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Lr. No. APERC/Secy/Tariff/F: 85/D.No. 270 /2020, Date: 05 -06-2020.

Sub: Proposed amendment to Electricity Act, 2003-Comments of
APERC-Reg

Ref: 1.No.42/6/2011-R&R (Vol-VIII),MoP,Gol,NewDelhi Dt.17.04.2020

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The comments of Andhra Pradesh Electricity Regulatory Commission (APERC) on the proposed amendment to the Electricity Act, 2003 are herewith enclosed.

Yours faithfully,

Commission Secretary (i/c)

Encl: As above.

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Existing Provisions	Proposed Provisions	Comments of APERC
Section 1 (1) This Act may be called the Electricity Act, 2003. (2) This Act may be called the Electricity Act, 2003. It extends to the whole of India except the State of Jammu and Kashmir....	Section 1 (1) This Act may be called the Electricity Act, 2003. (2) This Act may be called the Electricity Act, 2003. It extends to the whole of India except the State of Jammu and Kashmir	No comments.
Section 2 (11) “ Chairperson” means the Chairperson of the Authority or Appropriate Commission or the Appellate Tribunal as the case may be;	Section 2 (11) “ Chairperson” means the Chairperson of the Authority or Appropriate Commission or Electricity Contract Enforcement Authority or the Appellate Tribunal as the case may be;	No amendment is required.
New Insertion	Section 2 (15a) Cross border trade of electricity” means transactions involving import or export of electricity between India and any other country and includes transactions related to passage of electricity through our country in transit between two other countries;	The expression “our country” may be reworded.
New Insertion	Section 2 (17a) “Distribution sub-licensee” means a person recognized as such and authorized by the distribution licensee to distribute electricity on its behalf in a particular area within its area of supply, with the permission of the appropriate State Commission. Any reference to a distribution licensee under the Act shall include a reference to a sub-distribution	The Electricity Act does not envisage distribution sub-licensee. However, Section 2 (27) of the Act defined Franchisee. Under 7 th proviso to Section 14, the distribution licensee is empowered to entrust distribution activity “through another person” for a specified area. Though the word Franchisee is not

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	licensee;	mentioned in the said proviso, on a conjoint reading of the proviso with the definition of “Franchisee”, it is obvious that the words “through another person” is referable to Franchisee under the 7th proviso to Section 14. When there is already a provision enabling the distribution licensee to entrust its activity in a specified area to a Franchisee, introduction of the concept of distribution sub-licensee does not serve any purpose. On the contrary, this creates a dichotomy and confusion, because for a Franchisee, no permission is needed from the ERC, whereas for a sub-licensee such permission is required. <u>Therefore, Creation of the non-regulated entity Distribution Sub Licensee is not required. Rather, it is not desirable for the following reasons:</u> I. There is no clarity about the role and responsibility of Distribution Sub Licensee. II. As the Distribution Sub Licensee could discharge the functions of a licensee, it has no obligation to buy power exclusively from the Distribution Licensee. It would mean that it could procure power independently to the

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		exclusion of power contracted by distribution licensee which will get stranded. It will add to the Licensee's costs for recovery through higher tariff. III. As the Distribution Sub Licensee is not subjected to regulatory regime, there is an apprehension that a part of the area of Distribution Licensee or a set of its consumers could be assigned to it with no liability to pay cross subsidy surcharge. It would then adversely impact the remaining consumers of the incumbent Distribution Licensee in terms of tariff. IV. Capital expenditure by the Sub Licensee for infrastructure creation on behalf of the Licensee has been cited as a justification for its creation/induction. No arrangement has been suggested for recovery. It appears to be flimsy ground to creation. But there is no clarity as to how this cost would be recovered. V. Lastly, for any area such sub distribution licensees would also be monopolies with no choice for the consumers so as to build

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		pressure for better service and reasonable returns on investment.
New Insertion	Section 2 (24a)“Electricity Contract Enforcement Authority” means an Electricity Contract Enforcement Authority referred to in sub-section (1) of section 109A;	There is no need for such an authority. Relevant comments have been detailed against proposed section 109A.
Section 2 (27) “franchisee means a person authorised by a distribution licensee to distribute electricity on its behalf in a particular area within his area of supply;	Section 2 (27) “franchisee means a person recognized as such and authorized by a distribution licensee to distribute electricity on its behalf in a particular area within his area of supply, under information to the appropriate State Commission. Subject to the provisions of the agreement entered into between the distribution licensee and the franchisee, any reference to a distribution licensee in the Act shall include a franchisee;	No Comments.
Section 2 (43) “Member” means the Member of the Appropriate Commission or Authority or Joint Commission, or the Appellate Tribunal, as the case may be, and includes the Chairperson of such Commission or Authority or appellate tribunal;	Section 2 (43) "Member" means the Member of the Appropriate Commission or Authority or Joint Commission, or Electricity Contract Enforcement Authority or the Appellate Tribunal, as the case may be, and includes the Chairperson of such Commission or Electricity Contract Enforcement Authority or Authority or Appellate Tribunal;	No amendment is required.
New Insertion	Section 3A National Renewable Energy Policy - The Central Government may, from time to time, after such consultation with the State Governments, as may be considered necessary, prepare and notify a National	Under the existing regime, consultation by the Central Government with the State Governments is mandatory before formulating National Electricity

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	Renewable Energy Policy for the promotion of generation of electricity from renewable sources of energy and prescribe a minimum percentage of purchase of electricity from renewable and hydro sources of energy.	Policy both for Conventional and Non-Conventional energy sources. As per the proposed amendment by way of Section- 3(A) read with Section 86 (1) (e), consultation is only made discretionary in respect of Renewable Energy Sources. This may be highly detrimental to the interests of the State Governments and the distribution licensees because the proposed amendment under Section 86 (1) (e), curtails the discretion of the State ERCs to prescribe percentages for procurement of Renewable Energy by the licensees as such percentages shall be fixed by the ERCs “as prescribed by the Central Government”. It is needless to state that each State differs from others on natural resources as geographical and socio-economic aspects. Unless consultation with each State is mandatory, there is a likelihood of arbitrary fixation of percentages of Renewable Energy obligation which may impose unbearable burden on certain States not enriched with Renewable Energy Sources. Further, the blanket power of prescription of percentages of RPO with the Central Government would totally affect the autonomy and independence of State ERCs which is not desirable more so when the electricity subject is

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		in the concurrent list. If the proposed amendment is carried through, ERCs will be reduced to the Status of mere executing agencies of the Central Government with respect to Renewable Energy field. When the existing Electricity Act has conceived Regulatory Commissions as independent bodies, taking away their power in prescribing appropriate percentages of RPO runs contrary to the legislative intention of the plenary legislation. As regards inclusion of large hydro under Renewable Energy sources, by the proposed amendment, while in-principle there cannot be any objection for this, prescription of separate RPO for hydel may cause heavy burden on the States which do not have adequate hydro resources. Therefore, the words “and hydro” after the words “from renewable” in the proposed Section 3 A, Section 61 (h) and Section 86 (1) (e) need to be deleted. <u>Further, Addition of Section 3A is not needed as there is no need for a separate National Renewable Energy Policy for the reasons mentioned below:</u> i. The National Electricity Policy is mandated

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		under Section 3 (1) of Electricity Act, 2003 to take care of the utilization of hydro and renewable energy sources. Therefore, existing National Electricity policy is adequate and the intention in the proposed amendment could be easily covered while formulating or making any changes to National Electricity Policy. ii. Making it discretionary to consult State Governments is contrary to the provisions of Section 3. Excluding States from the consultative process is ultra vires of the constitution as Electricity is in concurrent list. iii. Giving a country wide prescription through a central policy diktat for uniform adherence to given targets of RE procurement is ill conceived. State Commissions are best placed to give the trajectory for RE integration taking into account the financial impact on the consumers and the status of power infrastructure to integrate the RE into the State Grid. iv. Fixing source wise RPO targets is not as per the global practice. For a state, source should not matter as long as it is renewable.

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Section 14 The Appropriate Commission may, on an application made to it under section 15, grant any person licence to any person – (a) to transmit electricity as a transmission licensee; or (b) to distribute electricity as a distribution licensee; or (c) to undertake trading in electricity as an electricity trader, in any area as may be specified in the licence: Provided that (7th Proviso) Provided also that in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person, that person shall not be required to obtain any separate licence from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply:	Section 14 The Appropriate Commission may, on an application made to it under section 15, grant any person licence to any person – (a) to transmit electricity as a transmission licensee; or (b) to distribute electricity as a distribution licensee; or (c) to undertake trading in electricity as an electricity trader, in any area as may be specified in the licence: Provided that (7th Proviso) Provided also that a franchisee shall not be required to obtain any separate license from the appropriate State Commission and such distribution licensee shall continue to remain responsible for distribution of electricity in its area of supply: (after 7th Proviso, insertions of a new Proviso) Provided also that a distribution sub-licensee shall not be required to obtain any separate license from the appropriate State Commission:	Similar views as at section 2 (17) supra.
Section 26 (1) The Central Government may establish a centre at the national level, to be known as the National Load Despatch Centre for optimum scheduling and despatch of electricity among the Regional Load Despatch Centres. (2) The constitution and functions of	Section 26 (1) The Central Government may establish a centre at the national level, to be known as the National Load Despatch Centre for optimum scheduling and despatch of electricity among the Regional Load Despatch Centres. (2) The constitution and functions of the National Load Despatch Centre shall be	Under the proposed sub-section (6), the NLDC is proposed to be vested with power of issuing directions commencing from Regional Load Despatch Centre upto sub-station and any other person connected with the operation of power system. Under

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the National Load Despatch Centre shall be such as may be prescribed by the Central Government: Provided that the National Load Despatch Centre shall not engage in the business of trading in electricity. (3) The National Load Despatch Centre shall be operated by a Government company or any authority or corporation established or constituted by or under any Central Act, as may be notified by the Central Government.	such as may be prescribed by the Central Government: Provided that the National Load Despatch Centre shall not engage in the business of trading in electricity. (3) The National Load Despatch Centre shall be operated by a Government company or any authority or corporation established or constituted by or under any Central Act, as may be notified by the Central Government. (4) the National Load Despatch Centre shall (a) be responsible for optimum scheduling and despatch of electricity in the country across different regions in accordance with the contracts entered into with the licensees or the generating companies; (b) monitor grid operations; (c) exercise supervision and control over the inter-regional and inter- state transmission network; and (d) have overall authority for carrying out real time operations of the national grid. (5) The National Load Despatch Centre may give such directions and exercise such supervision and control as may be required for the safety and security of the national grid and for ensuring the stability of grid operation throughout the country.	Section 32 of the Act, State Load Despatch Centre is the apex body in respect of intra-state transmission. Under clause (d) of sub-section (2), it is empowered to exercise supervision and control over the intra-state transmission system and under clause (e), it shall be responsible to carryout operations for grid control and despatch of electricity within the State. Under Section 33 of the Act, the SLDC in a State is empowered to give directions and exercise supervision and control for ensuring integrated grid operations and every 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 SLDC. The proposed sub-section (6) impinges upon the power of SLDC with regard to supervision and control of the intra-state transmission apart from giving rise to a situation where there may be conflicting directions emanating from NLDC on one side and the SLDC on the other side to licensees, generating companies, generating stations and sub-stations involved in the intra-state operations. Sub-section (6) cannot coexist with Sections 32 and 33. Intra- State Transmission decisions should be

