proposed Amendments are given below:

### Key Amendments: -

- Section 2: Introduction of distribution sub-licensee.
- Section 62 & 65: Direct Benefit Transfer (DBT)
- Section 109: Setting up of Electricity Contract Enforcement Authority (ECEA)
- Section 78: 'Unified' selection committee for appointment of Members and Chairpersons of ERCs, APTEL, and ECEA.
- Section 3A: Proposal to have minimum percentage to be purchased from hydro energy.
- Section 26: NLDC to monitor grid operations and ensure grid stability.
- Section 26 & 28: Payment Security for scheduling or dispatching of electricity.
- Section 82: State Commission to have up to four, and APTEL to have minimum seven members.

❖ **National Renewable Energy Policy (NREP) (Section 3A)**: Central Government, in consultation with State Governments, will prepare NREP to promote RE generation, and prescribe RPO for renewable and hydro energy.

❖ **Cross Border Trade of Electricity (CBTE) (Section 49A)**: Central Government to frame rules and guidelines, and CERC will formulate regulations to facilitate CBTE.

❖ **Tariff Subsidies (Section 62 & 65)**: Tariff to be calculated without accounting for subsidies, and government to provide subsidies directly to the consumers.

❖ **Selection Committee to Recommend Members (Section 78)**: - A single committee, consisting of five members to recommend members of Commissions (Central and State), Appellate Tribunal, and ECEA.

- The Committee to finalise the selection of the Chairperson or the Member within three months of the receipt for every recommendation for vacancy.

❖ **ECEA (PART XA)**: - The ECEA to have “sole authority and jurisdiction to adjudicate upon matters regarding performance of obligations under a contract related to sale, purchase or transmission of electricity” (Section 109A).

- ECEA to dispose-off any application within 120 days of receipt of application (Section 109B).

- ECEA to consist of a Chairperson, two or more Judicial Members, and three or more Technical Members (Section 109C).

❖ **Appellate Tribunal (Section 110 & 112):**

- A person can appeal against the order of ECEA at Appellate Tribunal.

- The Appellate Tribunal to have a Chairperson and minimum seven members.

❖ **Punishment for Non-compliance of Directions by Appropriate Commission (Section 142):**

- In case of contravention against the provisions of the Act, max. 1 crore for each contravention, and in case of a continuing failure to meet directives, an additional penalty of max. 1 lakh/day.

- In case of non-compliance of RPO, 0.50/kWh for shortfall in first year, 1/kWh for the second year, and 2/kWh for non-compliance continuing after the second year.

The MoP Document can be accessed [here](#).

**CER Opinion:**

**1) Standard Guidelines for Distribution sub-licensee (DSL) and franchisee**

❖ The set of standard guidelines for award of DSL and franchisee should be formulated by the Central Government in consultation with State Government and the SERCs. These guidelines should define the mode of award for DSL (outright sale, lease, etc.), role of competitive bidding, duration, commercial arrangements, sharing of risk and regulatory provisions thereof.

❖ Visibility of operations and regulatory purview for franchisee also needs to be enhanced.

❖ SERCs would need to amend distribution license and the relevant regulations to segregate the provisions applicable to the distribution licensee and the distribution sub-licensee. For example, the provisions related to the sub-licensed areas would now need to be excluded from the original licensed areas to avoid multiplicity of accountability.

❖ Will the respective SERC be able to cancel DSL in case of its failure to meet the provisions of the Act and regulations of the respective SERC?

**2) PPA allocation to DSL**

❖ Commercial arrangement for award of DSL should also specify if the sub-licensee would be allocated the existing PPAs, or provided electricity at pooled price by the existing holding/bulk supply company of the state or would be allowed to make own arrangement for power purchase.

❖ As the DSL would not require a license for power trading, would it be allowed to make its own power procurement? If so, the existing distribution licensee will be saddled with expensive PPAs unless the same is allocated to the DSL.

**3) National Renewable Energy Policy**

❖ National Renewable Energy Policy (Section 3A), should be formulated after consultation with the State Governments as their active participation in policy formulation can help in achieving the RE target.

**4) Large Hydro as RE**

❖ MoP notification dated 8<sup>th</sup> March, 2019 “Large-Hydro” (>25 MW) has been declared as “Renewable”. This expanded definition for renewable energy can be enshrined in the Act itself. Draft Amendment differentiates between 'Renewable' and 'Large Hydro'. Further, Hydro Purchase Obligation (HPO) is notified to be a part of non-solar RPO.

