

ELECTRICITY (AMENDMENT) BILL 2014

Observations & Comments on Draft Amendments

29 February 2016



વિદ્યુત્તંત્ર તંત્રી

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Agenda for discussion

- **Distribution – Separation of Content (Supply) & Carriage (Wires)**
 - [Renewal](#)
 - [Railway and Metro Deemed Licensee](#)
 - [Operational Issues-](#) Eg. Open Access, Duties, Application, Security Deposit etc.
 - [Intermediary & Supplier of Last Resort](#)
- **Consumer & Tariff**
 - [Tariff Determination](#) under Section 62 & 63
 - [Categorisation of Consumers](#)
- **Transmission**
 - [Dedicated Transmission Line](#)
- **Regulatory Body**
 - [Regional Regulator](#)
 - [Independent System Operator, Term of Chairman & Members](#)
- **Other Points**
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Separation of Content & Carriage (Sect. 12, 14, 15)

– Renewal of Licence

Provision & Likely Impact

Only one distribution licensee in any area of distribution

In case more than one licensee exists, as on date, would continue till period of licence.

Commission may grant two or more supply licensees for supply within same area of supply.

Increasing number of Supply Licensees may benefit consumers.

As against provision of a fixed term of 25 years ,Term of Licence would now be decided by the Commission .

Provision for renewal of licence inserted

Presently issues related to areas like Mumbai having multiple distribution licensees have been addressed. What would happen when the term of one of the licensee expires?

Suggestions

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 etc.

Alternatively term of license should be fixed for 25 years with a provision of deemed renewal i.e. if **license is not suspended or revoked it shall be deemed to be renewed.**

Since Supply business is similar to trading, provision of **Pan-India Supply License under CERC jurisdiction** may be provided.

Alternatively, supply licensee of an area performing satisfactorily , should get **supply license for any other area under jurisdiction of concerned SERC**

Separation of Content & Carriage (Sect. 12, 14, 15)

– Demerger of existing distribution licensee

Likely Outcomes

State Government to notify transfer scheme for creation of separate companies for Distribution and Supply.

Existing distribution licensee to continue to distribute & supply till transfer scheme is implemented. Post transfer, it cannot trade & supply electricity.

For private distribution licensee, provisions of Section 131(4A) relating to transfer scheme would not be applicable.

Suggestion

Demerger of private distribution licensee can be done as **per Company Act only.**



Separation of Content & Carriage (Sect. 12, 14, 15)

– Deemed licence to Railway & Metro Rail

Provision & Issues

SEZ, Railways & Metro Rail to be deemed licensee

For Railways & Metro → clarity needs to be provided on:-

- ***Deemed Distribution licensee or Supply licensee? Cannot be both.***
- ***What would be their Area of distribution or supply?***
- ***Will these organisation be obligated for Universal Service Obligation as Supply Licensee?***

Suggestions

This provision may result in many problems for these organisations:-

1. **Area of licence** - Main section provides licence for an area as specified in the licence. Proviso provides deemed licence to Railways etc. and no need to take licence from the Commission. In the absence of licence, how area can be defined.
2. In case each station is considered to be area, it won't qualify to be minimum area of supply. Further, Railways would have to submit **ARR for each of its station.**

Hon'ble Supreme Court in a recent judgment in **Sesa Sterlite** case has held that **self consumption by a deemed licensee cannot be held as sale to consumer by licensee.**

Only objective of deemed licensee status to Railways and Metro appears to be cheaper power procurement costs for Railways and Metro.

The objective of cheaper power to railways can be addressed by **suitable amendment in Section 62** to give effect that Railways and Metro shall be charged at Average cost of supply and shall **not be liable to pay any cross subsidy**



Separation of Content & Carriage (Sect. 42)

– Open Access (OA)

Provision

Commission to specify open access in distribution in phases.

Likely Impact

OA to distribution system would be akin to open access to transmission system.
Thus provision related to open access in distribution system should be similar to existing provisions for open access in transmission system.