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	(6) 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.	left to the SLDC only, which is already envisaged under the existing provision of the Act as stated supra.
Section 28 (1) The Regional Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in the concerned region. (2) The Regional Load Despatch Centre shall comply with such principles, guidelines and methodologies in respect of the wheeling and optimum scheduling and despatch of electricity as the Central Commission may specify in the Grid Code. (3) The Regional Load Despatch Centre shall - (a) be responsible for optimum scheduling and despatch of electricity within the region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region;	Section 28 (1) The Regional Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in the concerned region. (2) The Regional Load Despatch Centre shall comply with such principles, guidelines and methodologies in respect of the wheeling and optimum scheduling and despatch of electricity as the Central Commission may specify in the Grid Code. (3) The Regional Load Despatch Centre shall - (a) be responsible for optimum scheduling and despatch of electricity within the region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region; Provided that no electricity shall be scheduled or despatched under such contract unless adequate security of payment, as agreed upon by the parties to	Addition of the proviso to sub section (3) (a) in section 28 and sub section (2) (a) proposed by the amendment is not necessary. Payment security mechanism is part of PPAs approved by the Commission. Compliance to such mechanism needs to be enforced by Commission. NLDC and SLDCs are highly technical bodies that have scheduling and despatch of electricity as their core competence. Asking them to monitor payment security mechanism would not be proper. Instead, State/Central Commissions could be strengthened with legal mandate to ensure compliance of PPAs approved by them.

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(b) monitor grid operations; (c) keep accounts of the quantity of electricity transmitted through the regional grid; 	the contract, has been provided. (b) monitor grid operations; (c) keep accounts of the quantity of electricity transmitted through the regional grid; 	
Section 32 (1) The State Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in a State. (2) The State Load Despatch Centre shall - (a) be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State; (b) monitor grid operations; 	Section 32 (1) The State Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in a State. (2) The State Load Despatch Centre shall - (a) be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State; Provided that no electricity shall be scheduled or despatched under such contract unless adequate security of payment, as agreed upon by the parties to the contract, has been provided. (b) monitor grid operations; 	Similar views as at section 28 supra
Section 38 (1) The Central Government may	Section 38 (1) The Central Government may notify any	The portion “as may be specified by the State Commission under sub-section (2) of section 42, if

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notify any Government company as the Central Transmission Utility ... (2) The functions of the Central Transmission Utility shall be – (a) to undertake transmission of electricity through inter-State transmission system; ... (d) to provide non-discriminatory open access to its transmission system for use by- (i) any licensee or generating company on payment of the transmission charges; or (ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the Central Commission: ...	Government company as the Central Transmission Utility ... (2) The functions of the Central Transmission Utility shall be – (a) to undertake transmission of electricity through inter-State transmission system; ... (d) to provide non-discriminatory open access to its transmission system for use by- (i) any licensee or generating company on payment of the transmission charges; or (ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the Central Commission and a surcharge, as may be specified by the State Commission under sub-section (2) of section 42, if required by the Appropriate Commission to be collected by it.	required by the Appropriate Commission to be collected by it” appearing in the sub section (2) (d) (ii) may be replaced by “as may be specified by the Appropriate State Commission under sub-section (2) of section 42”. Reason: There is lack of clarity in the proposed provision. All charges including surcharge are to be collected by the concerned DISCOM, and not by the Commission.
Section 39 (1) The State Government may notify the Board or a Government	Section 39 (1) The State Government may notify the Board or a Government company as the	Similar views as at Section 38 supra.

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company as the State Transmission Utility: ... (2) The functions of the State Transmission Utility shall be - ... (d) to provide non-discriminatory open access to its transmission system for use by- (i) any licensee or generating company on payment of the transmission charges ; or (ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission: ...	State Transmission Utility: ... (2) The functions of the State Transmission Utility shall be - ... (d) to provide non-discriminatory open access to its transmission system for use by- (i) any licensee or generating company on payment of the transmission charges ; or (ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission and a surcharge, as may be specified by the State Commission under sub-section (2) of section 42, if required by the State Commission to be collected by it. ...	
Section 40 It shall be the duty of a transmission licensee -	Section 40 It shall be the duty of a transmission licensee -	No Comments.

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... (c) to provide non-discriminatory open access to its transmission system for use by- (i) any licensee or generating company on payment of the transmission charges; or (ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission: ...	... (c) to provide non-discriminatory open access to its transmission system for use by- (i) any licensee or generating company on payment of the transmission charges; or (ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the StateAppropriateCommission. ...	
Section 42 (1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act. (2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed	Section 42 (1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act. (2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the	No amendment to this section is required. A common thread runs through the third proviso to Section 42 (2), Sections 61 (g), 62 (3) and 86 (1) (e) of the Act. The proposed amendment to the third proviso to section 42 (2) would take away the discretion of the Electricity Regulatory Commissions in discharge of their statutory/legislative function relating to fixation of tariffs. The existing provision <i>inter alia</i> vests absolute discretion in the Commissions in the matter of progressive reduction of surcharge and cross

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date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints: Provided that such open access shall be allowed on payment of a surcharge in addition to the charges for wheeling as may be determined by the State Commission: Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee: Provided also that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission: Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use. Provided also that the State Commission shall, not later than five years from the date of	charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints: Provided that such open access shall be allowed on payment of a surcharge, in addition to the charges and charges for wheeling, as may be determined by the State Commission in addition to the charges for intra-state transmission, as determined under section 39, if applicable, and charges for inter-state transmission, as determined by the Central Commission under section 38, if applicable: Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee: Provided also that such surcharge and cross subsidies shall be progressively reduced by the State Commission in the manner as may be specified by the State Commission provided in the Tariff Policy: Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use. (New Proviso) Provided also that the manner of payment	subsidies. By the amendment to the third proviso, this power is sought to be completely taken away from the Commissions and they have to determine the surcharge and cross subsidies <u>as envisaged in the Tariff Policy</u> (Emphasis added). Section 61 of the Act enjoins upon the Electricity Regulatory Commissions to specify the terms and conditions for determination of the tariff. Under the existing clause (g) progressive reduction of cross subsidies shall be as specified by the appropriate Commissions. By the proposed amendment, such a progressive reduction of cross subsidies shall be made by the Commissions based on the Tariff Policy. Under the existing Section 62 (3) of the Act, the power to fix different tariffs by differentiating among the consumers based on the relevant factors such as load factor, nature and purpose of supply of power, geographical position of any area etc., is absolutely vested in the appropriate Commissions. By the proposed amendment, the power of the State Commissions in this regard is made subject to the provisions of the Tariff Policy. Under Section 86 (1) (e) of the Act, absolute power given to the Electricity Regulatory Commissions <i>inter alia</i> to specify for purchase of electricity from renewable

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commencement of the Electricity (Amendment) Act, 2003, by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt. ...	and utilization of the surcharge shall also be specified by the State Commission: Provided also that the State Commission shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003, by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt. ...	sources of energy is sought to be curtailed by mandating that such percentages shall be fixed as prescribed by the Central Government from time to time. In PTC India Limited Vs CERC (2010) 4 SCC 603, the Hon'ble Supreme Court held that Electricity Act, 2003 has been enacted in furtherance of the policy envisaged under the Electricity Regulatory Commissions Act, 1998 as it mandates independent and transparent Regulatory Commissions entrusted with wide ranging responsibilities and objectives <i>inter alia</i> including protection of consumers of the electricity. By the proposed amendments to the aforementioned provisions, this objective will be totally defeated as in the matters of surcharge and cross subsidies for open access consumers and in fixing different tariffs for different categories of consumers, the element of discretion vested in the Electricity Regulatory Commissions is sought to be taken away and Regulatory Commissions are proposed to be reduced to the status of mere executing agencies of Tariff Policies and Central Government directions on a very important legislative/statutory function of tariff fixation. Thus, the proposed amendments make the Electricity

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		Regulatory Commissions completely shed their independent character. This is in total derogation of the objects for which Regulatory Commissions are constituted to discharge the functions hitherto discharged by the respective State Governments and the Electricity Boards. The proposed amendments also affect the federal spirit as the Central Government is seeking to hold complete sway over all the matters concerning tariff fixation. Indubitably the State Governments are important and major stakeholders in power sector as they have to discharge socio economic responsibilities in making available electricity to their subjects. The 2003 Act made Electricity Regulatory Commissions neutral and independent authorities by vesting in them three vital functions, namely, Tariff Fixation (Legislative/Statutory), Regulatory and Adjudicatory. By the above discussed proposed amendments, the function of tariff fixation by the Electricity Regulatory Commissions is sought to be made symbolic as they have no discretion except to follow the Central Government Tariff Policies and directions. Therefore, it is requested to retain the existing provisions without any change whatsoever.

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Section 49 Where the Appropriate Commission has allowed open access to certain consumers under section 42, such consumers notwithstanding the provisions contained in clause (d) of sub-section (1) of section 62, may enter into an agreement with any person for supply or purchase of electricity on such terms and conditions (including tariff) as may be agreed upon by them.	Section 49 Agreement with respect to supply or purchase or transmission of electricity).- (1) A generating company or a licensee may enter into an agreement with a licensee for supply, purchase or transmission of electricity on such terms and conditions, as may be agreed upon by them, including tariff and adequate security of payment consistent with the provisions of this Act. (2) Where the Appropriate Commission has allowed open access to certain consumers under section 42, such consumers, notwithstanding the provisions contained in clause (d) of sub-section (1) of section 62, may enter into an agreement with any person for supply or purchase of electricity on such terms and conditions (including tariff) as may be agreed upon by them.	The proposed sub-section (1) of Section 49 confers unbridled power on a generating company or a licensee to enter into power purchase agreements without being subjected to any regulatory regime. This is plainly contrary to Section 62 of the Act under which a statutory duty and obligation is cast on the appropriate Commission to determine the tariff in accordance with the provisions of the Act. The proposed provision, if implemented, will also take away the regulatory function of the State Commission in respect of electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State as envisaged in Section 86 (1) of the Act. This provision thus knocks at the bottom of the spirit of regulatory control and tariff fixation by the appropriate Commissions giving scope for exorbitant tariffs coming into being by way of private arrangements between a generating company and a licensee. This will spell a death knell to the consumer's interest.

