

## **APP Comments on Electricity (Amendment) Bill, 2022 as introduced in Lok Sabha**

### **1. Executive Summary - Our views on the need for amendments in the Electricity Act and the envisaged benefits**

The Electricity Act 2003 introduced several measures to promote competition and facilitate private sector investments in generation, transmission and distribution of electrical energy, while protecting the interest of consumers. These measures and the resulting large scale entry of private developers in the power sector has resulted in a paradigm shift, with the nation moving away from an era of perennial electricity shortages to a power surplus position and national grid & distribution network connectivity having been extended to the remotest areas.

Past challenges of insufficient generation capacity and lack of last mile connectivity to the end consumers have been replaced with a completely new set of challenges. While the 2003 Act opened the gates for capacity building and utilization of more efficient technologies by way of which increased private sector investments, many of these private sector players have faced a sustainability crisis owing to continuously deteriorating financial health of the distribution utilities and a complete lack of payment discipline. Many efforts have been made to get the distribution utilities back on a sustainable path but lacunae in the tariff determination process have led to continuous increase in the losses being borne by the distribution utilities. At the same time, regulatory and adjudicatory mechanisms have shown the need for capacity building and upgrades as they have been unable to prevail upon emerging disputes in a timely manner.

India's commitment to reach net zero emissions by 2070 and to reach 50% of its electricity requirements from renewable energy sources by 2030 has been a major driver towards a transformational change which is currently happening in the sector - India has witnessed the fastest growth rate in RE capacity addition among all major nations in the past 8 years and the share of non-fossil based generation capacity has increased from non-existent levels in 2003 to almost 42% as on August, 2022. The rapid pace of RE

capacity addition poses significant challenges for the system operator in terms of ensuring reliable and secure grid operation while factoring in economic efficiency in the scheduling and despatch of electricity.

The Electricity (Amendment) Bill, 2022, seeks to address the above set of contemporary challenges by providing for payment security to the generators and transmission licensees, empowering the system operator with greater control and powers to bring about a just energy transition and strengthening the regulatory and adjudicatory mechanism. The Amendment Bill also takes next steps in providing greater choice to the end consumers of electricity and paves the way for further reform in the distribution segment through providing for greater competition by allowing multiple distribution licensees in an area of supply and the option to new licensees to utilize the existing distribution network. The Bill also provides an improved corporate governance framework for the distribution sector which will be of further benefit to the end consumers.

**We, as Association of Power Producers, are completely supportive of the changes envisaged in the Amendment Bill and believe that the proposed legislation shall enhance sustainability and efficiency of operations all across the power sector value chain.**

**2. APP’s detailed comments on Electricity (Amendment) Bill, 2022 as introduced in Lok Sabha**

S. no.	Section of the Electricity Act, 2003	Provisions of Electricity (Amendment) Bill, 2022	Comments/ Suggestions
1.	Section 2 (50)  Definition of “power system”	(50) "power system" means all aspects of generation, transmission, distribution and supply of electricity and includes one or more of the following, namely:-  (a) generating stations;  (b) transmission or main transmission lines;  (c) sub-stations;  (d) tie-lines;  (e) load despatch activities;  (f) mains or distribution mains;  (g) electric supply-lines;	The definition of energy storage system may be added for better clarity.  The following definition may be considered:  “Energy storage system” means system utilizing methods and technologies like, pumped storage, solid state batteries, flow batteries, compressed air, fuel cells, molten salt, hydrogen storage or any other technology that has been notified by Central Government, to store various forms of energy and to deliver the stored energy in the form of electricity;

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		(h) overhead lines; (i) service lines; (j) works; (k) energy storage system;	
2.	Section 14 (Grant of Licence)  6 <sup>th</sup> proviso	Provided also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity <del>through their own distribution system</del> within the same area, subject to the conditions that the applicant for grant of licence within the same area shall, without prejudice to the other conditions or requirements under this Act,	We support the proposed insertions.  Allowing distribution licensees to utilize the distribution network of other licensees in the same area of supply will promote effective and efficient utilization of distribution network assets on the ground and avoid any wasteful expenditure by new licensees which would

