



India's Electricity Act, 2003 Implications for Regional Electricity Trade

Volume II

September 2004

Prepared by

 **Nexant**

Contract No. 386-C-00-03-00135-00

Prepared for

USAID SARI/Energy Program

www.sari-energy.org



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भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 2nd June, 2003/Jyaistha 12, 1925(Saka)

The following Act of Parliament received the assent of the President on the 26th May, 2003, and is hereby published for general information :—

THE ELECTRICITY ACT, 2003

[No. 36 OF 2003]

[26th May, 2003]

An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto.

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and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fifty- fourth Year of the Republic of India as follows: -

PART I

PRELIMINARY

Short title, extent
and
commencement

1. (1) This Act may be called the Electricity Act, 2003.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions

2. In this Act, unless the context otherwise requires,
 - (1) "Appellate Tribunal" means the Appellate Tribunal for Electricity established under section 110;
 - (2) "appointed date" means such date as the Central Government may, by notification, appoint;
 - (3) "area of supply" means the area within which a distribution licensee is authorised by his licence to supply electricity;
 - (4) "Appropriate Commission" means the Central Regulatory Commission referred to in sub-section (1) of section 76 or the State Regulatory Commission referred to in section 82 or the Joint Commission referred to in section 83, as the case may be ;
 - (5) "Appropriate Government" means, -
 - (a) the Central Government, -
 - (i) in respect of a generating company wholly or partly owned by it;
 - (ii) in relation to any inter-State generation, transmission, trading or supply of electricity and with respect to any mines, oil-fields, railways, national highways, airports, telegraphs, broadcasting stations and any works of defence, dockyard, nuclear power installations;
 - (iii) in respect of National Load Despatch Centre; and Regional Load Despatch Centre;
 - (iv) in relation to any works or electric installation belonging to it or under its control ;
 - (b) in any other case, the State Government, having jurisdiction under this Act;
 - (6) "Authority" means the Central Electricity Authority referred to in sub-section(1) of section 70;
 - (7) "Board" means, a State Electricity Board, constituted before the commencement of this Act under sub-section (1) of section 5 of the

commencement of this Act, under sub-section (I) of section 5 of the Electricity (Supply) Act, 1948;

- (8) "Captive generating plant" means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such co-operative society or association;
- (9) "Central Commission" means the Central Electricity Regulatory Commission referred to in sub-section (1) of section 76;
- (10) "Central Transmission Utility" means any Government company which the Central Government may notify under sub-section (1) of section 38;
- (11) "Chairperson" means the Chairperson of the Authority or Appropriate Commission or the Appellate Tribunal as the case may be;
- (12) "Cogeneration" means a process which simultaneously produces two or more forms of useful energy (including electricity);
- (13) "company" means a company formed and registered under the Companies Act, 1956 and includes any body corporate under a Central, State or Provincial Act;
- (14) "conservation" means any reduction in consumption of electricity as a result of increase in the efficiency in supply and use of electricity;
- (15) "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;
- (16) "Dedicated Transmission Lines" means any electric supply line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in section 9 or generating station referred to in section 10 to any transmission lines or sub-stations or generating stations or the load centre, as the case may be;
- (17) "distribution licensee" means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;
- (18) "distributing main" means the portion of any main with which a service line is, or is intended to be, immediately connected;
- (19) "distribution system" means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers;
- (20) "electric line" means any line which is used for carrying electricity for any purpose and includes
 - (a) any support for any such line, that is to say, any structure, tower, pole or other thing in, on, by or from which any such line is, or may be, supported, carried or suspended; and

- (b) any apparatus connected to any such line for the purpose of carrying electricity;
- (21) "Electrical Inspector" means a person appointed as such by the Appropriate Government under sub-section (1) of section 162 and also includes Chief Electrical Inspector;
- (22) "electrical plant" means any plant, equipment, apparatus or appliance or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity but does not include-
 - (a) an electric line; or
 - (b) a meter used for ascertaining the quantity of electricity supplied to any premises; or
 - (c) an electrical equipment, apparatus or appliance under the control of a consumer;
- (23) "electricity" means electrical energy-
 - (a) generated, transmitted, supplied or traded for any purpose; or
 - (b) used for any purpose except the transmission of a message;
- (24) "Electricity Supply Code" means the Electricity Supply Code specified under section 50;
- (25) "electricity system" means a system under the control of a generating company or licensee, as the case may be, having one or more -
 - (a) generating stations; or
 - (b) transmission lines; or
 - (c) electric lines and sub-stations;

and when used in the context of a State or the Union, the entire electricity system within the territories thereof;
- (26) "electricity trader" means a person who has been granted a licence to undertake trading in electricity under section 12;
- (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;
- (28) "generating company" means any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person, which owns or operates or maintains a generating station;
- (29) "generate" means to produce electricity from a generating station for the purpose of giving supply to any premises or enabling a supply to be so given;
- (30) "generating station" or "station" means any station for generating electricity, including any building and plant with step-up transformer, switch yard, switch-gear, cables or other appurtenant equipment, if any used for that purpose and the site thereof, a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is

operating staff of a generating station, and where electricity is generated by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any sub-station;