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		Moreover, one of the primary objectives of the Electricity Act, 2003 was to promote competition and the existing provision promotes competition in power purchase. Bilateral power purchase contracts without regulatory control will increase the private sector gaming as private distribution companies may sign PPA with their related generating companies driven by their own interest. It is contradictory to the regulatory responsibilities of the State Commissions. There is no need for such contracts when the generation has been delicensed resulting in buyer's market in a power surplus situation. All bilateral power procurements as per Tariff policy are to be made through competitive bidding for day ahead, short, medium- or long-term requirement. <u>Therefore. insertion of the new Sub Section (1) through the proposed amendment is not desirable and required.</u>
New Insertion	Section 49A Cross Border Trade of Electricity - (1) The Central Government may prescribe rules and issue guidelines for allowing and facilitating cross border trade of electricity in accordance with the provisions of this Act.	No Comments.

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	(2) The Central Government may require the Central Commission to make regulations for cross border trade of electricity.	
Section 61 The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:- ... (g) that the tariff progressively reflects the cost of supply of electricity and also reduces cross-subsidies in the manner specified by the Appropriate Commission; (h) the promotion of co-generation and generation of electricity from renewable sources of energy; (i) the National Electricity Policy and tariff policy:	Section 61 The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:- ... (g) that the tariff progressively reflects the cost of supply of electricity and also reduces cross-subsidies in the manner specified by the Appropriate Commission as provided in the Tariff Policy; (h) the promotion of co-generation and generation of electricity from renewable and hydro sources of energy; (i) the National Electricity Policy and tariff policy and National Renewable Energy Policy:	Sub-section (g) may not be amended. Detailed justification for this has been given against Section 42. As already discussed, reduction in cross subsidy regime should be left to the State Commissions who are well conversant with the consumer profile of the State. Besides a diktat from policy would have severe financial impact on the state utilities. State Government would not be able to provide for commensurate revenue to the utilities. Further, Clause (h) should be reframed to drop the word 'hydro' as renewable sources include hydro sources. Further, amendment to Clause (i) is also not required.
Section 62 (1) The Appropriate Commission shall determine the tariff in accordance with provisions of this	Section 62 (1) The Appropriate Commission shall determine the tariff in accordance with	With regard to amendment to 62 (1) (d), implementing DBT on the lines of LPG subsidy

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Act for – (a) supply of electricity by a generating company to a distribution licensee: Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity; (b) transmission of electricity ; (c) wheeling of electricity; (d) retail sale of electricity. Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity. ... (3) The Appropriate Commission	provisions of this Act for – (a) supply of electricity by a generating company to a distribution licensee: Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity; (b) transmission of electricity ; (c) wheeling of electricity; (d) retail sale of electricity. Provided that the Appropriate Commission shall fix tariff for retail sale of electricity without accounting for subsidy, which, if any, under section 65 of the Act, shall be provided by the government directly to the consumer; Provided further that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.	transfer experience is premature for electricity consumers. Firstly, electricity users pay their subsidized bills after consumption. Secondly, there is an element of cross subsidy surcharge is built in the tariffs which would be available to utility even with non-payment by subsidised consumers. Further, Amendment to the Sub Section (3) is strongly opposed. Asking Commissions to fix tariff subject to tariff policy as proposed in amendment to Sub Section 3 fetters its role and constrains it significantly to discharge its statutory duties. Rather than being an autonomous body for setting up level playing field for the utilities to operate, Commissions would be reduced to the state of mere executive bodies of the Government to implement the tariff policy. It would lead to a lot of ambiguity and uncertainty as Electricity Act at several places envisaged Tariff policy as a guiding factor only. Now the proposed amendments make it mandatory for Commission to follow the tariff policy. The Commissions have been envisaged as independent expert bodies to enforce rule bound fair play. Curtailing its role through the modicum of tariff policy would be counter-productive. Detailed justification on this has been provided

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shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required. ...	... (3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may, subject to provisions of the Tariff Policy, differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required. ...	against Section 42.
Section 63 Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.	Section 63 (1) Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government. (2) The Appropriate Commission shall, after receipt of application complete in all respects, adopt the tariff so determined under sub-section (1), in a timely manner but not later than sixty days from the date of application: Provided that on expiry of sixty days from the date of application, if it is not decided by the Appropriate Commission, the tariff shall be deemed to have been adopted by the Appropriate Commission.	The time limit of 60 days prescribed in sub section (2) is short and it may be changed to 90 days as the hearing takes some time. 90 days should be counted from the date of admission of the petition, found complete in all respect.

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Section 65 If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under section 62, the State Government shall, notwithstanding any direction which may be given under section 108, pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licence or any other person concerned to implement the subsidy provided for by the State Government: Provided that no such direction of the State Government shall be operative if the payment is not made in accordance with the provisions contained in this section and the tariff fixed by State Commission shall be applicable from the date of issue of orders by the Commission in this regard.	Section 65 If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under section 62, the State Government shall, notwithstanding any direction which may be given under section 108, pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licence or any other person concerned to implement the subsidy provided for by the State Government the amount of subsidy directly to the consumer and the licensee shall charge the consumers as per the tariff determined by the Commission: Provided that no such direction of the State Government shall be operative if the payment is not made in accordance with the provisions contained in this section and the tariff fixed by State Commission shall be applicable from the date of issue of orders by the Commission in this regard.	In continuation to comments mentioned against section 62 with regard to DBT, it is to be noted that there are about 17 lakh agricultural consumers in the state of Andhra Pradesh who are not provided with meters and the commission is approving the ARR & Tariff based on estimated consumption for these consumers. This may be the same case in many states. Therefore, it is suggested that these consumers may be exempted from DBT scheme.
Section 77 (1) The Chairperson and the Members of the Central Commission shall be persons having adequate knowledge	Section 77 (1) The Chairperson and the Members of the Central Commission shall be persons having adequate knowledge of, or	The proposed amendment is agreeable.

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of, or experience in, or shown capacity in, dealing with, problems relating to engineering, law, economics, commerce, finance or, management and shall be appointed in the following manner, namely:- (a) one person having qualifications and experience in the field of engineering with specialisation in generation, transmission or distribution of electricity; (b) one person having qualifications and experience in the field of finance; c) two persons having qualifications and experience in the field of economics, commerce, law or management: Provided that not more than one Member shall be appointed under the same category under clause (c) (2) Notwithstanding anything contained in sub-section (1), the Central Government may appoint any person as Chairperson from amongst persons who is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court: Provided that no appointment under this sub-section shall be made	experience in, or shown capacity in, dealing with, problems relating to engineering, law, economics, commerce, finance, public policy or, management and shall be appointed in the following manner, namely:- (a) one person having qualifications and experience in the field of engineering with specialisation in generation, transmission or distribution of electricity; (b) one person having qualifications and experience in the field of finance law; c) two persons having qualifications and experience in the field of finance economics, commerce, law public policy or management: Provided that not more than one Member shall be appointed under the same category under clause (c) (2) Notwithstanding anything contained in sub-section (1), the Central Government may appoint any person as Chairperson from amongst persons who is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court: Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of India. ...	

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except after consultation with the Chief Justice of India. ...		
Section 78 (1) The Central Government shall, for the purposes of selecting the Members of the Appellate Tribunal and the Chairperson and Members of the Central Commission, constitute a Selection Committee consisting of – (a) Member of the Planning Commission incharge of the energy sector Chairperson; (b) Secretary-in-charge of the Ministry of the Central Government dealing with the Department of the Legal Affairs Member; (c) Chairperson of the Public Enterprises Selection Board Member; (d) a person to be nominated by the Central Government in accordance with sub-section (2)	Section 78 Constitution of Selection Committee to recommend Members: - (1) The Central Government shall, for the purposes of selecting the Members of the Appellate Tribunal and the Chairperson and Members of the Central Commission, Electricity Contract Enforcement Authority, State Commissions and Joint Commissions constitute a Selection Committee consisting of – (a) A person who is, or has been, a Judge of the Supreme Court to be nominated by the Chief Justice of India.....Chairperson; (b) Secretary-in-charge of the Ministry of the Central Government to be nominated by the Central Government.....Member; (c) Chief Secretaries of two State Governments in accordance with sub-section (2).....Member; (d) Secretary-in-charge of the Ministry of the Central Government dealing with power.....Member. (2) For the purposes of clause (c) of sub-section (1), the Chief Secretary of the State Governments in alphabetical order of the	The proposed amendment is strongly opposed on the following grounds: I. It goes against the federal principles of the Constitution to provide for a central selection committee for selection of Chairman and Members of State Electricity Regulatory Commissions. There is already an impartial state level Committee provided under the existing statutory provisions which is headed by a person who has been a High Court Judge and has Chief Secretary and Chairman of CEA as the other members. II. In the proposed arrangement, the state will not have any participation in the selection process. It will not be fair to completely alienate the State Government, which is the primary stakeholder, from the selection process. State Commissions cannot be equated to APTEL or the CERC/JERC because SERCs are more State consumer specific. Functions of the State Commission listed in

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Member ; (e) a person to be nominated by the Central Government in accordance with sub-section (3) Member ; (f) Secretary-in-charge of the Ministry of the Central Government dealing with power Member. (2) For the purposes of clause (d) of sub-section (1), the Central Government shall nominate from amongst persons holding the post of chairperson or managing director, by whatever name called, of any public financial institution specified in section 4A of the Companies Act, 1956. (3) For the purposes of clause (e) of sub-section (1), the Central Government shall, by notification, nominate from amongst persons holding the post of director or the head of the institution, by whatever name called, of any research, technical or management institution for this purpose.	states starting with Andhra Pradesh, Arunachal Pradesh shall be the members of the Selection Committee for a period of one year. (3) Secretary-in-charge of the Ministry of the Central Government dealing with Power shall be the Convener of the Selection Committee. (4) The Central Government shall, within a period of one month from the date of occurrence of any vacancy by reason of death, resignation or removal of a Member of the Appellate Tribunal, or the Chairperson or a Member of the Central Commission or the Electricity Contract Enforcement Authority and within a period of twelve months before the superannuation or end of tenure of the Member of the Appellate Tribunal or Chairperson or Member of the Central Commission or Electricity Contract Enforcement Authority, make a reference to the Selection Committee for filling up of the vacancy. (5) The State Government shall, within a period of one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson or a Member and within a period of twelve months before the superannuation or end of tenure of the Chairperson or Member, make a reference to the Selection Committee for filling up of	Section 86 of the Act are primarily linked to the affairs of the State. Each State has its own local issues. Functionaries associated in the selection process should have close understanding of the issues of the state as much as the Members of the Commission selected by them. III. Constituting the committee at state level and filling up the vacancies based on the recommendations is the responsibility of the State Government. Process involved in issuing an advertisement calling for candidates to apply, issuing a gazette notification constituting the selection committee, convening the meeting and recording the minutes, recommending two candidates for each vacancy, taking approval of the Government are important steps that need to be meticulously followed so as to defend the due process when selection is challenged in a court of law. By constituting a central committee, the entire responsibility of the process would be that of central government. Doing it for all the states in the country it would be a cumbersome process. IV. It would be extremely difficult for a single central

