

**CUTS Institute for Regulation and Competition (CIRC) comments on
EA 2003 (2020 amendment):**

Ministry of Power has issued draft proposal for amendment of Electricity Act, 2003 in the form of draft Electricity Act (Amendment) Bill, 2020 for comments / suggestions from Stakeholders.

Major amendments proposed in the electricity act and the comments/suggestions of CIRC are as follows:

Section in EA 2003	Sub section /Clause	Existing Act	Amendment Proposed	CIRC Comments/Suggestions
2	Sub section 1	Applicable to whole India except J&K	Includes J&K	First concrete step after revocation of article 370 to introduce much required reform in the state electricity sector of J&K.
	Clause 11	Reference to "Appropriate Commission and Appellate Authority" in the Act	Introduction of "Electricity Contract and Enforcement Authority"	This is a long deserved reform and comes at an appropriate time when India needs huge investment in the infrastructure segment, particularly attracting private sector investment through FDI and other means. It will

				further add to ease of doing business in India.
	Clause 15(a)		Introduction of the term "Cross border trading of electricity"	Recognizing the cross boarder trading and giving it statutory provision in the act provides it the required credential
	17(a)		Introduction of "Distribution Sub licensee" with in the distribution function	<p>This is a positive provision as franchisee system is outdated with many prohibiting and restrictions. This will positively impact the distribution services and overall good for the consumers.</p> <p>Positive step to separate the carriage and content issue and focus towards increasing the efficiency of operations. It will help further the reform process in the sector.</p>
3	3A		New insertion: National renewable Energy Policy	From NEP, This policy is now have a special mention in the act and to be developed in consultation with states. This is perceived to alienate any differences in interpretation and implementation of the policy at the state level. This policy aims at renewable generation and a certain specific consumption of RE in the state along with hydro.

				<p>It is silent on state's commitment of minimum purchase and scheduling of the intermittent energy in the grid. Perhaps, these issues may be covered separately in the policy document. Overall, the mention of the same will certainly carry some weight and it certainly highlights the commitment and intent of the government to pursue the renewable energy as its top most priority which would be a good signal to the investors' fraternity. Without specifically mentioning what would be the renewable energy mix in the grid, states would be reluctant to push more costly power because of the subsidy level. The Act must prescribe a floor (say 10%) which must be achieved and maintained by the state grid at all times.</p>
Section 26,section 28, section 32	Sub section 3 (4)		Responsibility of NLDC broadened to include optimal scheduling and dispatch of electricity, monitor the grid, overall authority to carry out real time operations. A mandatory clause has	This is in line with the pilot experiment of Security Constrained Economic Dispatch (SCED) of electricity where in there is some objections from the private players regarding its operation as non-conformity to the MOP guidelines.

			<p>been added for security of payment for scheduling and dispatch of electricity in the contract itself</p>	<p>Also, as the country gears up for a real time market for electricity scheduling and dispatch, this move is in right direction while signaling complete control and authority to one institution. In this way, ambiguity if any is cleared and institutional mechanism is well established.</p> <p>The one point accountability alienates many issues being raised by various stakeholders and it is overall good for maintaining grid stability.</p> <p>The clause of security of payment for NLDC as well as SLDC if implemented in right spirit has come as a blessing for the generating companies that often struggle to get their payments on time.</p> <p>Right now the SEBs are in terrible shape and this is crucial. The opposition from SEBs seems quite natural. They may agree for this after a certain period of time. Though this is necessary to bring in the required discipline, it may be left for the SERC</p>
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				and Contract Enforcement authority to decide mutually.
Section 38/39/40 and 42		Regarding open access and its treatment	Defined payment of charges like transmission charges by CERC and surcharges by SERC	It needs more clarification as nothing substantial can be inferred from this regarding opening of the OA to the consumer without any hindrances.
Section 42	3 rd proviso to sub section 2		Surcharge and cross subsidy to be progressively reduced as per the tariff policy	<p>This provision has been there in the jurisdiction of SERC and earlier questions were raised on the ability and efficacy of the State commission in implementing it. Perhaps due to political pressure and discoms lobby, SERC were unable to do this, thus acting against the consumer interests. It is now mandated to reduce the surcharge and cross subsidy as per the tariff policy. The implementation would be very tough as it may breach the jurisdiction of state regulatory commission's power. If the mandated provision is not followed by the SERC, how would be it monitored and acted upon? It is silent on this.</p> <p>In principle, there should not be any ambiguity in law such as "progressively reduced". It neither gives any time frame of reduction nor the quantity of reduction. There</p>

