





## **Analysis of the "Electricity (Amendment) Bill, 2022"**

The proposed amendments to the Electricity Act, 2003 ("**the Act**"), vide the bill titled "Electricity (Amendment) Bill, 2022" dated 03.08.2022 ("**bill**"), introduced by Shri R.K. Singh, Minister of Power, in the Lok Sabha has proposed significant changes to the framework of the Act.

The bill has sought to tackle the new as well as continuing challenges of sustainability of the power sector, contract enforcement, payment security mechanism, energy transition and the need to provide choice to consumers in order to promote competition. The Statement of Objects and Reasons states that the proposed amendments are important in view of the importance of green energy for our environment in the context of global climate change concerns and our international commitments to increase the share of renewable energy.

The proposed amendments under the bill have been classified into broad subject heads, as under: -

### **1. Introduction of "Deemed Approval" for all licensee under the new scheme:**

The bill has proposed introduction of the concept of "deemed approval of licensee" vide section 15 of the Act, if the Appropriate Commission fails to process any application in the time so provided under the regulations. The same is proposed to be brought into effect by inserting proviso to sub-section (6) of the section 15 of the Act, the same is extracted as under:

*"Provided further that if the Appropriate Commission fails to grant the licence or reject the application, as the case may be, within the time so provided, the applicant shall be deemed to have been granted the licence"*

### **Analysis:**

The proposed amendment under section 15 of the Act seeks to make the application process time bound and provides for deemed approval, if the application is not processed in the stipulated time. However, the timeline for processing of the application would continue to be prescribed by the Regulations



so framed by the Appropriate Commission. The proposed amendment is set to increase the onus on Appropriate Commissions to process applications before them, since failure to do the same will result in grant of "deemed approval".

## **2. Use of Distribution Networks by all licensees within the same area of supply and optimum use of distribution system:**

The bill has proposed amendments in sections 14 and 42 of the Act with regards to above mentioned subject of making available distribution network to all licensees, within the same area of supply, the same are as under:

(I) Modification of clause (b) of section 14 of the Act:

*"(b) to distribute electricity as a distribution licensee [in an area of supply in accordance with the such criteria as may be prescribed by the Central Government]"*

(II) Omission of words "through their own distribution system" in the sixth proviso to section 14 of the Act:

*"Provided also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity ~~[through their own distribution system]~~ within the same area, subject to the conditions that the applicant for grant of licence within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements relating to the capital adequacy, creditworthiness, or code of conduct as may be prescribed by the Central Government, and no such applicant, who complies with all the requirements for grant of licence, shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose:"*

(III) Substitution of sub-section (1) of section 42 of the Act as under:

*"(1) It shall be the duty of all distribution licensees to,—*

*(a) ensure an efficient, co-ordinated and economic distribution system in their area of supply:*

*Provided that a distribution licensee may use the distribution systems of other licensees in the area of supply for supplying power through the system of non-discriminatory open access;*

*(b) give non-discriminatory open access to other distribution licensees on payment of wheeling charges; and*



*(c) provide supply of electricity to the consumers,*

*in accordance with the provisions of this Act and the rules made thereunder by the Central Government and the regulations made by the Appropriate Commission and in accordance with the model regulations laid down by the Forum of Regulators."*

(IV) Insertion of sub-section (4A) and (4B) to section 42 of the Act as under:

*"(4A) A distribution licensee shall provide non-discriminatory open access through its distribution system to all distribution licensees having licence within the same area of supply, subject to payment of wheeling charges and in accordance with the regulations specified by the Appropriate Commission.*

*(4B) In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that a distribution licensee has knowingly failed to provide open access through its distribution system to another distribution licensee or hindered it in any manner from using its distribution network, the Appropriate Commission may, after giving the distribution licensee an opportunity of being heard, issue such directions as it considers necessary and impose the penalties in accordance with the provisions of this Act"*

(IV) Insertion of section 60A to the Act as under:

*"60A. (1) Notwithstanding anything contained in this Act, on the issuance of licence to more than one distribution licensee in an area of supply, the power and associated costs from the existing power purchase agreements with the existing distribution licensee, as on the date of issuing licence to another distribution licensee, shall be shared among all the distribution licensees in the area of supply as per such arrangements as may be specified by the State Commission in accordance with the provisions of this Act and the rules made thereunder by the Central Government:*

*Provided that the State Commission shall periodically review the sharing of power as provided in the existing power purchase agreements:*

*Provided further that a distribution licensee may enter into additional power purchase agreements, after meeting the commitments of the existing power purchase agreements, to meet any additional requirement of power without sharing with other distribution licensees.*

*(2) In case of issuance of licence to more than one distribution*



*licensee in an area of supply, the State Government shall set up a cross subsidy balancing fund which shall be managed by a Government company or entity designated by that Government in accordance with such regulations as the State Commission may make in accordance with the provisions of this Act and the rules made thereunder by the Central Government.*

*(3) Any surplus with a distribution licensee on account of cross subsidy or cross subsidy surcharge or additional surcharge shall be deposited into the fund"*

(V) Substitution of proviso to sub-section (1) of section 62 to the Act as under:

*"Provided that in case of distribution of electricity in the same area of supply by two or more distribution licensees, the Appropriate Commission shall, for promoting competition among such distribution licensees, fix the maximum ceiling of tariff and the minimum tariff for retail sale of electricity in accordance with the provisions of this Act and the rules made thereunder by the Central Government:*

*Provided further that in such ceiling tariff, the cross subsidy, wheeling charges and adjustment in tariff pertaining to the period prior to the introduction of ceiling tariff, if any, shall be indicated separately by the Appropriate Commission."*

(VI) Substitution of sub-section (1) of Section 64 to the Act, whereas the newly substituted third proviso to Section 64(1) is as follows:

*"Provided also that, where two or more distribution licensees operate in the same area of supply, the State Commission shall fix the maximum ceiling of tariff and the minimum tariff, suo motu, after calling for requisite information from such distribution licensees."*

### **Analysis:**

1. The Note on the amendment to Section 14 states that it seeks to facilitate the use of distribution networks of other licensees under provisions of non-discriminatory open access with the objective of enabling competition and enhancing efficiency of distribution licensees.
2. The proposed amendment under clause (b) of section 14 of the Act, have subjected the distribution licensee to "such criterion" as may be prescribed by the Central Government in addition to the regulatory control exercised



by the Appropriate Commission. It is not known as to the qualitative aspects of such criteria which may come to govern the distribution licensee.

3. The proposed amendment under sixth proviso to section 14 as well as proviso to section 42(1)(a) and 42(1)(b) of the act has the effect of allowing the use of distribution networks by all licensees under the provision of non-discriminatory open access. This will allow proliferation of multiple distribution licensees in the same area of supply, leading to avoidance of parallel networks and greater optimization of distribution networks.
4. Failure to comply with the requirements of open access has been given a penalty consequence under sub-section (4B) of section 42 of the Act.
5. The proposed amendment under section 60A enables management of power purchase and cross subsidy in case of multiple distribution licensees by creation of "cross subsidy balancing fund".
6. The State Commission under the proviso to section 62 read with 64 is now mandatorily required to "suo moto" determine the maximum ceiling tariff and the minimum in cases wherein two or more distribution licensees operate within the same area of supply.
7. Apart from the above, it still remains a challenge as to how the distribution licensees would act efficiently with the existing Discom being over-burdened with dues and liabilities towards GENCOs.
8. Further, the provision for periodic review of the sharing of power by the State Commission under Section 60(A), seems theoretical in the absence of a robust mechanism to do the same. The same analogy is also applicable to the management CSS balancing fund. The CSS computation in itself happens to be a complicated exercise with varied level of understanding, varying from state to state; in such scenario, granting multiple licenses within the same command area, would lead to create enormous amount of



confusion and inconsistencies, while determining CSS and putting the same in the fund thereof.