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		<p>comply with the additional requirements 1[relating to the capital adequacy, credit-worthiness, or code of conduct] as may be prescribed by the Central Government, and no such applicant, who complies with all the requirements for grant of licence, shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose</p>	<p>eventually have to be borne by the end consumer.</p> <p>However, it may be noted that at present, the return on investment is given to distribution licensee based upon investment made in distribution network. This may incentivize any new licensee to make additional investment in network, leading to higher burden on consumers. A concept similar to distribution margin or supply margin may be introduced to enable retail competition without adverse loading on consumer tariff.</p>

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3.	<b>Section 15. (Procedure for grant of licence):</b>	<p>(6) Where a person makes an application under sub-section (1) of section 14 to act as a licensee, the Appropriate Commission shall, as far as practicable, within ninety days after receipt of such application,</p> <p>-</p> <p>(a) issue a licence subject to the provisions of this Act and the rules and regulations made thereunder; or</p> <p>(b) reject the application for reasons to be recorded in writing if such application does not conform to the</p>	<p>We support the insertion of the proviso.</p> <p>Past experience shows that there are often long delays associated with regulatory approval process, with many cases remaining pending for years without getting approved or even listed. Deemed approval of licence is essential to strengthen investor comfort and avoid any unnecessary delays which would only harm consumer interests. It would also act as a deterrent to the approving authority from resorting to delays as a means of withholding approvals.</p>

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		<p>provisions of this Act or the rules and regulations made thereunder or the provisions of any other law for the time being in force:</p> <p>Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.</p> <p><u>Provided further that if the Appropriate Commission fails to grant the licence or reject the application, as the case may be, within the time so provided, the applicant shall be deemed to have been granted the licence.</u></p>	

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4.	Section 26. (National Load Despatch Centre)	<p>(4) <u>The National Load Despatch Centre shall—</u></p> <p>(a) <u>be the apex body to ensure integrated operation of the power system in the country;</u></p> <p>(a)(b) <u>be responsible for optimum scheduling and despatch of electricity in the country across different States and regions in accordance with the contracts entered into with the licensees or the generating</u></p>	<p>We support the insertion of subsection (4) as it seeks to strengthen the functioning of the National Load Despatch Centre in order to ensure the safety and security of the grid.</p> <p>The provision that no electricity shall be scheduled or despatched without adequate security of payment as prescribed by the Central Government is crucial to ensure sustainable and economic performance of the power sector. Giving strength to this provision by inserting it in the Act may finally help to overturn the long established practice adopted by State distribution companies to</p>



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		<p style="text-align: center;"><u>companies:</u></p> <p style="text-align: center;"><u>Provided that no electricity shall be scheduled or despatched under such contract unless adequate security of payment, as may be prescribed by the Central Government, has been made;</u></p> <p><del>(b)</del>(c) <u>monitor grid operations and ensure security of the electricity grid and for this purpose give directions as necessary to the Regional Load Despatch Centre or State Load Despatch Centre, as the case may be;</u></p>	<p>browbeat generating companies to provide power supply without any assurance as to when payments for the power supplied would be forthcoming.</p> <p>Past experience has shown that contractual provisions pertaining to timely payments have been completely ineffective in arresting the malaise of delays in payments to the generating companies. In this regard, the payment security mechanism prescribed by the Central Government in terms of mandatorily providing LC/advance payment coverage before supply of power has shown positive results across the board</p>

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		<p><u>(d) exercise supervision and control over the inter-regional and inter-State transmission network; and</u></p> <p><u>(e) have overall authority for carrying out real time operations of the electricity grid of the country.</u></p> <p><u>(5) The National Load Despatch Centre shall give such directions and exercise such supervision and control over the power system as may be required for the safety and security of the electricity grid</u></p>	<p>and needs to continue. The established practice of using delayed payments as a tool to manage their finances needs to be stopped by all means.</p> <p>Insertion of the provision for adequate security of payment will be a major shot in the arm for the efforts made by the Central Government to ensure timely payments across the power sector value chain and the sustainability of the sector.</p>