				<p>should be clear targets such as zero subsidy in five years or brought down to maximum 5% in three/five years? The penalty should also be clearly mentioned for not achieving these levels.</p>
Sec 61			<p>Tariff reflects the cost of supply and also reduces the cross subsidy as provided in the tariff policy</p>	<p>This is a huge change as the term progressively reducing and as specified by SERC has been omitted. This is major step towards tariff rationalization and huge relief for commercial and industrial consumers but it cannot be done automatically. The amendment surely provides a direction on the treatment of tariff rationalization process but do not directly take away the powers of SERC in determining the tariffs and provisioning of the same.</p> <p>The limits of SERC powers must be clearly stated in law. They cannot be permitted to determine the extent to which and time they wish to take to make the reform successful.</p>
Sec 62	Sub section 1		<p>Appropriate commission will fix tariff for retail sale of electricity without</p>	<p>This is a long pending demand from majority of the stakeholders for many years. Direct Benefit Transfer (DBT)</p>

	clause (d)		accounting for subsidy. Provision of subsidy if any shall be provided directly to the consumer	<p>will definitely help the discoms, consumers and will be a major relief for regulators. It is not certain whether</p> <ul style="list-style-type: none"> • DBT will directly accrue to the consumers account with Aadhar linking. Concerns may be raised on its utility as this may be misused for other purposes. • Alternatively, it may park in a separate account linked to consumer number and discoms to be allowed to draw the amount after billing. • State governments will be now responsible to account the subsidy amount in its budgeting and provide for this upfront. • Ultimately, if done in a right manner, it will reduce many inefficiencies in the distribution business that find shelters directly or indirectly in subsidy provision and its applications.
Sec 63	Sub section 2	Adoption of tariff discovered through competitive	Timeline fixed on SERC to adopt the tariff within 60 days of receiving application. If it is not adopted by respective	This is a huge relief for the contracting parties as it will help formalize agreement between them and starts working on the same without any worries or concerns.

		bidding by the commission	SERC, it will deem to be adopted	
Sec 77	Sub section 1, clause (b), clause (c)	Section of members of central commission	First time, people from law and public policy background finds a mention and suitable for becoming a member of CERC	This is a welcome step and much desired. CIRC, as an institution have been demanding this since long. Electricity as a subject requires understanding of the inter relation of law, public policy and economics in addition to the technical understanding required for the project. The many facets of criticality of the subject can only be understood through a 360 degree view of the subject matter and should not be constrained with one sided views on the subject.
Sec 78		On selection of members to CERC, APTEL,ECEA		This may be a subject of contention between center and state as it seems that power of selection of the members of the crucial committee is tilted in favors of center. There may be allegation of bias in selecting the members and thus, decisions that may not suit a particular state may oppose it.

				The only good thing is that chief secretary of the states are appointed as member in the selection panel.
Sec 82		In the absence of chairperson in SERC	Central government reserves the power to allocate the functions to any other state commissions	<p>This may be seen as a direct interference with the state government as power is a state subject too.</p> <p>It may be opposed by the state.</p>
Sec 92			<p>New Chapter of Electricity Contract Enforcement Authority (ECEA)</p> <p>This is about the key roles, responsibilities, working procedures, statutory provisions of new authority.</p> <p>It will have 6 members with retired HC judge as its chairman, 2 members from judiciary and 3 members as technical members.</p>	<p>CIRC is of the view that there should be a distinct and independent body only for the matters of contracts disputes and its resolutions. So, CIRC welcomes the introduction of a dedicated enforcement authority for resolution of contract disputes. This will help save a lot of time and enhance the ease of business in the industry. Time to resolution will be faster and it sends a positive signal to the investment fraternity.</p> <p>At this point of time, it is needlessly complex. For example, once a "Contract Enforcement Authority" has been established, it can:</p>