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(4) Secretary-in-charge of the Ministry of the Central Government dealing with Power shall be the Convenor of the Selection Committee. (5) The Central Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of a Member of the Appellate Tribunal or the Chairperson or a Member of the Central Commission and six months before the superannuation or end of tenure of the Member of the Appellate Tribunal or Member of the Central Commission, make a reference to the Selection Committee for filling up of the vacancy. (6) The Selection Committee shall finalise the selection of the Chairperson and Members referred to in sub-section (5) within three month from the date on which the reference is made to it. (7) The Selection Committee shall recommend a panel of two names for every vacancy referred to it. (8) Before recommending any person for appointment as Member of the Appellate Tribunal or the Chairperson or other Member of the	the vacancy. (6) The proceedings of the Selection Committee shall be held in Delhi or such other places as the Central Government may notify. (7) The Selection Committee shall finalise the selection of the Chairperson and Members referred to it under sub-sections (4) and (5) and make a recommendation for every vacancy referred to it within three months of the receipt of the reference. (8) Before recommending any person for appointment as Member of the Appellate Tribunal, or the Chairperson or other Member of the Appropriate Commission or Electricity Contract Enforcement Authority, the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as the Chairperson or Member. (9) No appointment of the Chairperson or other Member shall be invalid merely by reason of any vacancy other than that of the Chairperson in the Selection Committee.	selection committee for the entire country to find adequate time to go through the selection of such a large number of Chairpersons and Members of all the Commissions. V. Central selection committee should restrict itself to central regulatory bodies – APTEL, CERC and CEA. States should continue to follow the existing process for selecting Chairman and Members of SERCs as per the terms of service conditions, emoluments, allowances etc and the status of the Commission as prescribed in the rules notified by them. VI. Unless a common cadre for the whole country for the state and joint commissions is created, there is no propriety to call for a central selection committee to be forced on the state in the manner proposed. VII. The Central Selection Committee is predominantly manned by serving secretaries of the Government which is not in accordance with the judgment of the Supreme Court in Roger Mathews Vs. South Indian Bank Ltd and others. VIII. There is no representative of technical

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Central Commission, the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as the Chairperson or Member. (9) No appointment of the Chairperson or other Member shall be invalid merely by reason of any vacancy in the Selection Committee: Provided that nothing contained in this section shall apply to the appointment of a person as the Chairperson of the Central Commission where such person is, or has been , a Judge of the Supreme Court or the Chief Justice of a High Court.		organizations CERC or CEA in the selection committee even though the evaluation of technical member's qualification is required to be done. IX. The sub section (7) of the original Act requiring recommendation of a panel of two names for every vacancy has been done away with making the recommendation for every post binding on the Appropriate Government which is not fair.
Section 79 (1)The Central Commission shall discharge the following functions, namely:- ... (f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;	Section 79 (1)The Central Commission shall discharge the following functions, namely:- ... (f) to adjudicate upon disputes except matters referred to in section 109A involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;	Amendment to 1 (f) and sub section 4 is not required.

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... (4) In discharge of its functions, the Central Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under section 3.	... (New Insertion) (ja)To regulate cross border trade of electricity in accordance with the provisions of this Act and rules made there under; ... (4) In discharge of its functions, the Central Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under section 3 and National Renewable Energy Policy under section 3A.	
Section 82 (1) Every State Government shall, within six months from the appointed date, by notification, constitute for the purposes of this Act, a Commission for the State to be known as the (name of the State) Electricity Regulatory Commission: Provided that the State Electricity Regulatory Commission, established by a State Government under section 17 of the Electricity Regulatory Commissions Act, 1998 and the enactments specified in the Schedule, and functioning as such immediately before the appointed	Section 82 (1) Every State Government shall, within six months from the appointed date, by notification, constitute for the purposes of this Act, a Commission for the State to be known as the (name of the State) Electricity Regulatory Commission: Provided that the State Electricity Regulatory Commission, established by a State Government under section 17 of the Electricity Regulatory Commissions Act, 1998 and the enactments specified in the Schedule, and functioning as such immediately before the appointed date shall be the State Commission for the purposes of this Act and the Chairperson, Members,	82 (4): Conventionally, whenever a quasi-judicial body is constituted, it is composed with odd numbers, so that equal division in opinion would not lead to unseemly situations and result in stalemate in decision making process. The existing ERCs are consisting of three members including the Chairman. One more member will make the number even. Except creating problems as aforesaid, no useful purpose will be served by adding one more member to the existing strength of the ERCs. Further, the proposed Sub-Section (7) may be

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date shall be the State Commission for the purposes of this Act and the Chairperson, Members, Secretary, and officers and other employees thereof shall continue to hold office, on the same terms and conditions on which they were appointed under those Acts. Provided further that the Chairperson and other Members of the State Commission appointed before the commencement of this Act under the Electricity Regulatory Commissions Act, 1998 or under the enactments specified in the Schedule, may on the recommendations of the Selection Committee constituted under sub-section (1) of section 85 be allowed to opt for the terms and conditions under this Act by the concerned State Government. (2) The State Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued. (3) The head office of the State Commission shall be at such place	Secretary, and officers and other employees thereof shall continue to hold office, on the same terms and conditions on which they were appointed under those Acts. Provided further that the Chairperson and other Members of the State Commission appointed before the commencement of this Act under the Electricity Regulatory Commissions Act, 1998 or under the enactments specified in the Schedule, may on the recommendations of the Selection Committee constituted under sub-section (1) of section 85 section 78 be allowed to opt for the terms and conditions under this Act by the concerned State Government. (2) The State Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued. (3) The head office of the State Commission shall be at such place as the State Government may, by notification, specify. (4) The State Commission shall consist of not more than three four Members, including the Chairperson. (5) The Chairperson and Members of the State Commission shall be appointed by the State Government on the recommendation	modified as follows: “In the event of all or some posts of Chairperson and Members of a State Commission lying vacant the State Government may entrust their task to the Chairperson and/or member of another State Commission in consultation with the concerned State Government.” I. It is assumed that the amendment shall be followed prospectively from the date of its notification and the legality of the Commissions already constituted will not be affected. II. In case of a vacancy of Chairman or member not getting filled up in time due to some reason, there is no need for the central government to order another state commission to take charge. Concerned State could make alternative arrangement in the interim, if required, by entrusting the work to Chairman/ Members of another State Commission. First proviso to section 82: It is alternatively submitted that the proposed amendment suffers from drafting lacuna also as it has not saved the existing Commissions. Such saving is

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as the State Government may, by notification, specify. (4) The State Commission shall consist of not more than three Members, including the Chairperson. (5) The Chairperson and Members of the State Commission shall be appointed by the State Government on the recommendation of a Selection Committee referred to in section 85. New Insertion	of a Selection Committee referred to in section 85 section 78. (7) “If there is no chairperson and member in a State Commission to perform its functions, the Central Government may, in consultation with the state government concerned, entrust its functions to any other State Commission or Joint Commission, as it deems proper.”	necessary to ensure that regulatory work continues uninterrupted in the interests of the power utilities. Therefore there should be addition of the words “under the pre-amended provisions of the Electricity Act, 2003” before the words “under Section 17 of the Electricity Regulatory Commissions Act, 1998” in the first proviso to Section 82 of the Act. Also, a similar amendment needs to be carried out in the second proviso to section 82.
Section 84 (1) The Chairperson and the Members of the State Commission shall be persons of ability, integrity and standing who have adequate knowledge of, and have shown capacity in, dealing with problems relating to engineering, finance, commerce, economics, law or management. (2) Notwithstanding anything contained in sub-section (1), the State Government may appoint any person as the Chairperson from amongst persons who is, or has	Section 84 (1)The Chairperson and the Members of the State Commission shall be persons of ability, integrity and standing who have adequate knowledge of, and have having adequate knowledge of, or experience in, or shown capacity in, dealing with, problems relating to engineering, law, economics, commerce, finance, public policy or management and shall be appointed in the following manner, namely:- (a) one person having qualifications and experience in the field of engineering with specialization in generation, transmission or distribution of electricity;	“(1) The Chairperson and the Members of the State Commission shall be persons of ability, integrity and standing who have adequate knowledge of, and have shown capacity in....” may be retained as such without any modification. Reasons: The original wording of Chairperson and the members to be persons of ability, integrity and standing should be retained as these are critical measures to assure creditworthy selection.

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been, a Judge of a High Court: Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of that High Court. ...	(b) one person having qualifications and experience in the field of law; (c) two persons having qualifications and experience in the field of finance, economics, commerce, public policy or management. (2) Notwithstanding anything contained in sub-section (1), the State Government may appoint any person as the Chairperson from amongst persons who is, or has been, a Judge of a High Court: Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of that High Court. ...	
Section 85 (1)The State Government shall, for the purposes of selecting the Members of the State Commission, constitute a Selection Committee consisting of – (a) a person who has been a Judge of the High Court Chairperson; (b) the Chief Secretary of the concerned	Section 85 (1)The State Government shall, for the purposes of selecting the Members of the State Commission, constitute a Selection Committee consisting of– (a) a person who has been a Judge of the High Court Chairperson; (b) the Chief Secretary of the concerned StateMember; (c) the Chairperson of the Authority or	This Section does not require any amendment for the following reasons: I. By the proposed amendment to section 85, the federal character of the Constitution has been put at naught. While exercising power under the Concurrent List, the Central Government cannot take away the right of the State Government to make appointment in respect of State Regulatory Commission while continuing the State Government to be the appointing authority.