Usage of distribution system by Supply licensee would be open access

Thus, open access to distribution system for licensee have to be from day one

Suggestions

Open access by consumer to be specified by the Commission

Clause (b) section 42(2) to be reworded as under:

(b) to provide non-discriminatory open access to its distribution system for use by-

(i) any licensee or generating company on payment of the wheeling charges; or

(ii) any consumer as and when such open access is provided by the State Commission on payment of a surcharge which **shall be in addition to the wheeling and other charges payable** to the distribution licensee, as compensatory charges determined by the State Commission to meet the requirement of cross subsidy in the area of supply

Separation of Content & Carriage (Sect. 43.1,47.1,51.B, 51.E) – Application & Security Deposit

Provisions

Provisions for application and payment of security to distribution as well as to supply licensee.

Likely Outcomes

Provisions would result in discomfort to consumers.

Consumer would have to first apply to distribution licensee for connection. After getting physical connection would have to apply for supply to supply licensee. Similarly provision regarding security deposit to distribution licensee as well as to supply licensee is unwarranted.

Presently under existing provisions a consumer directly connected to transmission system is not required to pay any security to transmission licensee, why should distribution licensee require security? More so when the cost of service line etc. is to be reimbursed by the consumer as per Section 46 of Act.

Suggestions

There has to be **single window for consumer** and that would be **supply licensee**. It should be **the duty of supply licensee to co-ordinate with distribution licensee for new connection or reconnection.**

Distribution business being similar to transmission business **Consumer application along with security and other charges – only to supply licensee**

Bare reading of Section 47 would reveal that it relates to supply business only.

Accordingly, it is required to be deleted

Separation of Content & Carriage (Sect. 42, 43, 44, 61 (g))

– Duties of Licensee (1 / 2)

Uncertainty over philosophy & time frame for reduction & elimination of cross subsidy, which was the original intent of the Act.

Treatment & recovery of Regulatory Asset Charges (RAC) - historical and future ones to be clarified

Issues related to allocation of responsibility with respect to following needs to be appropriately addressed:-

Issues

- Meter installation, meter reading process in consumer premises
- Meter calibration, accuracy and reconciliation of gap between feeder meter – distribution transformer meter – consumer meter
- ***Could lead to increase in AT&C losses and mysterious game play by suppliers resulting into parallel economy seeping into electricity sector.***
- AT&C losses vis-à-vis distribution losses and commercial losses.
- Implementation ***intra-supply licensee ABT - Recovery and settlement of UI charges***

Need to clearly define / provide Other Charges mentioned.

Receivable ***cycle for generators & suppliers would increase & in such cases suppliers who are not financially strong*** would have survival issues.

Separation of Content & Carriage (Sect. 42, 43, 44)

– Duties of Licensee (2 / 2)

Suggestions

Suitable amendments to be incorporated for increased clarity :-

- **Cross subsidy reduction and elimination within five years. Formula to be decided by Commissions.**
- **Historical RAC** to be recovered as **additional wheeling charge or surcharge** as decided by Appropriate Commission **by distribution licensee** and pass on to concerned company
- **Meter** with all related responsibilities to be provided **by Distribution Licensee.**
- Consumer bill indicating various charges including wheeling charges separately to be raised by Supply Licensee.

Suitable amendments to be incorporated for increased clarity :-

- Commission to **determine opening levels of Technical and Commercial losses** separately and to **project loss reduction trajectory** for both individually.
- Distribution Licensee shall be responsible for **reduction of technical losses** and supply licensee to be responsible for reduction in commercial losses.
- **Commission to specify and implement intra-state/intra-supply licensee ABT including sharing of UI charges**
- **Guidelines on time-lines for receivables for Suppliers & Generators needs to be indicated.**



Separation of Content & Carriage (Sect. 35B)

– Intermediary Company

Likely Outcomes

In cases of Mumbai / Delhi wherein **existing multiple private distribution** companies are operational, clarity needed on **who would be the Intermediary Company ?** Further clarity on whether there would be a **single Intermediary Company or multiple** needs to be provided. **Will it be Govt. based entity ?**