**5) RPO**

- ❖ The Act does not specifically provide for separate categorization (and hence differential treatment) - 'solar' and 'non-solar RPO'. Given that, cost of solar energy has declined significantly, the two sub-categories should be merged together to enhance liquidity and economic efficiency.
  - ❖ The NREP should provide for differential RPO across states due to disparity of RE resources, generation mix as well as consumer mix.
  - ❖ Section 3A - NREP “prescribing” RPO, Section 86 (1) (e) - SERCs “**specifying**” RPO, as **prescribed by the Central Government**, Section 86 (4) - SERC to be **guided** by the NREP, and Section 61 (i) - Tariff regulations to be guided by the National Electricity Policy and tariff policy by NREP, thus, needs to be appropriately amended.
- 6) **Renewable Generation Obligation (RGO)**
- ❖ Section 176 (2) empowers the Central Government to specify RGO. The Act should also provide for RGO compliance framework, penalty for shortfall in RGO and applicability of RECs. Further, the concurrence of RPO and RGO requires that these targets to be set in coordination so as to synchronize the overall RE target for the country.
  - ❖ RGO should be specified within the framework of NREP as it impacts the whole power system as well as its economics.
- 7) **Integrated Resource Planning for Capacity Adequacy**
- The provision for specifying adequate capacity resources (Section 176 (2) (ae)) should be part of the National Electricity Policy (NEP). While this will enhance system reliability, it can significantly influence overall cost burden for the consumers. The NEP should provide for adequate reserve at the regional level considering coincidental peak demand growth and growing share of VRE across the constituent states.
- 8) **Storage as Generator or Licensee**
- ❖ Economic storage can address variability associated with RE generation, and can also play along the arbitrage opportunities across time of the day. The Act should identify a role for storage services and its regulations.
  - ❖ If storage is a part of 'generation' or 'distribution' business, separate license should not be required.
  - ❖ In case of stand-alone storage or operation of storage asset for arbitrage by a generator, the same should be a licensed activity as it can influence market outcome as well as system operation.
- 9) **RPO Compliance**
- ❖ A new proviso in Section 86 (1) (e) can be inserted to allow for banking/roll-over of the non-complied RPO quantum to offer flexibility to the obligated entities.
  - ❖ The proposed penalty for non-compliance of RPO creates a perverse incentive not to comply and pay penalty if REC equivalent price is more than penalty for the respective year of non-compliance. Hence, the penalty should be set at the forbearance price of REC.

**Further Reading:**

- [\*Anoop Singh, A market for renewable energy credits in the Indian power sector, Renewable and Sustainable Energy Reviews, 13\(3\), April \(2009\).\*](#)

- [\*Anoop Singh, Economics, Regulation, and Implementation Strategy for Renewable Energy Certificates, in India Infrastructure Report OUP \(2010\).\*](#)

- ❖ RPO penalties imposed on and paid for by the DISCOMs/obligated entities should not be passed through the ARR, or included in other charges. The RPO shortfall penalty collected should be deposited in a new fund, may be called RPO Fund, which may be utilized for promotion/adoption of RES, particularly to enable creation of monitoring and forecasting infrastructure for Rooftop PV.

10) **Development of REC and Ecerts Market**

- ❖ Section 66 may be amended as follows “The Appropriate Commission shall endeavor to promote the development of a market (including trading) in power, REC, Energy Efficiency, and Energy

Futures in such manner as may be specified and shall be guided by the National Electricity Policy and National Renewable Energy Policy referred to in Section 3 and 3A respectively in this regard.”

- ❖ NEP and NREP should be included reference to REC and Ecerts as well.

#### **11) Tariff Design**

- ❖ To enable design of economically efficient tariffs, which evolve with the technological and market developments in the sector, Section 62 (3) may be amended as follows:

“The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, reliability, total load/sanctioned load/maximum demand, pre-payment, total consumption of electricity during any specified period or the time ~~at which the supply is required~~ of consumption of electricity or the geographical position of ~~any area~~ supply, the nature of supply and the purpose for which the supply is required.”

- ❖ To provide for effective implementation of demand response program, a provision for reliability-differentiated tariff is suggested to be incorporated above.

Further, this should also provide for unbundling of distribution tariff in network and energy related charges.

- ❖ Only Max. Tariff during Shortage (Section 62 (1) (a)) - Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the ~~minimum and~~ maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity.

#### **12) Carriage and Content Separation for Phased Retail Competition**

Separate provision can be mandated for carriage and content separation, with flexibility to the state governments in phasing it across the identified license/sub-license areas. Further, the appropriate tariff regulation should also provide for unbundling of distribution and retail supply tariff.

#### **13) Open Access - Cross Subsidy Surcharge**

While amendment to Section 42 (2) (3 Proviso) lets the state commission be guided by the tariff policy for progressive reduction of CS and CSS, state-level flexibility (within a framework) should be provided to account for current status of CS, consumer mix, cost structure etc. across states.

#### **14) Open Access (OA)**

- ❖ Given the limited progress on grant of OA in some of the states, an OA registry mandating publication of the application status and retail, and standardization of the procedures will significantly improve the competitive environment thereof.
- ❖ The procedure and modalities to obtain open access for any consumer/generator connected within an area of franchisee/DSL should be clarified.