			<p>ECEA will have the power of a civil court. If aggravated by its decision, the affected party can appeal to APTEL.</p>	<p>a. List down procedure of filing disputes b. Registering all contracts c. Time bound commitment of resolution failing which it will explain why there is a delay.</p> <p>While provisioning of 120 days is deemed an appropriate time for any dispute settlement but Authority can be empowered to set its timeline.. As the name suggests, this body will take care of the enforcement side of the contract too as it is alleged that regulatory commissions do not have any enforcement authority.</p> <p>In this case, the primary regulator should oversee the contracts and disputes will go to the Electricity Enforcement authority. This will set a template for all infra / network sectors.</p> <p>The Contract Enforcement Authority will have the status of a High court. These are commercial disputes and should not be dragged for years</p>
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				<p>through a court system. This way, the ECEA functions like a High court and only exceptional matters will be reviewed by the SC.</p> <p>The Act requires a person of "high court judge" equivalent to head it. When such competence is requisite, then it is not advisable to downgrade the person's utility to a lower court such as ECEA. The SC has already clarified the "should be judge of High court" need not be mandatory¹. The court system is already short on judges and retired judges would have had little or no experience in technical/sectoral matters. They have suggested a person of suitable judicial background, who could be eligible to be a high court judge.</p> <p>On the other side, it may be argued that it may create an additional layer of quasi-judicial body in addition to regulatory commissions and APTEL. There may be arguments about the</p>
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¹ <https://economictimes.indiatimes.com/industry/energy/power/power-regulatory-bodies-must-have-a-judicial-member-supreme-court/articleshow/63836852.cms?from=mdr>

				<p>nature of disputes and their jurisdiction under the respective electricity commissions. As most of the cases are related directly or indirectly to tariffs such as FSA (Fuel Supply Agreements) and PPA (Power purchasing Agreements) and tariff determination comes under the state commission jurisdiction that may create an overlapping of jurisdiction in handling such matters.</p> <p>Alternatively, it is also important to note that the SERC do not have a full workload to justify the expenditure incurred on them. These bodies could be mandated to carry out the tasks assigned to the proposed ECEA by strengthening its bench strength and capacities of its human resources. CIRC supports this argument.</p> <p>These issues need more clarification and the boundaries need to be clearly defined between different quasi-judicial bodies, even if the decision is to set up new institutions. As there are</p>
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				instances that cases related to power sector end up in the Supreme Court anyway, this may only add an additional layer to the system, slowing it down further.
Sec 176	Sub section 2		Regarding the minimum percentage of renewable and hydro energy, modalities of bundling renewable with thermal power, renewable generation obligations	These must be very specific and legally enforceable.
Sec 178			Central commission may, by notification make regulation in respect to the functions assigned to it	This will empower CERC to adjudicate matters and address any disputes related to jurisdiction issues.

Final Comments:

The proposed amendments to EA 2003 can be summed up as somewhere between incremental and transformative. Some of the amendments like DBT for subsidy provision, cost reflective tariff will go a long way in rationalizing the tariff. It aims at setting free the regulators on matters related to subsidy based tariff setting and provisioning for unnecessary regulatory assets. The creation of ECEA or giving similar mandate to SECs, is much needed step for preserving the sanctity of contract and enforce the law. Some of the provisions require further clarifications such as the nature of distribution sub licensee and how it is different than the already existing franchisee system. The jurisdiction of ECEA and CERC in matters related to

contractual disputes especially involving tariff related disputes requires further discussion. The matters such as (appointments to regulatory commission and ECEA, power of transferring one state's commission rights to another state, the issue of cross subsidy surcharge and open access matters) that can be a bone of contention between state and center needs to be resolved amicably.

On the consumer front, it is an opportunity to simplify the act so that a general consumer can decipher it properly and read through the act to understand and act accordingly. She can provide her suggestions in a meaningful way. With very low awareness and complex jargons, even if a consumer wants to put forth her view, it seems difficult. Hopefully, the final amendments find special mention of consumer rights and demands. It should not be wasted while discussing the other matters. In the proposed amendments, consumers' perspective do find a place but indirectly. There is still a lot more to be done on quality of supply, on demand supply, grievance redressal and penalty provision on discoms for supply related issues, choosing their own distribution agencies etc.

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