### **3. Introduction of Payment Security provision:**

One of the highlights of the proposed amendment is the insertion of payment security provision. The amendment has proposed changes as under:

(I) Insertion of clause 60(a) under section 2 of the Act:

*"(60a) "security of payment" means such security of payment as may be prescribed by the Central Government"*

Further, three identical provisos are inserted in sections 26, 28 and 32 of the Act:

(II) Insertion of proviso under clause (b) of proposed sub-section (4) of section 26 of the Act, as under:

*"Provided that no electricity shall be scheduled or despatched under such contract unless adequate security of payment, as may be prescribed by the Central Government, has been made;"*

(III) Insertion of proviso under clause (a) of sub-section (3) of section 28 of the Act:

*"Provided that no electricity shall be scheduled a dispatched under such contract unless adequate security of payment, as may be prescribed by the Central Government, has been made;"*

(IV) Insertion of proviso under clause (a) of sub-section (2) of section 32 of the Act;

*"Provided that no electricity shall be scheduled or despatched under such contract unless adequate security of payment, as may be prescribed by the Central Government, has been made,"*

#### **Analysis:**

Since, there is a huge accumulation of unrealized revenues pertaining to default in payment. The proposal is to empower load dispatch center to oversee the payment security mechanism before scheduling dispatch of electricity and to be made mandatory considering the sanctity of the existing contracts unless it is waived by the parties to contract themselves. However, the contracts executed in accordance with Section 49(2) should also be considered under this section in



order to further secure the interest of the generators, as the case may be.

This very step is a conscious effort on the part of the legislators to overcome the growing instances of the generators becoming NPA, while the distribution licensees and the procurers have been sitting over huge backlog of dues. In most of the cases, these dues are paid without LPS and for the purpose of survival, the generators even go for bill discounting. Now, with this proposed amendment by making PSM as mandatory, the legislators have followed the recommendation made by 40<sup>th</sup> Parliamentary Committee. This amendment has taken a step ahead by not only mandating the requirement of PSM between the parties but the same has become a condition precedent for the purpose of scheduling or dispatch of power in respect of the contract. This responsibility is now vested with the NLDC, RLDC and SLDC. This is no doubt a very positive step towards ensuring financial viability of generating assets.

Here, one important aspect is the rules that the Central Government would come up with, which prescribe the modus operandi and the manner in which the PSAM is required to be opened. Therefore, the rules should be conducive and in consonance with the scheme of the amendment.

#### **4. Push on Hydro-electric generation:**

The bill has proposed amendment to section 8 of the Act by introducing (1A), which reads as under:

*"(1A) the authority shall, after examining the scheme, conquer on the scheme in such manner as may be prescribed by the central government."*

The proposed section 8 as per the bill would stand as under:

**"8. Hydro-electric generation.**—(1) *Notwithstanding anything contained in section 7, any generating company intending to set up a hydro-generating station shall prepare and submit to the Authority for its concurrence, a scheme estimated to involve a capital expenditure exceeding such sum, as may be fixed by the Central Government, from time to time, by notification.*

*(1A) the authority shall, after examining the scheme, conquer on the*





*scheme in such manner as may be prescribed by the central government*

*(2) The Authority shall, before concurring in any scheme submitted to it under sub-section (1) have particular regard to, whether or not in its opinion,-*

*(a) the proposed river-works will prejudice the prospects for the best ultimate development of the river or its tributaries for power generation, consistent with the requirements of drinking water, irrigation, navigation, flood-control, or other public purposes, and for this purpose the Authority shall satisfy itself, after consultation with the State Government, the Central Government, or such other agencies as it may deem appropriate, that an adequate study has been made of the optimum location of dams and other river-works;*

*(b) the proposed scheme meets the norms regarding dam design and safety.*

*(3) Where a multi-purpose scheme for the development of any river in any region is in operation, the State Government and the generating company shall co-ordinate their activities with the activities of the persons responsible for such scheme in so far as they are inter-related."*

The notes on the clauses under the bill provides for the following justification:

*"this class seeks to amend section 8 of the principal Act to streamline the concurrence of the hydro generating station by the Authority so as to facilitate development of the hydro sector in the country."*

### **Analysis:**

The proposed amendment seeks to subject the concurrence of the Central Electricity Authority ("**CEA**"), with respect to schemes of Hydroelectric generating stations, to the 'manner as may be prescribed by the Central Government'. The full effect of this provision will depend upon the nature of prescription that will be provided by the Central Government in due time. However, it can definitely be said that while the unamended version had no such strings attached, the insertion of (1A) to section 8 of the Act has made the opinion of CEA subject to the manner as may be prescribed by the Central Government.

