

Comments on

Proposed Amendments to Electricity Act 2003

2020

Comments from AEEE on Proposed Amendments to Electricity Act 2003

Page No. of the document	Section No. ; Sub-section title	Comments
1	Amendment of Section 2; para 3(iii), 3(v)	Need for more elaboration and clarity about the functions and responsibilities of “Distribution sub-licensee” and “franchisee”.
2	Para 6 of statement of objects	There is now proposed an added responsibility of ensuring security of payments duty to the dispatch centre. The load dispatch centre is a body regulating the flow of power from generating stations to consumers and their principles for load dispatch is clearly laid out. Adding this responsibility to the LDC will complicate their task further and will necessitate bringing in an element of new skills to the LDC.
2, 3	Section 2; Clause 17(a) insertion and Clause 27 substitution Section 14	The definition of distribution sub licensees and definition of franchisee has been substituted in the amendment. Notable difference is that there is that one is approved by the commission, whereas the other is informed to the commission. Seventh proviso is to be substituted and the changes are in line with the efforts to privatize distribution of electricity and enabling entry of new players. It has been mentioned that both entities don’t need separate licenses. But it is unclear that what is the difference between sub-licensee and a franchisee in terms of their functions.
3	Section 3; 3(a)	Introduction of separate National Renewable Energy Policy along with National Electricity Policy and Tariff Policy is a welcome step and reflects commitment towards renewable.
3	Amendment of Section 3; para 4	EA 2003 directs the Central Government to prepare the National Electricity Policy from time to time and notify the National Electricity Plan once in five years, in consultation with the State Governments and the Authority for development of the power system based on optimal utilisation of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy. It imperative to include electrical energy savings through utility-driven Demand Side Management as one of the resources to be considered in the National Electricity Policy and the National Electricity Plan.
3	Section 26	Role of NLDC was not a part of EA, and was defined vide MoP notification. This amendment is empowering of SLDC and its responsibilities for system operation.

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4 - 5	Amendment of Section 38; para 9 Amendment of Section 39; para 10 Amendment of Section 40; para 11	The proposed amendment leaves the imposition of surcharge to the discretion of State Commission and does away with any guidance on surcharge (its application and use). This may lead to levying of surcharge by the State Commissions without proper basis which is tantamount to misuse of the fiscal instrument. This will ultimately discourage Open Access and defeats the very purpose of the Open Access provision.
6	Amendment of Section 61; para 15 (i)	The omission of the word “progressively” is a welcome step and shows the emphasis that tariff should be reflective of cost of supply.
6	Amendment of Section 62; para 16	The proposed amendments are a welcome step to bring clarity and accountability with respect to the provision of subsidy and tariff fixing at large. However, the responsibility is taken away from the hands of the commission to the Tariff Policy, there by diminishing role of commissions. Moreover, changes need to be made in Tariff policy to reflect the same.
6 & 8	Amendment of Section 78; para 20 Amendment of Section 82; para 22(i), 22(iii)	With the omission of Section 85 and the proposed updates to Section 78 and 82, it appears that a State may have no representation in the appointment of members to the SERC, which could negatively impact the appointment of suitable members to the SERC. An alternative for Section 78 (Selection Committee) is to have the Chief Secretary of the concerned state as an additional representative, in addition to the rotational Chief Secretaries.
7	Section 65; Provision (i)	Direct transfer of subsidy to the consumer is appreciated as it will resolves the issue faced by DISCOMs in delay in getting the subsidy amount from the State government and thereby impacting the financial their health.
9	22, Amendment of Section 82	This is also not consistent with other laws since no other law provides for a state authority to look into matters of another state authority (e.g labour courts, industry laws etc.). Same applies to high courts as well. Jurisdictions of the various state bodies is an essential ingredient of the structure of the Indian constitution.
9	Amendment of Section 84; para 23 Deletion of Section 85; para 24	The proposed amendment is a much-needed improvement and this will help implement innovative and cutting-edge measures by the utilities with necessary regulatory support.
10	Amendment of Section 86; para 25	As part of the set of functions of the State Commission, promotion of electrical energy savings through utility-driven Demand Side Management should be recognised and