Suggestions

Functions needs to be clarified as part of the Amendment and should incl.:-

- Operation methodology – existing PPAs and future
 - **Contractual / legal issues for PPA parties** to come out of PPAs and get into PPAs with intermediary company. Mention process to be followed
 - Role in tariff negotiations
 - Needs to maintain competitive spirit despite operating complexities like :-
 - **Securing power from multiple generators @ multiple price points**
 - **Allocating power to various supply licensees across multiple consumer categories**
 - Cases wherein only one supply PPA is in place – treatment
 - Basis of allocation of power to various consumer categories –
 - **Preference of lower cost power to low end consumers**
 - Overall consumer mix & connect load
 - Arrangement with Supply licensee of last resort & incumbent licensee
 - Treatment of short & medium term PPAs to be determined clearly
- Contradictions with National Tariff Policy needs to be corrected**

Separation of Content & Carriage (Sect. 51B, 70B)

– Supplier of Last Resort

Likely Outcomes

Obligated to supply electricity to the consumers in the area of supply in case the supply licensee chosen by the consumer ceases to be a supply licensee or otherwise his supply licence is suspended for any reason whatsoever.

Will get designated from time to time ? In areas of multiple licensee, which supplier becomes designated ?

Suggestions

Needs to be Government supply company and suitable mechanism to compensate that company in event of losses to be prepared.

Payment security / financial health of supplier of last resort needs to be ensured

Need to predominantly supply to low end consumers – to be defined as residential consumers having average monthly consumption of 300 units per month.

Clarity needed / appropriate amendment on – Operating procedure incl. Time period; Load planning & forecasting issues and power procurement costs



Tariff determination and design (Sect. 62)

Provision

State Government to make rules for recovery of existing revenue deficit (Regulatory Assets)

Impact

Rules made by the Government in this regard would not be appealable but would only be subjected to judicial review before High Court.

Suggestion

The term 'Appropriate Government' should be replaced with Appropriate Commission. The order of the Commission is appealable before APTEL under Section 111. Accordingly issue related to recovery of existing revenue deficit to be resolved by the Commission and not by State Government.

Provision

➤ *There is conflict in Clause 1A and Clause 4 of Section 62 relating to Fuel and power procurement adjustment formula. Clause 1A says Formula to be specified in Tariff Policy. Clause 4 provides formula to be specified by the Commission. **Formula to be specified by the Commission***

Determination of Tariff (Sect. 62, 63)

– Stressed Assets

Likely Outcomes

Many of the earlier projects awarded through competitive bidding which are now facing viability concerns have requested for migration from Section 63 to Section 62 for re-determination of tariff in the overall interest of the consumers.

Restoring viability of the stressed projects is of paramount importance to avoid grave consequences for the consumers, power sector, banking sector and the economy.

Explicit addition in Section 63 is needed to enable migration of stressed projects from tariff under Section 63 to tariff redetermination under Section 6

Suggestions

Tariffs adopted under this section including all the PPAs entered into under section 63 subsequent to **notification of the Competitive Bidding Guidelines by the Government of India on 19th January 2005**, may be re-determined by the **Appropriate Commission** under such circumstances as may be specified by the **Central Government** and in accordance with the **provisions of Section 61 & Section 62 and the framework**, which may be specified by the Central Government for this purpose



Recovery of Government dues (Sec 45A)

Provision

Government in consultation with the Commission and the concerned authorities to prescribe the manner of collection and realisation of any dues under the relevant laws for the time being in force in that State, along with the electricity dues.

Issue

The purpose of insertion of this section is not clear. Other dues of government such as Property Tax etc cannot be clubbed with electricity charges.

Impact

Any non-payment of these dues by consumer would impact collection efficiency and commercial loss reduction.

Categorisation of Consumers

It has been observed that several Commissions have put Government run or aided educational institutes and hospitals under commercial categories.

Issue

Government institutions do not operate on profit earning motives. Accordingly their tariff should not be same as that of commercial organisations.

APTEL in its judgment in Appeal number 139 of 2012 in the matter of Rajasthan Educational Institutes Association has held that the Governments are operating these Educational Institutes in accordance with the duty casted upon the State under Directive Principle enshrined in the Constitution. There is no profit earning motive. Accordingly, these institutes cannot be kept in the same basket along with private institutions which run on commercial principles.