- (31) "Government company" shall have the meaning assigned to it in section 617 of the Companies Act, 1956;
- (32) "grid" means the high voltage backbone system of inter-connected transmission lines, sub-stations and generating plants;
- (33) "Grid Code" means the Grid Code specified by the Central Commission under clause (h) of sub-section (1) of section 79;
- (34) "Grid Standards" means the Grid Standards specified under clause (d) of section 73 by the Authority;
- (35) "high voltage line" means an electric line or cable of a nominal voltage as may be specified by the Authority from time to time;
- (36) "inter-State transmission system" includes -
 - (i) any system for the conveyance of electricity by means of main transmission line from the territory of one State to another State;
 - (ii) the conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-State transmission of electricity;
 - (iii) the transmission of electricity within the territory of a State on a system built, owned, operated, maintained or controlled by Central Transmission Utility.
- (37) "intra-State transmission system" means any system for transmission of electricity other than an inter-State transmission system ;
- (38) "licence" means a licence granted under section 14;
- (39) "licensee" means a person who has been granted a licence under section 14;
- (40) "line" means any wire, cable, tube, pipe, insulator, conductor or other similar thing (including its casing or coating) which is designed or adapted for use in carrying electricity and includes any line which surrounds or supports, or is surrounded or supported by or is installed in close proximity to, or is supported, carried or suspended in association with, any such line;
- (41) "local authority" means any Nagar Panchayat, Municipal Council, municipal corporation, panchayat constituted at the village, intermediate and district levels, body or port commissioners or other authority legally entitled to, or entrusted by the Union or any State Government with, the control or management of any area or local fund;
- (42) "main" means any electric supply-line through which electricity is, or is intended to be, supplied ;
- (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;

- (44) "National Electricity Plan" means the National Electricity Plan notified under sub-section (4) of section 3;
- (45) "National Load Despatch Centre" means the Centre established under sub-section (1) of section 26;
- (46) "notification" means notification published in the Official Gazette and the expression "notify" shall be construed accordingly;
- (47) "open access" means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;
- (48) "overhead line" means an electric line which is placed above the ground and in the open air but does not include live rails of a traction system;
- (49) "person" shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;
- (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;
 - (h) overhead lines;
 - (i) service lines;
 - (j) works;
- (51) "premises" includes any land, building or structure;
- (52) "prescribed" means prescribed by rules made by the Appropriate Government under this Act;

- (53) "public lamp" means an electric lamp used for the lighting of any street;
- (54) "real time operation" means action to be taken at a given time at which information about the electricity system is made available to the concerned Load Despatch Centre;
- (55) "Regional Power Committee" means a committee established by resolution by the Central Government for a specified region for facilitating the integrated operation of the power systems in that region;
- (56) "Regional Load Despatch Centre" means the centre established under sub-section (1) of section 27;
- (57) "regulations" means regulations made under this Act;
- (58) "repealed laws" means the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 repealed by section 185; 9 of 1910
54 of 1948
14 of 1998
- (59) "rules " means rules made under this Act;
- (60) "schedule" means the schedule to this Act;
- (61) "service-line" means any electric supply line through which electricity is, or is intended to be, supplied -
- (a) to a single consumer either from a distributing main or immediately from the Distribution Licensee's premises; or
- (b) from a distributing main to a group of consumers on the same premises or on contiguous premises supplied from the same point of the distributing main;
- (62) "specified" means specified by regulations made by the Appropriate Commission or the Authority, as the case may be, under this Act;
- (63) "stand alone system" means the electricity system set up to generate power and distribute electricity in a specified area without connection to the grid;
- (64) "State Commission" means the State Electricity Regulatory Commission constituted under sub-section (1) of section 82 and includes a Joint Commission constituted under sub-section (1) of section 83;
- (65) "State Grid Code" means the State Grid Code referred under clause (h) of sub-section (1) of section 86;
- (66) "State Load Despatch Centre" means the centre established under sub-section (1) of section 31;
- (67) "State Transmission Utility" means the Board or the Government company specified as such by the State Government under sub-section (1) of section 39;
- (68) "street" includes any way, road, lane, square, court, alley, passage or open space, whether a thoroughfare or not, over which the public have a right of way, and also the roadway and footway over any public bridge or causeway;
- (69) "sub-station" means a station for transforming or converting electricity for the transmission or distribution thereof and includes transformers,

converters, switchgears, capacitors, synchronous condensers, structures, cable and other appurtenant equipment and any buildings used for that purpose and the site thereof;