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		included in Section 86, and the State Commission should stipulate the savings amount as a percentage of the total consumption of electricity in the area of a distribution licence, as has been considered in case of renewable energy (refer to clause (e)).
10	Insertion of new Chapter; para 28	<p>Whether creation of a “super” authority is the appropriate way to address an issue is questionable. India’s electricity sector is facing similar types of challenges pertaining to compliance and enforcement, regulator’s role, etc. Creating “super” authorities at the central level may not be a feasible way to address the problems. There is another dimension to this challenge which is constitutional in nature. While creating authorities, one has to take into account the constitutional validity since Power is a concurrent subject in India.</p> <p>A new regulatory body to handle contracts have been introduced with a chairperson, technical and judicial members. This is a centralised body, which will adjudicate from Delhi. Erstwhile power of State regulators such as those under clause 29-24 has been handed over to this new body. Though the intend of the bring discipline to incidents of demand for termination of power purchase agreements and the violations of contractual terms, this is a notable weakening of power of the state regulators. Overall it is beneficial to the power producer, not for the DISCOM</p>
10	Section86(1)	<p>On top of renewable purchase obligations, hydro purchase obligations will be added. Given that hydro helps in flexible operation grid, it appears as a positive step. However, there has been challenges in enforcing renewable purchase obligations. It might have a compounded effect as often state have resorted to reducing their renewable purchase obligations quoting the share of hydro already in their generation mix.</p>

General comments or comments on particular aspects which are not covered in the current Draft:

1. There is no amendment proposed for timely collection & dissemination of electricity consumption data at more granular levels, and for making such data available to the public, to be used for research and for informed data-driven policymaking for efficient use of electricity.
2. It is good that renewable energy has been explicitly included to promote generation from renewable sources. Similar amendments should have been included to promote and prescribe “Energy Efficiency as a resource”.

3. The ICAP recommends “Mandatory disclosures and Third-Party verification of building cooling requirement and energy use for all commercial (non-residential) buildings that have a connected load of 100 kW or higher” – does this fall under the ambit of the EC Act and MoP – can there be a provision to institutionalise this data disclosure?
4. In the draft version that came in 2018, terms like decentralised distributed energy, ancillary service, electric vehicle charging, smart grid etc, were defined in the Act, which is missing in this version.
5. Draft issued on 7th September 2018 provided more clarity in terms of what type of activity will not be considered as trading, distribution or supply such as for telecommunication, charging of batteries for electric vehicles by charging stations. However, all such provisions have been removed from the current draft.
6. Draft issued on 7th September 2018 also added the provision to review the past performance of the licensee prior to the extension of the license as in the section 20. However, this has been removed in the latest draft. We believe that it was a welcome step and should have been retained.
7. Draft issued on 7th September 2018 included the initiative to develop forward and future market in case of power. However, that has been removed from the recent draft. This provision would have helped in bringing out commercial efficiency of the sector.
8. The earlier draft issued on 7th September 2018 proposed the separation of carriage and content i.e. distribution and supply to address the challenge faced by power distribution which is the weakest link. The separation of carriage and content should have been retained as that would have enabled competition and enhanced efficiency at the distribution end by allowing end consumers to choose their suppliers.
9. It appears that the entire amendment is for the purposes of creating a new body titled ‘Electricity Contract Enforcement Authority’. There is not enough justification given anywhere on the need for such an authority when already legal options exist as defined in the contracts for resolving disputes on contract related matters.
10. There is no provision in the Electricity Act 2003 that explicitly defines “Demand Side Management” or “Demand Side Flexible Resources” as an alternative resource option for DISCOMs in their planning to meet the forecasted peak power and energy demand both in the short and long term. Recognition of demand side resources as “Alternative Resource” in the energy resource basket of power utilities can enable it to compete with supply side options within the principles of equity, reliability and cost effectiveness.
11. There is no clear provision in the Act which recognises the need for distribution licensees to leverage Ancillary Services in providing quality electricity service in their distribution areas in a cost-effective manner.

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