#### **15) Market Destination**

- ❖ Section 26 (Section 28) provides for optimum scheduling and despatch of electricity across (within) RLDC. The Security Constrained Economic Despatch optimizes schedule across entities embedded within the RLDC. An amendment to Section 26, enabling optimized scheduling across the country (including intra-state entities) by the NLDC would strengthen countrywide deployment of Security Constrained Economic Despatch, and ultimate migration towards Market Based Economic Despatch.

#### **16) Cross Border Trade of Electricity (CBTE)**

- ❖ The CBTE is currently restricted to the nodal agencies identified by the ministry, thus limiting competition in such transactions. Given this barrier to market entry, Section 79 should provide for setting trading margins for import/export of electricity.
- ❖ Development of a regional power market would not only benefit the participating countries but also enhance competition in the market. Addition of new market areas on the Indian power

exchanges to represent interconnected neighboring countries would enable regional participation. It can be clarified if the CBTE provisions may be guided by bilateral/regional policy.

### **Further Reading:**

- Anoop Singh, Tooraj Jamasb, Rabindra Nepal & Michael Toman, *Electricity Cooperation in South Asia: Barriers to Cross-Border Trade, Energy Policy* (2018)

- Anoop Singh, Tooraj Jamasb, Rabindra Nepal & Michael Toman, *Cross-border electricity cooperation in South Asia, Policy Research Working Paper Series 7328, The World Bank* (2015).

- Anoop Singh, Priyantha Wijayatunga and P. N. Fernando, *Improving Regulatory Environment for a Regional Power Market in South Asia, South Asia Working Paper No. 44, Aug 2016, Asian Development Bank, Manila* (2016).

- Anoop Singh, Jyoti Parikh, K.K. Agrawal, Dipti Khare, Rajiv Ratna Panda and Pallavi Mohla, *Prospects for Regional Cooperation on Cross-Border Electricity Trade in South Asia, IRADe, New Delhi* (2013).

❖ *The word 'our country' should be replaced with 'territory of India' or 'a license area' in the Section 2 (15a).*

### **17) Direct Benefit Transfer (DBT) (Section 62 & 65)**

- ❖ The proposed scheme of billing the consumer by the DISCOM on the basis of subsidized tariff, and subsequent claim of subsidy from the government would pose cash-flow challenge to the DISCOMs. For such consumers, prepaid meters financed through prepaid subsidy under DBT would address this hardship.
- ❖ Similar to DBT scheme implemented for LPG, a DBT scheme for the electricity sector (may be called eDBT) can also ensure targeted delivery of subsidy. Unique identification of the 'beneficiary consumer', in case different from the premise owner, would be required for its effective implementation. To avoid cash-flow hardship to Kutir Jyoti/Lifeline consumers and small farmers, subsidy should be reflected in the bill against normal tariff and the same should be directly payable to the DISCOMs.
- ❖ Along with introduction of DBT, flat rate tariff should be withdrawn. This would promote efficient consumption and would make DBT more beneficial for small consumers.

### **18) Unified Selection Committee**

The Proposed Single Selection Committee may face political economy constraints while also presenting its own implementation challenges. Clarification regarding the tenure of selection committee members (especially CS of states by rotation), and its nature being a standing committee should be provided (Section 78).

### **19) Electricity Contract Enforcement Authority**

- ❖ Creation of a new institutional layer (ECEA) for redressing contract related disputes would face the challenge of consensus across states, and may also face challenge to outline the scope of jurisdiction and its power. Barring this, ECEA may address the investor's concern for variety of PPA related disputes.
- ❖ It needs to be clarified if ECEA's jurisdiction will also cover matters related to REC mechanism, solar rooftop projects etc.
- ❖ Since commercial disputes handled by ECEA can significantly influence tariff payable by the consumers, a mechanism for participation of consumer/associations in the ECEA proceedings would help safeguard consumer interests.

- ❖ The alternate usage of words such as non-performance/violation/breach of contract/non-fulfilment of obligation etc. across the draft needs to be standardized (Section 109B).
- ❖ The proviso regarding eligibility for reappointment of Chairperson (Member) as Member (Chairperson) of ECEA is ambiguous, and needs to be clarified (Section 109E).

## **20) Regulatory Independence**

A cooling-off period for regulatory appointments would help strengthen the virtue of regulatory independence in the sector. Concerns about regulatory capture, adversely influencing the consumer's interest, can be addressed by enhancing transparency of regulatory processes and consumer participation thereof.

## **21) National Regulatory Certification Program**

Electricity/Energy Sector Regulation is a specialized skill that has limited pool of human resources. Identification of such 'certified' pool of officers across the overall organizational structure of the power sector and their deployment for regulatory responsibilities can address this limitation. Institutes of national importance can develop appropriate certification/eMasters program for the same.

\* Note : Underlined text is additional and strikethrough is suggested to be deleted.