### **5. Strengthening the functions of National Load Dispatch Centre:**

(A) The bill has proposed amendments into section 26 of the Act by inserting



sub-sections (4), (5), (6) and (7) as under:

*"(4) The National Load Despatch Centre shall—*

*(a) be the apex body to ensure integrated operation of the power system in the country;*

*(b) be responsible for optimum scheduling and despatch of electricity in the country across different States and regions in accordance with the contracts entered into with the licensees or the generating companies:*

*Provided that no electricity shall be scheduled or despatched under such contract unless adequate security of payment, as may be prescribed by the Central Government, has been made*

*(c) monitor grid operations and ensure security of the electricity grid and for this purpose give directions as necessary to the Regional Load Despatch Centre or State Load Despatch Centre, as the case may be;*

*(d) exercise supervision and control over the inter-regional and inter-State transmission network; and*

*(e) have overall authority for carrying out real time operations of the electricity grid of the country.*

*(5) The National Load Despatch Centre shall give such directions and exercise such supervision and control over the power system as may be required for the safety and security of the electricity grid of the country, for ensuring the stability of grid operation and for achieving maximum economy and efficiency in the operation of the power system throughout the country.*

*(6) The National Load Despatch Centre shall give such directions to the State Load Despatch Centre, as may be necessary through the Regional Load Despatch Centre concerned.*

*(7) 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 from time to time."*

## **Analysis**

*The proposed amendment has provided for statutory powers and functions of the*



*National Load Dispatch Centre for ensuring safety and security of the grid and for the economic and efficient operation of the power system in the country.*

*However, the real time operations to be carried out at the national level, requires more transparency and a platform may be created so that the same can be accessed by the stakeholders. Further, provision with regard to consequential effect of non-compliance of the direction/ instruction of NLDC, is required to be inbuilt as part of the Act.*

(B) The bill has also sought to amend sub-section (2) of section 26 the Act as under:

(I) Omission of words "and functions" from sub-section (2) of section 26 of the Act:

*"(2) The constitution ~~[and functions]~~ of the National Load Despatch Centre shall be such as may be prescribed by the Central Government "*

(II) The proviso to sub-section (2) of section 26 of the Act as under:

*"Provided that the National Load Despatch Centre shall not engage in the business of trading in electricity [except as mandated by the Central Government for implementation of any scheme to ensure the stability of the power system]"*

### **Analysis:**

*The proposed amendment seeks to create an exception for NLDC's engagement in the business of trading, being, as mandated by the Central Government, the implementation of any scheme with the objective of providing "stability of the power system".*

(C) Pertinently, the bill has also sought to amend section 79 of the Act by inserting sub-section (fa) to section 1 of section 79 as under:

*"(fa) to adjudicate upon the disputes involving the National Load Despatch Centre or the Regional Load Despatch Centre in regard to matters connected with sections 26, 28 and 29"*

### **Analysis:**

*The proposed amendment seeks to give the Central Commission the powers to*



*resolve the dispute involving the National Load Despatch Centre and Regional Load Despatch Centres in respect of matters provided under sections 26, 28 and 29 of the Act. This is no doubt brings clarity and statutory certainty, even though otherwise in the absence of a provision such dispute was falling within the ambit of CERC. However, with the proposed amendment in the form of an insertion, the issue of maintainability is put to rest till any further other modification.*