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State Member; (c) the Chairperson of the Authority or the Chairperson of the Central Commission Member: Provided that nothing contained in this section shall apply to the appointment of a person as the Chairperson who is or has been a Judge of the High Court. (2) The State Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson or a Member and six months before the superannuation or end of tenure of the Chairperson or Member, make a reference to the Selection Committee for filling up of the vacancy. (3) The Selection Committee shall finalise the selection of the Chairperson and Members within three months from the date on which the reference is made to it. (4) The Selection Committee shall recommend a panel of two names	the Chairperson of the Central Commission Member: Provided that nothing contained in this section shall apply to the appointment of a person as the Chairperson who is or has been a Judge of the High Court. (2) The State Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson or a Member and six months before the superannuation or end of tenure of the Chairperson or Member, make a reference to the Selection Committee for filling up of the vacancy. (3) The Selection Committee shall finalise the selection of the Chairperson and Members within three months from the date on which the reference is made to it. (4) The Selection Committee shall recommend a panel of two names for every vacancy referred to it. (5) Before recommending any person for appointment as the Chairperson or other Member of the State Commission, the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as Chairperson or Member, as the case may be.	It is a paradox that selection will be made by the Central Government and appointment letter will be issued by the State Government and all the expenses in respect of salary and perks and office maintenance, etc. will be borne by the State Government. Such arrangement is alien to the service jurisprudence or under the Constitution. The appointing authority therefore cannot be <u>denied</u> of the right to select the chairman and members by constituting its own selection committee. II. Opening words used in Section 78 go to indicate that the power of selection has been usurped by the Central Government, when it says in Section 78 sub-section (1) that “the Central Government shall for the purpose of selecting the members of the Appellate Tribunal and the chairperson and members of the Central Commission, Electricity Contract Enforcement Authority, State Commissions and Joint Commissions”. III. The proposed amendment goes against the basic structure of the Constitution when the State Government is denied the power of its own

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for every vacancy referred to it. (5) Before recommending any person for appointment as the Chairperson or other Member of the State Commission, the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as Chairperson or Member, as the case may be. (6) No appointment of Chairperson or other Member shall be invalid merely by reason of any vacancy in the Selection Committee.	(6) No appointment of Chairperson or other Member shall be invalid merely by reason of any vacancy in the Selection Committee.	selection mechanism in respect of state entities. Such exercise of power by Central Government under Concurrent List would lead to colourable exercise of power, excessive delegation of power and is also ultra vires of the Constitution. IV. Similar attempt was made by the Central Government in respect of 25 tribunals by making amendments in Part XIV of the Finance Act, 2017. By similar process a uniform provision for constitution of 25 different tribunals was made to give effect to the requisite qualifications, method of appointment, terms of office, salary and allowances, and various other terms of services of the member of the presiding officer of different Statutory Tribunals. The said provision was disapproved by the Apex Court, by means of majority judgement of the Constitution Bench, in <i>Rozar Methew vs South Indian Bank Limited</i> and others dated 13.11.2019.
Section 86 (1) The State Commission shall discharge the following functions, namely: - ... (e) promote cogeneration and	Section 86 (1) The State Commission shall discharge the following functions, namely: - ... (e) promote cogeneration and generation of electricity from renewable and hydro sources of energy by providing suitable	Amendment to this section may not be required. Source wise RPO for different RE sources of generation is not the correct approach. A common

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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 sources, a percentage of the total consumption of electricity in the area of a distribution licensee; (f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration; ... (4) In discharge of its functions the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under section 3.	measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee as may be prescribed by the Central Government from time to time; (f) adjudicate upon the disputes except matters referred to in section 109A between the licensees, and generating companies and to refer any dispute for arbitration; ... (4) In discharge of its functions the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under section 3 and National Renewable Energy Policy under section 3A.	RPO is the desirable norm. It should be left to State Commissions to decide the proportion of RE to the total power mix.
Section 90 (1) No Member shall be removed from office except in accordance with the provisions of this section. ... (3) The Central Government or the State Government, as the case may be, may, in consultation with the Chairperson of the Appellate Tribunal suspend any Member of the Appropriate Commission in respect of whom a reference has	Section 90 (1) No Member shall be removed from office except in accordance with the provisions of this section. ... (3) The Central Government or the State Government, as the case may be, may, in consultation with the Chairperson of the Appellate Tribunal suspend any Member of the Appropriate Commission in respect of whom a reference has been made to the Chairperson of the Appellate Tribunal,	No amendment is required.

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been made to the Chairperson of the Appellate Tribunal, under sub-section (2) until the Central Government or the State Government, as the case may be, has passed orders on receipt of the report of the Chairperson of the Appellate Tribunal, on such reference : Provided that nothing contained in this section shall apply to the Chairperson of the Appropriate Commission who, at the time of his appointment as such is a sitting Judge of the Supreme court or the Chief Justice of a High Court or a Judge of a High Court.	under sub-section (2) until the Central Government or the State Government, as the case may be, has passed orders on receipt of the report of the Chairperson of the Appellate Tribunal, on such reference : Provided that nothing contained in this section shall apply to the Chairperson of the Appropriate Commission who, at the time of his appointment as such is a sitting Judge of the Supreme court or the Chief Justice of a High Court or a Judge of a High Court.	
Section 92 (1) The Appropriate Commission shall meet at the head office or any other place at such time as the Chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as it may specify. ... (5) All orders and decisions of the Appropriate Commission shall be authenticated by its Secretary or any other officer of the Commission	Section 92 (1) The Appropriate Commission shall meet at the head office or any other place at such time as the Chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as it may specify. ... (5) All orders and decisions of the Appropriate Commission shall be authenticated by its Secretary or any other officer of the Commission duly authorised by the Chairperson in this behalf.	Insertion of sub section (6) is not necessary.

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duly authorised by the Chairperson in this behalf.	(6) Where before or during the course of a proceeding, the Appropriate Commission comes to a conclusion that the Electricity Contract Enforcement Authority has the sole authority and jurisdiction to adjudicate a matter, it shall refer the same to the Electricity Contract Enforcement Authority for its orders.	
New Insertion	PART XA ELECTRICITY CONTRACT ENFORCEMENT AUTHORITY 109A. Establishment of Electricity Contract Enforcement Authority.- (1)The Central Government shall, by notification, establish an Electricity Contract Enforcement Authority to exercise the powers conferred on, and discharge the functions assigned to, it under the Act. (2) Notwithstanding anything contained in this Act or any other law in force, the Electricity Contract Enforcement Authority shall have the sole authority and jurisdiction to adjudicate upon matters regarding performance of obligations under a contract related to sale, purchase or transmission of electricity, provided that it shall not have any jurisdiction over any matter related to regulation or determination of tariff or any dispute involving tariff. (3) Every contract between a generation company and a licensee shall be filed with	By the proposed amendments, a parallel body to the existing ERCs is sought to be created, thereby one of the vital functions of the ERCs namely, the adjudicatory function is almost sought to be taken away from the purview of the ERCs. When ERCs are vested with the authority to approve the PPAs, which function still continues to remain with them, creation of a separate entity for enforcement of PPAs defies any logic and reason. The reason given in the objects for the proposed amendment, that the ERCs are burdened with regulatory and other activities is not factually correct. The ERC having been created to discharge the functions of tariff fixation, approval of PPAs and adjudication of disputes in connection therewith, there could be no reason for taking away the very vital function of adjudication of disputes between the generating companies and the licensees. The proposed amendment, if given effect to, will leave

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	the Appropriate Commission within 30 days of the said contract having been concluded. 109B. Application to Electricity Contract Enforcement Authority and order thereon - (1) Any person aggrieved in any matter referred to in section 109A may prefer an application to the Electricity Contract Enforcement Authority. (2) Every application under sub-section (1) shall be filed within a period of six months from the non-performance of the obligation under the contract: Provided that the Electricity Contract Enforcement Authority may entertain an application after the expiry of the said period of six months if it is satisfied that there is sufficient cause for not filing it within that period. (3) Every application received under sub section (1) shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed. (4) On receipt of an application or matter under sub-section (6) of section 92, the Electricity Contract Enforcement Authority may, after giving the parties to the application an opportunity of being heard, determine whether a valid contract subsists between the parties and whether any party is in violation of any of its obligations under	the ERCs only with the part time functioning of tariff fixation with no other substantial activity thereafter. If the Central government finds that the existing provisions are not adequate for proper and effective implementation of PPAs, it can as well insert appropriate provisions in that regard, instead of pruning the existing functions of ERCs. <u>Therefore, sections 109A to 109N are not necessary and hence may be dropped for the following reasons.</u> I. Setting up an exclusive authority at a central level to adjudicate disputes relating to PPA is against the spirit of creation of State Commissions vested with regulatory, legislative and adjudicative powers. Once the adjudicating responsibility is divested, the work of the Commission will remain limited to setting of tariff and issuing of license II. With the induction of member legal from the judicial service the Commissions are better placed to adjudicate and resolve such disputes. III. Though most of the orders in PPA disputes are complied by the utilities, some are challenged in appeal before APTEL. Instead of creating parallel bodies, the existing powers of the SERCs and

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	the contract. (5) Upon a finding that there has a violation/breach of obligation under a contract by a party or parties, the Electricity Contract Enforcement Authority shall direct that the said parties immediately perform their obligation under the contract and may direct the payment of costs on account of the breach of contract or non-fulfilment of obligations of the contract and any further amount it may deem fit as compensation. (6) The Electricity Contract Enforcement Authority shall send a copy of every order made by it to the parties to the application as the case may be. (7) The Electricity Contract Enforcement Authority shall deal with the application filed before it under sub-section (1) and any matter referred to it under sub-section (6) of section 92 as expeditiously as possible and endeavor to dispose it finally within one hundred and twenty days from the date of its receipt: Provided that where any application could not be disposed off within the said period of one hundred and twenty days, the Electricity Contract Enforcement Authority shall record its reasons in writing for not disposing of the matter within the said period.	JERCs shall be strengthened on the lines of the powers available with APTEL for execution of their orders. In fact, in the earlier draft amendment circulated by Power Ministry, a new sub-section 2A was proposed under section 94 giving powers to the Commissions to execute their orders. It read as under “An order made by the Appropriate Commission under this Act shall be executable by the Appropriate Commission as a decree of civil court and for this purpose the Appropriate Commission shall have all the powers of a civil court.” IV. Commissions are able to resolve disputes by invoking their regulatory powers in addition to adjudication on any peculiar issue. Supreme Court in Energy Watchdog case has sanctified such powers. Proposed ECEA has no such powers and it would therefore be difficult for it to resolve those kinds of issues in disputes. V. All PPA related disputes have tariff implications. Commissions are determining tariffs and therefore are better placed to resolve such disputes with full compliance.