Suggestion

A proviso to Section 62 may be added to give effect that these institutes would get preferential tariff and would not be higher than ACoS



Transmission (Sect. 2(16), 10(1))

– Dedicated Transmission Line

Likely Outcomes

As per Section 10 (1) it is the duty of generating company to establish, operate and maintain dedicated transmission lines.

Dedicated Transmission line defined as radial lines.

Whereas station connected to only one substation radially shall be obligated to construct, maintain and operate such lines. Stations connected to grid at two or more substations would not have such obligation.

Such a provision would result in discrimination more so when power procurement would have to be done through bidding route.

Generators cannot get powers of telegraph authority under Section 164.

Generators with radial lines would face RoW issues during construction of dedicated lines.

Evacuation lines for other generators being constructed by CTU or STU or Licensee would not face such issues as such agency would be empowered with powers of telegraph authority under Section 164.

Suggestion

Provision of dedicated lines may be removed from section 2(16) and Section 10



Concept of Regional Regulator in place of State Regulator

Likely Outcomes

Draft bill had provision for Regional Commission which has been deleted

Experience of last 10 years have shown that State Commissions have been captured/frustrated by the State Governments. Need not say that there are various pressures by the Government for no increase or minimal increase in tariff resulting in accumulation of huge amount of Regulatory Assets running in to Tens of Thousands of Crores

Suggestion

Aggregating 4 or 5 State Commissions in to Regional Commission would offset political economy in their functioning.

Provision of **optional Joint Commission is already there in the existing Act.** This provision have to made mandatory specifying states for such Joint Commissions

Further, many states have established Single Member Commissions. This need to be rectified. **Setting up of Joint Commissions would eliminate Single Member Commissions**



Independent and transparent System Operator

Provision

Provision regarding STU to operate SLDC till State Government notify independent system operator hampering transparent and independent functioning of SLDCs

Issue

SLDCs are not functioning independently and transparently. Following directions of the STU/Government in not honoring PPAs

Suggestions

Like RLDC, operated by independent company, SLDCs are also required to be operated by independent company
Act should provide time lines for making SLDCs truly independent
Presently, SLDCs do not honor PPAs for the purpose of scheduling of power. Act should make provision for SLDC to honor provisions of PPAs and allow scheduling accordingly
SLDCs require to provide load flow data and studies relating to network congestion in a transparent manner

Term of Chairman and Members of Commissions

Provision

Term of Chairman and Members has been **reduced from 5 years to three years** with a provision of re-appointment for another term of three years.

Likely Outcome

This could considerably **weaken the institution of Regulatory Commission**. A possibility of second/ extended term would be **too damaging for the independence of the Regulators** and may **impact the performance of the Commission**, as possibility of extension **may influence the decisions**.

Suggestion

A **fixed term of five years**, with **no provisions for extension** is best suited to give Commission adequate reasons to be independent and pragmatic. **Hon'ble Supreme Court in UoI Vs R. Gandhi** has also observed that the **term of office of three years shall be changed to a term of seven or five years** subject to eligibility for appointment for one more term. This is because considerable time is required to achieve expertise in the concerned field. A term of three years is very short and by the time the members achieve the required knowledge, expertise and efficiency, one term will be over.



Safety Considerations (Sect. 56)

Previous Provision

CEB constituted under Section 37A of 1910 act had framed Indian Electricity Rules 1956. These Rules had several time tested rules for safety of public life and property. Section 56 of 2003 Act mandates the Authority to frame Safety Regulations. Accordingly CEA has notified new Safety Regulations similar to IE Rules 1956.

Provision

Electrical Inspector appointed by the State Government has been made responsible for implementation of these safety rules.

Electrical Inspector is responsible and answerable only to the state Government.

Impact

Following photographs would indicate gross violation of various provisions of the safety rules by the licensees.