## **6. Modifications in the Functions of Central Commission:**

The bill has proposed several modifications in the functions of the Central Commission, under section 79 of the Act. As already discussed, the insertion of section (fa) has enabled the Central Commission with the powers to resolve the disputes between the National Load Despatch Centres and Regional Load Despatch Centres. In addition, following modifications are proposed as under:

- (I) Omission under clause (f) of sub-section (1) of section 79 of the Act, providing for the function of Central Commission to refer the dispute to arbitration

*"(f) to adjudicate upon the disputes including those relating to performance of obligations under a contract related to sale, purchase or transmission of electricity, involving generating companies or licensees in regard to matters connected with clauses (a) to (d) ~~and to refer any dispute for arbitration]~~"*

- (II) Insertion of clause (ja) of sub-section (1) of section 79 of the Act as under:

*"(ja) to grant license for distributing electricity in more than one State"*

- (III) Insertion of proviso to clause (k) of sub-section (1) of section 79 of the Act as under:

*"Provided that the Chairperson of the Central Commission shall constitute a Bench consisting of a Member appointed under clause (c) of sub-section (2) of section 77 and not more than one Member, as may be nominated by the Chairperson, who shall discharge the functions as provided in clauses (f) and (fa)"*

### **Analysis:**

The modification of Section 79(f) brings more clarity as to the scope and ambit of



the adjudicatory function of CERC. The use of expression 'licensee' instead of 'transmission licensee' brings within its ambit all the licensees which would be involved in any issue pertaining to Section 79(1)(a) to (d). Referring the dispute to arbitration has been completely taken away, which shows the policy and approach of the legislators to keep the disputes of the entire sector with the sectoral regulator and in any case the reference to arbitration was creating more confusion than coming as an aid to the regulators or the parties for that matter.

A completely new concept has been introduced i.e. grant of distribution licensee for more than one state by CERC, since under the unamended Act, there is no concept of obtaining license in more than one state from CERC. This may help the private entities to opt for licenses from more than one state, however, in the absence of any amendment to Section 86(1)(d), it is going to create a clash of regulatory function between a State Commission and CERC qua grant of license to distribution licensee. It may be appreciated that the stakeholders as well as the consumers of the concern state are required to be heard while grant of such distribution license by CERC. Practically, to what extent such power would be exercised while maintaining no conflict with the power and function of the State Commission, is a matter of concern. Further, the terms and conditions upon which such license would be granted by CERC can be different from the regulations and conditions of a State Commission, which is going to adjudicate upon the ARR Petitions of such distribution licensees.

## **7. Modifications in the Functions of State Commission:**

The bill has proposed several modifications in the functions of the State Commission under section 86 of the Act. The same are extracted as under:

(I) Insertion of proviso to clause (a), for the words "Provided that", as under:

*"Provided that the tariff recovers all prudent costs incurred for supply of electricity and also provide reasonable returns on investment and take necessary steps to ensure financial stability of the licensees:*

*Provided further that,"*

(II) Substitution of clause (e) to sub section (1) of section 86 of the Act as



under:

*"(e) promote generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such person, a percentage of the total consumption of electricity in the area of supply of a distribution licensee [which shall not be less than such percentage as may be prescribed by the Central Government];"*

- (III) Insertion after clause (e) to sub section (1) of section 86 of the Act as under:

*"(ea) promote co-generation of electricity;"*

- (IV) Substitution of clause (f), to sub section (1) of section 86 of the Act as under:

*"(f) adjudicate upon the disputes including those relating to performance of obligations under contracts related to sale, purchase or transmission of electricity involving generating companies or licensees:*

*Provided that in case of reneging of Power Purchase Agreement by a generating company or a licensee, the dispute shall be adjudicated along with appropriate compensation to the affected party, within ninety days from the date of submission of petition to the Appropriate Commission;*

*(fa) adjudicate upon the disputes involving the State Load Despatch Centre in regard to matters connected with section 32 and section 33;"*

- (V) Insertion of clause (j), to sub section (1) of section 86 of the Act as under:

*"(ja) issue directions or guidelines or specify regulations to secure consumer choice and an efficient, coordinated and economical use of the distribution system, where there are more than one distribution licensee in an area of supply;*

*(jb) review the resource adequacy at intervals of every six months for each of the distribution licensees in accordance with the guidelines issued by the Central Government;"*

- (VI) Insertion under clause (k), to sub section (1) of section 86 of the Act as under:

*"discharge such other functions as may be assigned to it under the*



*Act by [the Central Government or the State Government]”*

(VII) Insertion of after clause (k), to sub section (1) of section 86 of the Act as under:

*“Provided that the Chairperson of the State Commission shall constitute a Bench consisting of a Member appointed under clause (c) of sub-section (2) of section 84 and not more than one Member, as may be nominated by the Chairperson, who shall discharge the functions provided in clauses (f) and (fa).”*

**Analysis:**

1. The proviso added to Section 86(1)(a) reassures the principles already engraved under Section 61 and 62 of the Act read with the relevant regulations. It is trying to strike a balance between both the viability of the generator as well as the licensees.
2. There is a clear stipulation, under clause (e), upon the State Commission in respect of Renewable Purchase Obligation (“**RPO**”) to be kept not below the mandate provided by the Central Government. This will make the targets in respect of RPO consistent and uniform across the board, and will bring more parity. However, this does not take away the power of the respective state commissions to give their own trajectory over and above the percentage prescribed by the Central Government.
3. Co-generation as a matter of policy has been taken away from the ambit of RPO, which is a culmination of various conflict of opinion amongst state commissions as well as their regulations. However, now it is upon the state commission to lay down the road map for promotion co-generation since the obligation to promote is retained with the insertion of Section 86(1)(ea).
4. The enabling part of the proposed Section 86(1)(f) makes the scope and ambit clearer and there is complete removal of any chance of referring any dispute for arbitration. The proviso is a welcome move by stipulating the specified period of time within which the dispute with regard to reneging the PPA and the compensation thereof, shall have to be adjudicated. However, the expression ‘appropriate commission’ makes the provision ambiguous,



since Section 86 of the Act deals with the functions of the state commission only. Therefore, reference to appropriate commission would distort the scheme of the Act.

5. An identical provision to clause (fa) to sub-section (1) of section 79 is added to section 86, providing for jurisdiction of the State Commission to resolve disputes for matters covered in sections 32 and 33 of the Act in respect of State Load Despatch Centres.
6. The function assigned under Clause (ja) and (jb) are going to be challenging and the same would give rise to various conflicts with respect to the functioning of the multiple discoms within a particular area.
7. The insertion of central Government and state Government is reflective of the approach of the legislators in the present piece of legislation to have an overreaching governmental interference and supervision, in the day to day functioning of the regulators. Apart from this clause, there are various clause in which the prescription by the central Government has been inserted or reproduced which would beyond a particular point put question as to the independence of the regulator from the tentacles of central Government.

## **8. Open access to Consumers to Inter State Transmission System Network**

The bill has proposed amendment to section 40 the Act. The same is as under:

- (I) Insertion of proviso to clause (a) in clause (c), in sub-clause (ii), after the fourth proviso is as under:

*"Provided also that a consumer who requires supply of electricity where the maximum power to be made available at any time exceeds one megawatt shall be entitled to get open access to inter-State transmission system in accordance with the regulations made by the Central Commission, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission."*

- (II) Insertion of Explanation under clause (b) after the fifth proviso as so





inserted, is as under:

*"Explanation. For the purposes of this section and section 42, the expression "megawatt" means ten lakh watts."*

### **Analysis:**

The proposed amendment has allowed the consumers (with capacity > 1MW) to directly access the ISTS network on payment of appropriate charges.