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	109C. Composition of Electricity Contract Enforcement Authority- (1) The Electricity Contract Enforcement Authority shall consist of the following – a) a Chairperson; b) two or more Judicial Members as may be prescribed by the Central Government from time to time; and c) three or more Technical Members, as may be prescribed by the Central Government from time to time. 2) Subject to the provisions of this Act, the jurisdiction of the Electricity Contract Enforcement Authority may be exercised by Benches thereof; a Bench may be constituted by the Chairperson of the Electricity Contract Enforcement Authority with two or more Members of the Electricity Contract Enforcement Authority as the Chairperson of the Electricity Contract Enforcement Authority may deem fit: Provided that every Bench shall include at least one Judicial Member and one Technical Member; (c) the Benches of the Electricity Contract Enforcement Authority shall ordinarily sit in Delhi and such other places as the Central Government may, in consultation	VI. PPAs are approved by Commission and it is quite natural and proper that they would be able to interpret the provisions of PPA much better. VII. Delay in adjudication of disputes could be addressed by setting time limits for the Commissions. VIII. The contract enforcement powers proposed to be given to ECEA can be given to CERC/ SERCs to make them empowered and effective. IX. Any party not satisfied with the order of CERC/ SERC can always approach the APTEL. Therefore, there is no justification for constitution of another authority. X. If there is any arbitration issue, then there is separate Arbitration and Conciliation Act, 1996. This Act can be invoked to resolve the dispute. XI. Under section 109A(3) any person aggrieved by order of commission could file petition with ECEA. So, there would be two appellate authorities – APTEL and ECEA. It would lead to forum shopping by the appellants. XII. Chairman and members of the ECEA are not

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	with the Chairperson of the Electricity Contract Enforcement Authority, notify; (d) the Central Government shall, in consultation with the Chairperson of the Electricity Contract Enforcement Authority, notify the areas in relation to which each Bench of the Electricity Contract Enforcement Authority may have exercise jurisdiction. (3) Notwithstanding anything contained in sub-section (2), the Chairperson of the Electricity Contract Enforcement Authority may transfer a Member of the Electricity Contract Enforcement Authority from one Bench to another Bench. Explanation.- For the purposes of this section, a Judicial Member shall include the Chairperson of the Electricity Contract Enforcement Authority. 109D.Qualification for appointment of Chairperson and Members of Electricity Contract Enforcement Authority.-(1) A person shall not be qualified for appointment as the Chairperson of the Electricity Contract Enforcement Authority or a Member of the Electricity Contract Enforcement Authority unless he- (a) in the case of the Chairperson of the Electricity Contract Enforcement Authority, is, or has been a Judge of a	proscribed from taking up any position for a period of one year in any commercial organization upon demitting office. <u>For all the above reasons, sections 109 A to 109 N are not necessary and hence they may be dropped.</u>

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	High Court; and (b) in the case of a Judicial Member of the Electricity Contract Enforcement Authority, is, or has been a District Judge or Additional District Judge for a minimum period of seven years; and (c) in the case of a Technical Member of the Electricity Contract Enforcement Authority,- i. is, or has been, an officer of the rank of Additional Secretary or above for at least one year in the Ministry or Department of the Central Government dealing with power or any other sector of infrastructure; or ii. is, or has been, a person of ability and standing, having adequate knowledge or experience in dealing with the matters relating to electricity generation, transmission, distribution and regulation, or economics, finance, public policy, commerce, or management with experience in infrastructure related matters. (2) The Chairperson and Members of the Electricity Contract Enforcement Authority shall be appointed by the Central Government on the recommendation of the Selection Committee referred to in section 78.	

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	(3) Before appointing any person for appointment as Chairperson or other Member of the Electricity Contract Enforcement Authority, the Central Government shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as such Chairperson or Member. 109E. Term of Office and Terms and Conditions of service.-The Chairperson of the Electricity Contract Enforcement Authority or a Member of the Electricity Contract Enforcement Authority shall hold office as such for a term of five years from the date on which he enters upon his office: Provided that such Chairperson or other Member shall not be eligible for reappointment in the same capacity as the Chairperson or a Member in the Electricity Contract Enforcement Authority; Provided further that no Chairperson of the Electricity Contract Enforcement Authority or Member of the Electricity Contract Enforcement Authority shall hold office after attaining the age of sixty-seven years. 109F. Vacancies.-If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson of the Electricity Contract Enforcement Authority or a Member of the Electricity Contract Enforcement Authority, the Central	

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	Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Electricity Contract Enforcement Authority from the stage at which the vacancy is filled. 109G. Resignation and Removal.- (1) The Chairperson of the Electricity Contract Enforcement Authority or a Member of the Electricity Contract Enforcement Authority may, by notice in writing under his hand addressed to the Central Government, resign his office: Provided that the Chairperson of the Electricity Contract Enforcement Authority or a Member of the Electricity Contract Enforcement Authority shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of term of office, whichever is the earliest. (2) The Chairperson of the Electricity Contract Enforcement Authority or a Member of the Electricity Contract Enforcement Authority shall not be removed from his office except by an order of the Central Government on the ground of proved misbehavior or incapacity after an inquiry made by Chairperson of the	

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	Appellate Tribunal in which the Chairperson or a Member of the Electricity Contract Enforcement Authority concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges. 109 H. Member to act as Chairperson in certain circumstances.- (1) In the event of the occurrence of any vacancy in the office of the Chairperson of the Electricity Contract Enforcement Authority by reason of his death, resignation or otherwise, the senior-most Member of the Electricity Contract Enforcement Authority shall act as the Chairperson of the Electricity Contract Enforcement Authority until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office. (2) When the Chairperson of the Electricity Contract Enforcement Authority is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member of the Electricity Contract Enforcement Authority shall discharge the functions of the Chairperson of the Electricity Contract Enforcement Authority until the date on which the Chairperson of the Electricity Contract Enforcement Authority resumes his duties. 109I. Officers and other employees of Electricity Contract Enforcement	

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	Authority.-(1) The Central Government shall provide the Electricity Contract Enforcement Authority with such officers and other employees as it may deem fit. (2) The officers and other employees of the Electricity Contract Enforcement Authority shall discharge their functions under the general superintendence of the Chairperson of the Electricity Contract Enforcement Authority. (3) The salaries and allowances and other terms and conditions of service of the officers and other employees of the Electricity Contract Enforcement Authority shall be such as may be prescribed by the Central Government. (4) The Chairperson of Electricity Contract Enforcement Authority shall exercise such financial and administrative powers as may be prescribed by the Central Government. 109 J. Procedure and powers of Electricity Contract Enforcement Authority.- (1) The Electricity Contract Enforcement Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Electricity Contract Enforcement Authority shall have powers to regulate its own procedure.	

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	(2) The Electricity Contract Enforcement Authority shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:- a) summoning and enforcing the attendance of any person and examining him on oath; b) requiring the discovery and production of documents; c) receiving evidence on affidavits; d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office; e) issuing commissions for the examination of witnesses or documents; f) reviewing its decisions; g) dismissing an application on default or deciding it ex parte; h) setting aside any order of dismissal of an application on	

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	default or any order passed by it ex parte; i) pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard; and j) any other matter which may be prescribed by the Central Government. (3) An order made by the Electricity Contract Enforcement Authority under this Act shall be executable by it as a decree of civil court and, for this purpose, the Electricity Contract Enforcement Authority shall have all the powers of a civil court including but limited to powers of attachment and sale of property, arrest and detention in prison and appointment of a receiver. (4) Notwithstanding anything contained in sub-section (3), the Electricity Contract Enforcement Authority may transmit any 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. (5) All proceedings before the Electricity Contract Enforcement Authority shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the	

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	Indian Penal Code and the Electricity Contract Enforcement Authority shall be deemed to be a civil court for the purposes of section 345 and 346 of the Code of Criminal Procedure, 1973. 109 K. Distribution of business amongst Benches and transfer of cases from one Bench to another Bench.- (1) Where Benches are constituted, the Chairperson of the Electricity Contract Enforcement Authority may, from time to time, by notification, make provisions as to the distribution of the business of the Electricity Contract Enforcement Authority amongst the Benches and also provide for the matters which may be dealt with by each Bench. (2) On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson of the Electricity Contract Enforcement Authority may transfer any case pending before one Bench, for disposal, to any other Bench. 109 L. Decision to be by majority.- If the Members of the Electricity Contract Enforcement Authority of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a	

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	reference to the Chairperson of the Electricity Contract Enforcement Authority who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Electricity Contract Enforcement Authority and such point or points shall be decided according to the opinion of the majority of the Members of the Electricity Contract Enforcement Authority who have heard the case, including those who first heard it. 109 M. Right of parties to take assistance of legal practitioner.- A person preferring an application to the Electricity Contract Enforcement Authority under this Act and any other party to the case may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Electricity Contract Enforcement Authority, as the case may be. 109 N. Appeal to Appellate Tribunal.-Any person aggrieved by any decision or order of the Electricity Contract Enforcement Authority, may, file an appeal to the Appellate Tribunal within sixty days from the date of communication of the decision or order of the Electricity Contract Enforcement Authority to him: Provided that the Appellate Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the	

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	appeal within the said period, allow it to be filed within a further period not exceeding sixty days.	
Section 110 The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Appellate Tribunal for Electricity to hear appeals against the orders of the adjudicating officer or the Appropriate Commission under this Act.	Section 110 The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Appellate Tribunal for Electricity to hear appeals against the orders of the adjudicating officer or the Appropriate Commission or the Electricity Contract Enforcement Authority under this Act.	No amendment is required.
Section 111 (1) Any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity: ...	Section 111 (1) Any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission or an order made by the Electricity Contract Enforcement Authority under this Act may prefer an appeal to the Appellate Tribunal for Electricity: ...	No amendment is required.
Section 112 (1) The Appellate Tribunal shall consist of a Chairperson and three other Members. ...	Section 112 (1) The Appellate Tribunal shall consist of a Chairperson and three other Members such number of other Members, not less than seven, as may be prescribed by the Central Government. ...	No comments.
Section 119	Section 119	

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(1) The Central Government shall provide the Appellate Tribunal with such officers and other employees as it may deem fit. (2) The officers and other employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the Chairperson of the Appellate Tribunal. (3) The salaries and allowances and other terms and conditions of service of the officers and other employees of the Appellate Tribunal shall be such as may be prescribed by the Central Government.	(1) The Central Government shall provide the Appellate Tribunal with such officers and other employees as it may deem fit. (2) The officers and other employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the Chairperson of the Appellate Tribunal. (3) The salaries and allowances and other terms and conditions of service of the officers and other employees of the Appellate Tribunal shall be such as may be prescribed by the Central Government. (4) The Chairperson of Appellate Tribunal shall exercise such financial and administrative powers as may be prescribed by the Central Government.	
Section 120 (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure. (2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested	Section 120 (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure. (2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit,	No comments.