Suggestion

Electrical Inspector to be made responsible and answerable to the Commission. Commission should be empowered to fix the amount of compensation to injured person or his family. Commission should also be empowered to impose penalty on the person violating any provision of the safety Regulations

Safety considerations



Safety considerations



Encroachment / Unauthorized construction leading to violation of safe clearance from network



Uncontrolled environment over a widespread area of 510 sq kms!

Encroachment / Unauthorized construction leading to violation of safe clearance from network



Constructing house very near to electrical lines – Not leaving the mandatory clearance of 1.2 meters in case of LT network as per rule 80 Of Indian Electricity Rules 1956.





Safety considerations – Transmission Line - Mumbai



Safety considerations – Transmission Line - Mumbai



Safety considerations – Transmission Line - Mumbai



Safety considerations



Safety considerations



Safety considerations



Separation of Content & Carriage (Sect. 1.(27),55,56)

– Franchisee, Smart Meters

Likely Outcomes

With distribution & multiple supply licensees, whether concept of Franchisee is relevant ?

Suggestion

If relevant, then **re-define Franchisee for both distribute & supply part of business** for franchisee.

Likely Outcomes

Installations of **smart meters as specified by CEA without approval** from **Commissions** is in appropriate, since this **investment would need to be recovered through consumer tariff's** which are decided by SERCs.
No consumption limits mentioned

Suggestion

Installation of **smart meters subject to approval by Commissions** as per specifications given CEA.
Being capital intensive, **smart meters could be installed only upto certain consumption** say like > 1000 units per month.
Disconnections of pre paid meters to be inline with **principles set by Commissions**



Generation Requirement (Sect. 7(2))

- Setting up of Renewable Energy (RE) Capacities

Likely Outcomes

RE capacity corresponding to *ten percent of thermal capacity* is a huge amount and would be *difficult to implement* by those developers without sufficient experience with renewable energy. Insistence for such high blending could become a deterrent for both

Practical difficulties associated with this provision pertaining to the absorption of such renewable power, acceptance of buyers, siting of the renewable generation capacity, etc.

Grid stability could be an issue given *infirm nature of large wind & solar power*

Suggestion

RE generation capacity as prescribed by the Central Government from time to time which shall not be **more than five** per cent of the thermal power installed capacity

Provided that the **Central Commission may formulate guidelines** clearly outlining the **mechanism of absorption of such renewable energy and also for maintain the grid stability.**



Separation of Content & Carriage (Sect. 12)

– Optimal Utilisation of Distribution Network

Likely Outcomes

Since carriage business is a *regulated and natural monopoly*, the Appropriate Commission should ensure that *in areas where two or more distribution licensees exist*, the available network is *optimally utilized and upgraded* so that consumers are not made to pay for duplicity of the network

Suggestion

Provided that Appropriate Commission, in the interest of the consumers, shall **issue suitable directions to ensure optimal & efficient utilization** as well as **expansion and strengthening of the network** of the distribution licensees.



Renewal of Licence (Sect. 20)

– Sale of Utilities of Licensee

Likely Outcomes

Amendment to Section 20 provides for *selection of licensee upon expiry of tenure through auction*.

This is *contradictory to Section 15 (8) which allows for renewal of license*.

This provision will *also adversely impact the consumer* as it may result in *reduced operational efficiency* during the *later stage of the outgoing* licensee's operations.

Suggestion

Therefore, license should be renewed without any process of auction
Original provision to be retained



Transmission (Sect. 37)

– Grid Standards

Likely Outcomes

Past experience shows misuse of Section 37 by some of the State Governments.

Necessary safeguards need to be added to ***protect the generating companies*** from ***unreasonable restriction on open access supply***

Suggestion

Add new provision - Provided that such directions **shall not be issued in contravention of other provisions of the Act and / or contractual obligations of the stake holder**



Information with Respect to Levels of Performance (Sect. 59 A) – Material Complaint against Licensee

Likely Outcomes

Any complaint filed should be *supported by underlying facts and figures*. In the absence of any such compulsion, the *provision may be misused*. Further, as the Appropriate Commission is responsible for specifying the standards of performance, *any such complaint against a licensee should be filed before the Appropriate Commission and not the Appropriate Government*.