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		<p><u>of the country, for ensuring the stability of grid operation and for achieving maximum economy and efficiency in the operation of the power system throughout the country.</u></p> <p>(6)<u>The National Load Despatch Centre shall give such directions to the State Load Despatch Centre, as may be necessary through the Regional Load Despatch Centre concerned.</u></p> <p><del>(6)</del>(7) <u>Every Regional Load Despatch Centre, State Load Despatch Centre, licensee, generating company, generating</u></p>	

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		<p><u>station, sub-station and any other person connected with the operation of the power system shall comply with the directions issued by the National Load Despatch Centre from time to time.</u></p>	
5.	<p><b>Section 28. (Functions of Regional Load Despatch Centre):</b></p>	<p>(3) The Regional Load Despatch Centre shall -</p> <p>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</p>	<p>We support the insertion of this proviso.</p> <p>Reasoning is the same as outlined in s.no. 4 above.</p>

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		<p>operating in the region;</p> <p><u>Provided that no electricity shall be scheduled or despatched under such contract unless adequate security of payment, as may be prescribed by the Central Government, has been made;</u></p>	
6.	<b>Section 32. (Functions of State Load Despatch Centres):</b>	<p>(2) The State Load Despatch Centre shall -</p> <p>(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</p>	<p>We support the insertion of this proviso.</p> <p>Reasoning is the same as outlined in s.no. 4 above.</p>

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		<p>operating in that State;</p> <p><u>Provided that no electricity shall be scheduled or despatched under such contract unless adequate security of payment, as may be prescribed by the Central Government, has been made</u></p>	
7.	<p><b>Section 42.</b></p> <p><b>(Duties of distribution license and open access):</b></p>	<p><u>(1) It shall be the duty of all distribution licensees to,—</u></p> <p><u>ensure an efficient, co-ordinated and economic distribution system in their area of supply:</u></p> <p><u>Provided that a distribution licensee may use the distribution systems of other licensees in the area of supply</u></p>	<p>We support the proposed insertions.</p> <p>Allowing distribution licensees to utilize the distribution network of other licensees in the same area of supply will promote effective and efficient utilization of distribution network assets on the ground and avoid any wasteful expenditure by new licensees which would</p>

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		<p><u>for supplying power through the system of non-discriminatory open access;</u></p> <p>(b) <u>give non-discriminatory open access to other distribution licensees on payment of wheeling charges; and</u></p> <p>(c) <u>provide supply of electricity to the consumers,</u></p> <p><u>in accordance with the provisions of this Act and the rules made thereunder by the Central Government and the regulations made by the Appropriate Commission and</u></p>	<p>eventually have to be borne by the end consumer.</p>

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		<p><u>in accordance with the model regulations laid down by the Forum of Regulators.</u></p> <p>(4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.</p> <p><u>(4A) A distribution licensee shall provide non-discriminatory open</u></p>	



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		<p><u>access through its distribution system to all distribution licensees having licence within the same area of supply, subject to payment of wheeling charges and in accordance with the regulations specified by the Appropriate Commission.</u></p> <p><u>(4B) In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that a distribution licensee has knowingly failed to provide open access through its distribution system to another distribution licensee or hindered it in any manner from using its distribution network, the Appropriate Commission may, after</u></p>	

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		<p><u>giving the distribution licensee an opportunity of being heard, issue such directions as it considers necessary and impose the penalties in accordance with the provisions of this Act.</u></p>	
8.	<p><b>Section 59 (Information with respect to levels of performance)</b></p>	<p>(1) Every licensee shall, within the period specified by the Appropriate Commission,</p> <p>furnish to the Commission the following information, namely:-</p> <p>(a) the level of performance achieved under sub-section (1) of the section 57;</p> <p>(b) the number of cases in which compensation was made under</p>	<p>We support the proposed insertion in Section 59.</p> <p>Compliance monitoring of the guidelines notified by the Central Government regarding corporate governance is vital to ensure sustainability of the sector and protect consumer interests.</p>