### **9. Provision regarding tariff**

(I) Insertion of clause (g) and (ga) under sub-section (1) of section 61 of the act as under:

*"(g) the tariff recovers all prudent costs incurred for supply of electricity;*

*(ga) the tariff reduces cross subsidies in the manner specified by the Appropriate Commission;"*

(II) Substitution of the proviso to clause (d) of sub-section (1) of section 62 of the act as under:

*"Provided that in case of distribution of electricity in the same area of supply by two or more distribution licensees, the Appropriate Commission shall, for promoting competition among such distribution licensees, fix the maximum ceiling of tariff and the minimum tariff for retail sale of electricity in accordance with the provisions of this Act and the rules made thereunder by the Central Government:*

*Provided further that in such ceiling tariff, the cross subsidy, wheeling charges and adjustment in tariff pertaining to the period prior to the introduction of ceiling tariff, if any, shall be indicated separately by the Appropriate Commission."*

(III) Insertion of the sub-section (4) of section 62 of the act as under:

*"Provided that the Appropriate Commission may, by an order and for reasons to be recorded in writing, allow the licensee to effect the changes due to amendment in tariff, not exceeding in four stages, during a year in accordance with the Tariff Policy"*

(IV) Substitution of sub-section (1) of section 64 of the act as under:

*"(1) An application for determination of tariff under section 62 shall*



*be made by a generating company or licensee at such time and in such manner and accompanied by such fee, as may be specified by the Appropriate Commission:*

*Provided that the time specified should be such that the new tariff comes into effect from the beginning of the following financial year: Provided further that if an application is not made by a generating company or licensee on time, the State Commission shall, not later than thirty days of the last date specified in the regulations, initiate proceedings for determination of tariff and call for such information, details and documents as may be required for such determination with the objective of determining the tariff before the beginning of the financial year:*

*Provided also that, where two or more distribution licensees operate in the same area of supply, the State Commission shall fix the maximum ceiling of tariff and the minimum tariff, suo motu, after calling for requisite information from such distribution licensees.”;*

- (V) The words “one hundred and twenty days from receipt of an application”, is substituted by the words “ninety days from the date of receipt of the application or initiation of proceedings”.
- (VI) Insertion of clause (a) of section 64 of the act as under:

*“Provided that if tariff order cannot be issued due to any reasons which are to be recorded in writing, the Appropriate Commission shall issue the order for interim tariff within the said period of ninety days from the date of receipt of such application or initiation of such proceedings:*

*Provided further that the interim tariff shall remain in operation till issue of final tariff order which shall be issued within such period not exceeding one hundred and fifty days of receipt of such application for determination of tariff or initiation of such proceedings.”.*

### **Analysis:**

- Over the period of almost 3 decades, Section 61 has been construed to be guiding principle so far as the scheme of the Act is concerned pertaining to tariff. A thrust is being given with regard to the recovery of cost as well as progressive reduction of CSS by the appropriate Commission. The erstwhile Section 61(g) has been now bifurcated into 2 provisions in order to supply independent emphasis upon these 2 aspects of recovery of prudent cost as



well as reducing cost subsidy.

2. The appropriate Commission is now under an obligation to determine the ceiling tariff and the maximum tariff for retail sale of electricity, further, the cross subsidy, wheeling charges and adjustment in tariff shall have to be specifically indicated in the ceiling tariff.
3. Changes with regard to amendment in tariff is now allowed in 4 stages during a year and such modification can only be made by the direction of the appropriate Commission by recording reasons inviting.
4. For the purpose of filing tariff petition under Section 62, the amended provision specifies stipulated time period within which the application has to be made and in the absence of application by the generator or the licensee, the appropriate Commission may suo-moto proceeding with the determination process.
5. In the absence of determination or tariff within the stipulated time, the appropriate Commission shall issue order for interim tariff, which shall remain in force till final tariff is determined. Therefore, the regulations made by the appropriate Commission shall have to be, now, in consonance with these provisions proposed by the amendment.