Suggestion

Therefore, it is suggested to refer to ‘material complaint’ instead of just ‘complaint’.

In case any **material** complaint is filed **before the Appropriate Commission and if the Appropriate Commission is** satisfied that any licensee has not discharged any of the functions assigned to him by the Act, including the standards of performance specified by the Appropriate Commission, the **Appropriate Commission may take appropriate action as per the provisions of section 19.**



Determination of Tariff (Sect. 62) – Procurement only by Competitive Bidding as per Sect. 63

Likely Outcomes

Developers, who had offered competitive tariffs based on the macro-economic environment in the ***past are facing serious viability challenges*** due to factors beyond their control

Hence ***developers have now started factoring*** in perceived risks on higher side in new power procurement tenders ***thereby quoting higher tariffs*** Since the high tariffs being quoted will be valid over a period of 30 years, the ***consumers will not be able to gain the benefit of possible lowered risk profile in the future*** without the regulatory oversight that is available through tariff determination under Section 62

Suggestion

Delete this proviso



Separation of Content & Carriage (Sect. 51B)

– Incumbent Supply Licensee

Likely Outcomes

Other supply licensee could pick and choose its consumers (maybe non subsidised) as it will have to supply power progressively based on load factor

Since *incumbent supply licensee has duty to supply* to all consumers, it could end up having *large number of subsidized consumers thereby impacting its financial viability.*

Hence consumer choice could also be impacted

Suggestions

All other **supply licensees should also have an obligation to pick up subsidized consumers** and maintain proper consumer mix.

Mechanism / principle could be developed by Appropriate Commission



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Key amendments suggested in generation & likely implications / suggestions (1 / 2)

Decentralised Distributed Generation (DDG) 15A

Defined as electricity generation from wind, small hydro, solar, biomass, biogas, bio-fuel, generation from any kind of waste including municipal and solid waste ,geothermal, hybrid power system or such other sources for end use at or near the place of generation.

National Electricity & National Renewable Policy to consider DDG as well

- ***DDG projects to get much needed impetus – benefit esp. to rural areas.***

Renewable Energy (RE) Sources 57A, 3,7,14, 42

Defined as small hydro, wind, solar, bio-mass, bio-fuel, bio-gas, co-generation from these sources, waste including municipal and solid waste, geothermal, tidal, forms of oceanic energy and such other sources

Renewable Energy Services Company also defined

Measures to promote RE – incl. new coal & lignite based plants to establish RE plants of not less than 10% of installed capacity; Bundling of RE power for existing such plants etc.

Generation & supply from RE sources needs no licence.

No surcharge for OA consumers using RE power

- ***Significant jump in RE capacities; Accelerated development of Bio Fuels/ Mass projects***
- ***10% RE capacity set up for new coal / lignite plants – implementation & monitoring could be an issue. Need to avoid sub optimal RE plant set ups***
- ***Clause clarifying that “RE supplies needs to be through Open Access” to be added.***
- ***Amend definition of Renewable Energy Services Company as “ an energy service company which provides renewable energy in the form of electricity post the consumer meter side for the purposes of this Act”***

Key amendments suggested in generation & likely implications / suggestions (2 / 2)

Spinning Reserves ₇

Build & maintain spinning reserve – back up capacity as per Central Government
Before establishment / expansion – detailed project report & information to be submitted to Authority

- ***Spinning reserves fixed cost shall be reckoned by supply and fixed as % of supply on an average in a year.***
- ***Amendments suggested :-***
 - ***Spinning reserves % should be part of the Ancillary Services and market determined accordingly OR***
 - ***Spinning reserves % to be responsibility of the Supply licensee and considered as part of PPAs***

Bundled Power ₇

Existing coal & lignite plants can set up RE plants (with concurrence of exiting procurers) & energy so produced will be bundled & pass through to be allowed by Commission.
Obligated entities buying such power can account it towards Renewable Purchase Obligation (RPO).

- ***Further impetus to RE power but bundling of power for tariff determination could have adverse impact on the tariff of generator thereby impacting consumers at large***
- ***Clause related to such bundling of power for tariff consideration to be deleted.***

Thank You