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in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:- ... (g) dismissing a representation of default or deciding it <i>ex parte</i>; (h) setting aside any order of dismissal or any representation for default or any order passed by it <i>ex parte</i>; ...	in respect of the following matters, namely:- ... (g) dismissing a representation of an appeal or an application on default or deciding it <i>ex parte</i>; (h) setting aside any an order of dismissal or any representation for of an appeal or an application on default or any order passed by it <i>ex parte</i>; ...	
Section 121 The Appellate Tribunal may, after hearing the Appropriate Commission or other interested party, if any, from time to time, issue such orders, instructions or directions as it may deem fit, to any Appropriate Commission for the performance of its statutory functions under this Act.	Section 121 (1)The Appellate Tribunal may, after hearing the Appropriate Commission Electricity Contract Enforcement Authority or other interested party, if any, from time to time, issue such orders, instructions or directions as it may deem fit, to any Appropriate Commission or Electricity Contract Enforcement Authority for the performance of its statutory functions under this Act.	<u>Proposed amendment to sub section (1) is not required.</u> <u>Additional provision introduced by the new sub section (2) is not desirable.</u> Section 121 vests a limited power of supervisory jurisdiction on the Appellate Tribunal for Electricity over the Electricity Regulatory Commissions to the extent of issuing orders and instructions to perform its statutory functions under the Act. In PTC India Limited Vs CERC (2010) 4 SCC 603 while dealing with the scope of power of the Appellate Tribunal for Electricity, the Hon'ble Supreme Court held that there

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		is no power of judicial review vested in it in order to examine the legality or otherwise of regulations framed by the Electricity Regulatory Commissions. No doubt under Section 111 of the Act, orders passed by the appropriate Commissions are appealable to the Appellate Tribunal and on such appeals, the Tribunal can pass appropriate orders. The orders passed by the Appellate Tribunal shall be executable by it under Section 120 (3) as decree of Civil Court and, for this purpose, it has been conferred with the powers of a Civil Court. Under Section 146 of the Act, non-compliance of the orders or directions is made a punishable offence. It is noteworthy that the orders passed or directions issued to the appropriate Commissions under Section 121 are exempted from the purview of Section 146 of the Act. In the absence of power of judicial review and having regard to the limited supervisory jurisdiction under Section 121 of the Act, it cannot be said that the Electricity Regulatory Commissions are direct subordinates to the Appellate Tribunal for Electricity. When there is already a mechanism for execution of orders passed by the Appellate Tribunal for Electricity under Section 120 (3) of the Act apart from imposing punishment

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		under Section 146 of the Act for non-compliance of the orders, there could be no sound reason for vesting the contempt power in the Appellate Tribunal for Electricity. Ordinarily the power of contempt is vested only in courts of record such as High Courts and Supreme Court established under the constitution. Hence it is not desirable to vest the Appellate Tribunal with the power of contempt. Alternatively, it is submitted that the proposed provision could be inserted under Section 120 of the Act, instead of under Section 121 of the Act as the latter provision exclusively deals with the directions issued to the appropriate Commissions creating a serious apprehension that it is intended to punish the Regulatory Commissions. Having regard to the independent nature of and wide-ranging powers vested in the Electricity Regulatory Commissions, it is neither appropriate nor desirable to subject the Commissions to the contempt jurisdiction of the Appellate Tribunal for Electricity as such a measure may affect the independent functioning of the Commissions. It is therefore suggested that the proposed provision may be deleted. In the alternative, the provision may

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		be shifted to Section 120 of the Act with a proviso similar to that existing under Section 146 of the Act for exempting the Commissions from the purview of the contempt.
	(2)The Appellate Tribunal shall have the same jurisdiction, powers and authority to take action on wilful disobedience to any of its judgment, decree, direction, order or other process or wilful breach of an undertaking given to a it, as a High Court under the provisions of the Contempt of Courts Act, 1971 (70 of 1971) on its own motion or on a motion made by the Advocate General or such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer or the Advocate General, and a reference in the Contempt of Courts Act, 1971 to a High Court shall be construed as including a reference to the Appellate Tribunal.	
Section 142 In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in	Section 142 (1)In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or rules or regulations made thereunder, or any direction or order issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that,	No Comments.

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writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.	without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh crore rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees upto one lakh rupees for every day during which the failure continues after contravention of the first such direction. (2) Notwithstanding anything contained in sub-section (1), in case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person, with effect from such date as may be notified by the Central Government, has not purchased power from renewable or hydro sources of energy as specified by it using its powers under the Act, the Appropriate Commission shall after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, a sum calculated at the rate of fifty paise per kilowatt-hour for the shortfall in purchase in the first year of default, one rupees per kilowatt-hour for the shortfall in purchase in the second successive year of default and at the rate of two rupees per unit for the shortfall in purchase continuing after the second year.	
Section 146 Whoever, fails to comply with any	Section 146 Whoever, fails to comply with any order or	No Comments

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order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made thereunder, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one lakh rupees, or with both in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to five thousand rupees for every day during which the failure continues after conviction of the first such offence: ¹Provided that nothing contained in this section shall apply to the orders, instructions or directions issued under section 121.	direction given under this Act, within such time as may be specified in the said order or direction or contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made thereunder, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one lakh crore rupees, or with both in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to five thousand one lakh rupees for every day during which the failure continues after conviction of the first such offence: ¹Provided that nothing contained in this section shall apply to the orders, instructions or directions issued under section 121.	
Section 176 (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act. (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: - (a) the time within which the	Section 176 (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act. (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: - (a) the time within which the objection and suggestions on the draft National Electricity	In view of the comments in the context of proposed sections 3A,49,49A,109 A to 109N ,the proposal to add clauses (aa), (ad), (ae), (da), (pa), (pb), (pc) and (pd) of sub section 176 (2) may be dropped.

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objection and suggestions on the draft National Electricity Plan to be invited by the Authority under the proviso to sub-section (4) of section 3; (b) the additional requirements¹ relating to the capital adequacy, creditworthiness or code of conduct under sixth proviso to section 14; ... (d) the constitution and functions of the National Load Despatch Centre under sub-section (2) of section 26; (e) the works of licensees affecting the property of owner or occupier under sub-section (2) of section 67; ... (p) the form in which and time at which the Central Commission shall prepare its budget under section 106; (q) the form and the manner of verifying such form, and fee for filing appeal under sub-section (2) of section 111; (r) the salary and allowances payable to and the other terms and	Plan to be invited by the Authority under the proviso to sub-section (4) of section 3; (aa) the minimum percentage of purchase of electricity from renewable and hydro sources of energy under section 3A; (ab) allowing and facilitating cross border trade of electricity and any matter related to it under sub section (1) of section 49A; (ac) laying down the modalities of bundling of renewable energy (including hydro) with thermal energy; (ad) Renewable Generation Obligation; (ae) regarding maintaining adequate capacity resources; (b) the additional requirements¹ relating to the capital adequacy, creditworthiness or code of conduct under sixth proviso to section 14; ... (d) the constitution and functions of the National Load Despatch Centre under sub-section (2) of section 26; (da) payment security mechanism under section 49; (e) the works of licensees affecting the property of owner or occupier under sub-	

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conditions of service of the Chairperson of the Appellate Tribunal and Members of the Appellate Tribunal under section 115; (s) the salary and allowances and other conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of section 119;	section (2) of section 67; ... (p) the form in which and time at which the Central Commission shall prepare its budget under section 106; (pa) the form, the manner of verifying the form, and fee for filing the application under sub-section (4) of section 109B; (pb) the number of Judicial and Technical Members to be included in the Electricity Contract Enforcement Authority under sub-section (1) of section 109C; (pc) the salaries and allowances and other terms and conditions of service of the officers and other employees of the Electricity Contract Enforcement Authority under sub-section (3) of section 109I; (pd) the exercise of financial and administrative powers by the Electricity Contract Enforcement Authority under sub-section (4) of section 109I; (q) the form and the manner of verifying such form, and fee for filing appeal under sub-section (2) of section 111; (qa) the number of Members to be included in the Appellate Tribunal under sub section 1 of section 112;	

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	(r) the salary and allowances payable to and the other terms and conditions of service of the Chairperson of the Appellate Tribunal and Members of the Appellate Tribunal under section 115; (s) the salary and allowances and other conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of section 119; (sa) exercise of financial and administrative powers by the Chairperson of Appellate Tribunal under sub section 4 of section 119; ...	
Section 178 (1) The Central Commission may, by notification make regulations consistent with this Act and the rules generally to carry out the provisions of this Act. (2)In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of following matters, namely:- (a) period to be specified under the first proviso to section 14; (b) the form and the manner of the application under sub-section (1) of	Section 178 (1) The Central Commission may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act. consistent with the functions assigned to it in the Act. (2)In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of following matters, namely:- (a) period to be specified under the first proviso to section 14; (aa) Cross border trade of electricity, if any,	Sub-section (1) and clause (ze) of sub-section (2) of this section ensure that the regulations are made within the ambit of the Act and to carry out the provisions of the Act, while at the same time enabling the Commission to frame regulations which may not be specifically mentioned under sub section (2) of the Act. The electricity sector is dynamic and undergoing rapid transformation due to disruptive technologies. In this context, it is not possible to specify all the possible subjects under sub section (2) to which the Commission's regulation framing powers would get limited to. The same approach has been followed in the context of the provisions dealing with the rule making powers of the Central government (Section 176) ,State Government (Section 180) and regulation making powers of CEA (Section 177) as well. In view of the above, amendment to section (1) and

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section 15; (c) the manner and particulars of notice under sub- section (2) of section 15; (d) the conditions of licence under section 16; (e) the manner and particulars of notice under clause (a) of sub-section (2) of section 18; (f) publication of alterations or amendments to be made in the licence under clause (c) of sub-section (2) of section 18; (g) Grid Code under sub-section (2) of section 28; (h) levy and collection of fees and charge from generating companies or transmission utilities or licensees under sub-section (4) of section 28; (i) rates, charges and terms and conditions in respect of intervening transmission facilities under proviso to section 36; (j) payment of the transmission charges and a surcharge under-sub-clause (ii) of clause (d) of sub-section (2) of section 38;	under sub section (2) of section 6A; (b) the form and the manner of the application under sub-section (1) of section 15; (c) the manner and particulars of notice under sub- section (2) of section 15; (d) the conditions of licence under section 16; (e) the manner and particulars of notice under clause (a) of sub-section (2) of section 18; (f) publication of alterations or amendments to be made in the licence under clause (c) of sub-section (2) of section 18; (g) Grid Code under sub-section (2) of section 28; (h) levy and collection of fees and charge from generating companies or transmission utilities or licensees under sub-section (4) of section 28; (i) rates, charges and terms and conditions in respect of intervening transmission facilities under proviso to section 36; (j) payment of the transmission charges and a surcharge under-sub-clause (ii) of	clause (ze) may be dropped. Also, in view of the comments at section 42 (2) and section 61, amendment to clause (r) may be dropped.