## **10. Power of execution**

- (I) Under Section 94, the following sub-sections have been inserted after sub-section 3 of Section 94:

*"(4) An order made by the Appropriate Commission or its Bench shall be executable as a decree of a civil court and, for this purpose, such Commission or Bench shall have all the powers of a civil court including but not limited to powers of attachment and sale of property and appointment of a receiver.*

*(5) Notwithstanding anything contained in sub-section (4), the Appropriate Commission or Bench referred to in that sub-section may transmit an 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"*

### **Analysis:**

Specific power of a civil court is being vested with the commission or its bench and such power is also inclusive of power of attachment, sale of property and appointment of a receiver. Further, the appropriate commission is empowered to transmit an order made by it to a civil court having local jurisdiction for the purpose of executing the order as if it was a decree made by a court. These insertions are no doubt efficacious and going to bring more teeth to the power of the Appropriate Commission to enforce its own order.

### **11. Specific provision for penalties in respect of non-compliance with RPO**

The bill has also proposed amendment under Section 142 of the Act. The same has been substituted by the following:

*"142. (1) Where the Appropriate Commission is satisfied on a complaint made it to or otherwise that any person has contravened any of the provisions of this Act or the rules made thereunder, the Commission may after giving such person an opportunity of being heard, by order in writing, direct that without prejudice to any other penalty to which he may be liable under this Act, such person shall be liable to pay a penalty, which shall not exceed one crore rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six lakh rupees for each day during which the failure continues after contravention of the first such direction.*

*(2) Where the Appropriate Commission is satisfied on a complaint made to it or otherwise that any person has contravened any regulation, direction or order issued by it, the Commission may after giving such person an opportunity of being heard, by order in writing, direct that without prejudice to any other penalty to which he may be liable under this Act, such person shall be liable to pay a penalty, which shall not exceed ten lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to sixty thousand rupees for each day during which the failure continues after contravention of the first such direction.*

*(3) Notwithstanding anything contained in sub-section (1) and (2), where the Appropriate Commission is satisfied on a complaint filed before it or otherwise, that obligated entity has not purchased power from renewable sources of energy as specified under clause (e) of sub section (1) of section 86, the Commission shall after giving such entity an opportunity of being*



*heard, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall be liable to pay a penalty of a sum calculated as a rate of -*

*(i) not less than twenty - five paisa per kilowatt - hour and not more than thirty-five paisa per kilowatt-hour for the shortfall in purchase in the first year of default;*

*(ii) not less than thirty-five paisa per kilowatt-hour and not more than fifty paisa per kilowatt hour for the shortfall in purchase continuing after the first year of default”*

### **Analysis:**

1. Monetary penalty of not more than One crore rupees is imposed on any person under sub-section (1) of section 142 of the Act, with an additional penalty of six lakhs rupees in case of successive breach or contravention of the provisions, under the Act. Further, a penalty not exceeding ten lakhs rupees, may be imposed in case of breach of any of the regulations, directions or orders of the Appropriate Commission under sub-section (2) of section 142 of the Act.
2. A specific penalty for the breach of renewable purchase obligations under sub-section (3) of section 142 of the Act is stipulated, providing for greater impetus for the obligated entities to meet their RPO targets. It would also be interesting to examine if the cost of meeting the shortfall by purchase of Renewable Energy Certificates exceeds the penalty stipulated, as that is likely to have an effect on the REC market.

### **12. Miscellaneous:**

The proposed amendment seeks to insert clause (3A) to sub-section (3) of section 166 of the act as under:

*“(3A) The Forum of Regulators referred to in sub-section (2) shall discharge the following functions, namely: -*

*(a) Prepare and lay on model regulations for the guidance of State Commission for the purposes of sub-section (1) of section 42, sub-section (1) of section 43, sub-sections (1) and (2) of section 60A, section 61 and*



*the first proviso to sub-section (1) of section 62, in accordance with the provisions of this Act and the rules made thereunder;*

*(b) Monitor the status of compliance of the provisions of clause (e) of sub-section (1) of section 86 by distribution licensees on annual basis and submit a report to the Central Government; and*

*(c) any other functions, as may be prescribed by the Central Government."*

**Analysis:**

The amendment seeks to empower the Forum of Regulators to publish model regulations on various matters related to the ease of implementation of the provisions of the act. The monitoring of the status of compliance from the distribution licensee would act as a beneficial change.