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		<p>subsection (2) of section 57 and the aggregate amount of the compensation.</p> <p>(c) the status of compliance of the guidelines notified by the Central Government regarding corporate governance.</p>	
9.	<b>Section60. (Market domination)</b>	<p><u>60A</u></p> <p><u>(1) Notwithstanding anything contained in this Act, on the issuance of licence to more than one distribution licensee in an area of supply, the power and associated costs from the existing power purchase</u></p>	<p>We support the proposed insertion of Section 60A.</p> <p>For integrated and seamless operation of the grid and in order to ensure that stakeholder interests are balanced and treated uniformly across the country without</p>

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		<p><u>agreements with the existing distribution licensee, as on the date of issuing licence to another distribution licensee, shall be shared among all the distribution licensees in the area of supply as per such arrangements as may be specified by the State Commission in accordance with the provisions of this Act and the rules made thereunder by the Central Government:</u></p>	<p>inconsistencies between different States, it is essential that the Central Government should frame rules regarding sharing of power and associated costs among all the distribution licensees in the same area of supply.</p>
10.	Section 64 ( <b>Procedure for tariff order</b> )	(1) <b>An application for determination of tariff under section 62 shall be made by a generating company or licensee at such time and in such manner and accompanied by such</b>	We support the proposed insertion as it will help to bring about greater discipline in the process of tariff fixation.

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

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		<p><u>with the objective of determining the tariff before the beginning of the financial year:</u></p>	
11.	Section 64 (Procedure for tariff order)	<p>(3) The Appropriate Commission shall, within <b>ninety days from the date of receipt of the application or initiation of proceedings</b> under subsection (1) and after considering all suggestions and objections received from the public,-</p> <p>(a) issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order;</p> <p><b>Provided that if tariff order cannot be issued due to any reasons which are to be recorded in writing, the</b></p>	We support the proposed insertion as it will help to bring about greater discipline in the process of tariff fixation.

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		<p>Appropriate Commission shall issue the order for interim tariff within the said period of ninety days from the date of receipt of such application or initiation of such proceedings:</p> <p>Provided further that the interim tariff shall remain in operation till issue of final tariff order which shall be issued within such period not exceeding one hundred and fifty days of receipt of such application for determination of tariff or initiation of such proceedings.</p>	
12.	Section 82 (Constitution of State Commission)	(6) If any State Commission is unable to perform its functions on account of vacancies, the Central Government may, in consultation	We support the insertion of this provision as it will help to mitigate any delays caused due to vacancies in a State Commission.

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		with the State Government concerned, entrust its functions to any other State Commission or Joint Commission, as it deems proper.	
13.	<b>Section 112. (Composition of Appellate Tribunal)</b>	(1) The Appellate Tribunal shall consist of a Chairperson and such number of other Members, not less than three, as may be prescribed by the Central Government.	<p>Suggestion: Minimum number of APTEL members may be increased beyond three.</p> <p>Reasoning: The last few years have witnessed a significant increase in the number of pending cases at APTEL. Many of these involve crucial matters such as tariff orders, contractual (PPA) disputes and interpretation of rules and regulations, and delays in APTEL judgments on these issues pose a serious challenge to the</p>



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			smooth functioning of the power sector.

### 3. Further suggestions for inclusion in the Electricity (Amendment) Bill 2022:

#### a) Section 63 - Determination of tariff by bidding process

Current provision in the Act:

*“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.”*

**Our suggestion:** Timelines for adoption of tariff by Regulatory Commission need to be stipulated and Procurers should be levied penalty in case of delay beyond a set period in filing the petition. **It is suggested that the Appropriate Commission may analyze and adopt the tariff within 90 days from receipt of an application and if the tariff is not adopted by the Appropriate Commission within this time period then it shall be deemed to have been adopted.**

#### b) Section 112. (Composition of Appellate Tribunal)

**Our suggestion:** It is suggested that Regional benches of APTEL may be considered for improved adjudicatory functioning. At present the number of cases pending with APTEL for adjudication are far more than are being resolved through judgements every year. Increasing the number of benches would not only help with early resolution of cases but will also be on track towards improving efficiency and ease of doing business for the stakeholders since regional benches would help to cut down on travel time and associated costs for the appellants and respondents.