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(k) reduction ¹of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (d) of sub-section (2) of section 38; (l) payment of transmission charges and a surcharge under sub-clause (ii) of clause(c) of section 40; (m) reduction ²of surcharge and cross subsidies under the second proviso to sub-clause (ii) of clause (c) of section 40; (n) proportion of revenues from other business to be utilised for reducing the transmission and wheeling charges under proviso to section 41; (o) duties of electricity trader under sub-section (2) of section 52; (p) standards of performance of a licensee or class of licensees under sub-section (1) of section 57; (q) the period within which information to be furnished by the licensee under sub-section (1) of section 59; (r) the manner for reduction of cross-subsidies under clause (g) of	clause (d) of sub-section (2) of section 38; (k) reduction ¹of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (d) of sub-section (2) of section 38; (l) payment of transmission charges and a surcharge under sub-clause (ii) of clause(c) of section 40; (m) reduction ²of surcharge and cross subsidies under the second proviso to sub-clause (ii) of clause (c) of section 40; (n) proportion of revenues from other business to be utilised for reducing the transmission and wheeling charges under proviso to section 41; (o) duties of electricity trader under sub-section (2) of section 52; (p) standards of performance of a licensee or class of licensees under sub-section (1) of section 57; (q) the period within which information to be furnished by the licensee under sub-section (1) of section 59; (r) the manner for reduction of cross-subsidies under clause (g) of section 61; (s) the terms and conditions for the	

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section 61; (s) the terms and conditions for the determination of tariff under section 61; (t) details to be furnished by licensee or generating company under sub-section (2) of section 62; (u) the procedures for calculating the expected revenue from tariff and charges under sub-section (5) of section 62; (v) the manner of making an application before the Central Commission and the fee payable therefor under sub-section (1) of section 64; (w) the manner of publication of application under sub-section (2) of section 64; (x) issue of tariff order with modifications or conditions under sub-section (3) of section 64; (y) the manner by which development of market in power including trading specified under section 66; (z) the powers and duties of the Secretary of the Central Commission	determination of tariff under section 61; (t) details to be furnished by licensee or generating company under sub-section (2) of section 62; (u) the procedures for calculating the expected revenue from tariff and charges under sub-section (5) of section 62; (v) the manner of making an application before the Central Commission and the fee payable therefor under sub-section (1) of section 64; (w) the manner of publication of application under sub-section (2) of section 64; (x) issue of tariff order with modifications or conditions under sub-section (3) of section 64; (y) the manner by which development of market in power including trading specified under section 66; (z) the powers and duties of the Secretary of the Central Commission under sub-section (1) of section 91; (za) the terms and conditions of service of the Secretary, officers and other employees of Central Commission under sub-section (3) of section 91;	

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under sub-section (1) of section 91; (za) the terms and conditions of service of the Secretary, officers and other employees of Central Commission under sub-section (3) of section 91; (zb) the rules of procedure for transaction of business under sub-section (1) of section 92; (zc) minimum information to be maintained by a licensee or the generating company and the manner of such information to be maintained under sub-section (8) of section 128; (zd) the manner of service and publication of notice under section 130; (ze) any other matter which is to be, or may be specified by regulations.	(zb) the rules of procedure for transaction of business under sub-section (1) of section 92; (zc) minimum information to be maintained by a licensee or the generating company and the manner of such information to be maintained under sub-section (8) of section 128; (zd) the manner of service and publication of notice under section 130; (ze) any other matter which is to be, or may be specified by regulations.	
Section 181 (1) The State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act. (2) In particular and without prejudice to the generality of the power contained in sub-section (1),	Section 181 (1) The State Commissions may, by notification, make regulations in respect of the functions assigned to it in the Act. consistent with this Act and the rules generally to carry out the provisions of this Act. (2) In particular and without prejudice to the generality of the power contained in	There is no need to make any amendment to Section 181 of the Act. The entire Section of the Act may be left as such in order to protect the independence and effectiveness of the SERCs.

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such regulations may provide for all or any of the following matters, namely: - (a) period to be specified under the first proviso of section 14; (b) the form and the manner of application under sub- section (1) of section 15; (c) the manner and particulars of application for licence to be published under sub-section (2) of section 15; (d) the conditions of licence under section 16; (e) the manner and particulars of notice under clause(a) of sub-section (2) of section 18; (f) publication of the alterations or amendments to be made in the licence under clause (c) of sub-section (2) of section 18; (g) levy and collection of fees and charges from generating companies or licensees under sub- section (3) of section 32; (h) rates, charges and the terms and conditions in respect of intervening transmission facilities	sub-section (1), such regulations may provide for all or any of the following matters, namely: - (a) period to be specified under the first proviso of section 14; (b) the form and the manner of application under sub- section (1) of section 15; (c) the manner and particulars of application for licence to be published under sub-section (2) of section 15; (d) the conditions of licence under section 16; (e) the manner and particulars of notice under clause(a) of sub-section (2) of section 18; (f) publication of the alterations or amendments to be made in the licence under clause (c) of sub-section (2) of section 18; (g) levy and collection of fees and charges from generating companies or licensees under sub- section (3) of section 32; (h) rates, charges and the terms and conditions in respect of intervening transmission facilities under proviso to section 36; (i) payment of the transmission charges	

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under proviso to section 36; (i) payment of the transmission charges and a surcharge under sub-clause (ii) of clause(d) of sub-section (2) of section 39; (j) reduction ¹of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (d) of sub-section (2) of section 39; (k) manner and utilisation of payment and surcharge under the fourth proviso to sub-clause(ii) of clause (d) of sub-section (2) of section 39; (l) payment of the transmission charges and a surcharge under sub-clause(ii) of clause (c) of section 40; (m) reduction ²of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (c) of section 40; (n) the manner of payment of surcharge under the fourth proviso to sub-clause (ii) of clause (c) of section 40; (o) proportion of revenues from other business to be utilised for reducing the transmission and	and a surcharge under sub-clause (ii) of clause(d) of sub- section (2) of section 39; (j) reduction ¹of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (d) of sub-section (2) of section 39; (k) manner and utilisation of payment and surcharge under the fourth proviso to sub-clause(ii) of clause (d) of sub-section (2) of section 39; (l) payment of the transmission charges and a surcharge under sub-clause(ii) of clause (c) of section 40; (m) reduction ²of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (c) of section 40; (n) the manner of payment of surcharge under the fourth proviso to sub-clause (ii) of clause (c) of section 40; (o) proportion of revenues from other business to be utilised for reducing the transmission and wheeling charges under proviso to section 41; (oa) determination and payment of surcharge and wheeling charges under the first proviso to sub-section (2) of section 42; (p) reduction of surcharge and cross	

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wheeling charges under proviso to section 41; (p) reduction ¹of surcharge and cross-subsidies under the third proviso to sub-section (2) of section 42; (q) payment of additional charges on charges of wheeling under sub-section (4) of section 42; (r) guidelines under sub-section (5) of section 42; (s) the time and manner for settlement of grievances under sub-section (7) of section 42; (t) the period to be specified by the State Commission for the purposes specified under sub-section (1) of section 43; (u) methods and principles by which charges for electricity shall be fixed under sub-section (2) of section 45; (v) reasonable security payable to the distribution licensee under sub-section (1) of section 47; (w) payment of interest on security	subsidiesin surcharge and cross subsidies, as may be provided for in the Tariff Policy under the third proviso to sub-section (2) of section 42; (pa) the manner of payment and utilization of the surcharge under the fifth proviso to sub-section (2) of section 42; (q) payment of additional charges on charges of wheeling under sub-section (4) of section 42; (r) guidelines under sub-section (5) of section 42; (s) the time and manner for settlement of grievances under sub-section (7) of section 42; (t) the period to be specified by the State Commission for the purposes specified under sub-section (1) of section 43; (u) methods and principles by which charges for electricity shall be fixed under sub-section (2) of section 45; (v) reasonable security payable to the distribution licensee under sub-section (1) of section 47; (w) payment of interest on security under sub-section (4) of section 47;	

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under sub-section (4) of section 47; (x) electricity supply code under section 50; (y) the proportion of revenues from other business to be utilised for reducing wheeling charges under proviso to section 51; (z) duties of electricity trader under sub-section (2) of section 52; (za) standards of performance of a licensee or a class of licensees under sub-section (1) of section 57; (zb) the period within which information to be furnished by the licensee under sub-section (1) of section 59; ²(zc) the manner of reduction of cross-subsidies under clause (g) of section 61; (zd) the terms and conditions for the determination of tariff under section 61; (ze) details to be furnished by licensee or generating company under sub-section (2) of section 62; (zf) the methodologies and	(x) electricity supply code under section 50; (y) the proportion of revenues from other business to be utilised for reducing wheeling charges under proviso to section 51; (z) duties of electricity trader under sub-section (2) of section 52; (za) standards of performance of a licensee or a class of licensees under sub-section (1) of section 57; (zb) the period within which information to be furnished by the licensee under sub-section (1) of section 59; (ze) the manner of reduction of cross-subsidies under clause (g) of section 61; (zd) the terms and conditions for the determination of tariff under section 61; (ze) details to be furnished by licensee or generating company under sub-section (2) of section 62; (zf) the methodologies and procedures for calculating the expected revenue from tariff and charges under sub-section (5) of section 62; (zg) the manner of making an application before the State Commission and the fee payable therefor under sub-section (1) of	

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procedures for calculating the expected revenue from tariff and charges under sub-section (5) of section 62; (zg) the manner of making an application before the State Commission and the fee payable therefor under sub-section (1) of section 64; (zh) issue of tariff order with modifications or conditions under sub-section(3) of section 64; (zi) the manner by the which development of market in power including trading specified under section 66; (zj) the powers and duties of the Secretary of the State Commission under sub-section (1) of section 91; (zk) the terms and conditions of service of the secretary, officers and other employees of the State Commission under sub-section (2) of section 91; (zl) rules of procedure for transaction of business under sub-section (1) of section 92; (zm) minimum information to be maintained by a licensee or the	section 64; (zh) issue of tariff order with modifications or conditions under sub-section(3) of section 64; (zi) the manner by the which development of market in power including trading specified under section 66; (zj) the powers and duties of the Secretary of the State Commission under sub-section (1) of section 91; (zk) the terms and conditions of service of the secretary, officers and other employees of the State Commission under sub-section (2) of section 91; (zl) rules of procedure for transaction of business under sub-section (1) of section 92; (zm) minimum information to be maintained by a licensee or the generating company and the manner of such information to be maintained under sub-section (8) of section 128; (zn) the manner of service and publication of notice under section 130; (zo) the form of preferring the appeal and manner in which such form shall be verified and the fee for preferring the appeal	

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generating company and the manner of such information to be maintained under sub-section (8) of section 128; (zn) the manner of service and publication of notice under section 130; (zo) the form of preferring the appeal and manner in which such form shall be verified and the fee for preferring the appeal under sub-section (1) of section 127; (zp) any other matter which is to be, or may be, specified. (3) All regulations made by the State Commission under this Act shall be subject to the condition of previous publication.	under sub-section (1) of section 127; (zp) any other matter which is to be, or may be, specified. (3) All regulations made by the State Commission under this Act shall be subject to the condition of previous publication.	