- (70) "supply", in relation to electricity, means the sale of electricity to a licensee or consumer;
- (71) "trading" means purchase of electricity for resale thereof and the expression "trade" shall be construed accordingly;
- (72) "transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a sub-station, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works;
- (73) "transmission licensee" means a licensee authorised to establish or operate transmission lines;
- (74) "transmit" means conveyance of electricity by means of transmission lines and the expression "transmission" shall be construed accordingly;
- (75) "utility" means the electric lines or electrical plant, and includes all lands, buildings, works and materials attached thereto belonging to any person acting as a generating company or licensee under the provisions of this Act;
- (76) "wheeling" means the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under section 62;
- (77) "works" includes electric line, and any building, plant, machinery, apparatus and any other thing of whatever description required to transmit, distribute or supply electricity to the public and to carry into effect the objects of a licence or sanction granted under this Act or any other law for the time being in force.

PART II

NATIONAL ELECTRICITY POLICY AND PLAN

National
Electricity Policy
and Plan

3. (1) The Central Government shall, from time to time, prepare the national electricity policy and tariff policy, in consultation with the State Governments and the Authority for development of the power system based on optimal utilisation of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy.

(2) The Central Government shall publish National Electricity Policy and tariff policy from time to time.

(3) The Central Government may, from time to time, in consultation with the State Governments and the Authority, review or revise, the National Electricity Policy and tariff policy referred to in sub-section (1).

(4) The Authority shall prepare a National Electricity Plan in accordance with the National Electricity Policy and notify such plan once in five years:

Provided that the Authority in preparing the National Electricity Plan shall publish the draft National Electricity Plan and invite suggestions and objections thereon from licensees, generating companies and the public within such time as may be prescribed:

Provided further that the Authority shall -

- (a) notify the plan after obtaining the approval of the Central Government;
- (b) revise the plan incorporating therein the directions, if any, given by the Central Government while granting approval under clause (a).

(5) The Authority may review or revise the National Electricity Plan in accordance with the National Electricity Policy.

National policy on stand alone systems for rural areas and non-conventional energy systems.

4. The Central Government shall, after consultation with the State Governments, prepare and notify a national policy, permitting stand alone systems (including those based on renewable sources of energy and non-conventional sources of energy) for rural areas.

National policy on electrification and local distribution in rural areas.

5. The Central Government shall also formulate a national policy, in consultation with the State Governments and the State Commissions, for rural electrification and for bulk purchase of power and management of local distribution in rural areas through Panchayat Institutions, users' associations, co-operative societies, non-Governmental organisations or franchisees.

Obligations to supply electricity to rural areas.

6. The Appropriate Government shall endeavour to supply electricity to all areas including villages and hamlets.

PART III

GENERATION OF ELECTRICITY

Generating Company and requirement for setting up of generating station

7. Any generating company may establish, operate and maintain a generating station without obtaining a licence under this Act if it complies with the technical standards relating to connectivity with the grid referred to in clause (b) of section 73.

Hydro-electric generation

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

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

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

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

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

Captive
Generation

9. (1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines:

Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company.

(2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use:

Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be:

Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission.

Duties of
Generating
Companies

10. (1) Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.

(2) A generating company may supply electricity to any licensee in accordance with this Act and the rules and regulations made thereunder and may, subject to the regulations made under sub-section (2) of section 42, supply electricity to any consumer.

(3) Every generating company shall -

(a) submit technical details regarding its generating stations to the Appropriate Commission and the Authority;

(b) co-ordinate with the Central Transmission Utility or the State Transmission Utility, as the case may be, for transmission of the electricity generated by it.

Direction to
generating
companies

11. (1) The Appropriate Government may specify that a generating company shall, in extraordinary circumstances operate and maintain any generating station in accordance with the directions of that Government.

Explanation. - For the purposes of this section, the expression “extraordinary circumstances” means circumstances arising out of threat to security of the State, public order or a natural calamity or such other circumstances arising in the public interest.

(2) The Appropriate Commission may offset the adverse financial impact of the directions referred to in sub-section (1) on any generating company in such manner as it considers appropriate.

PART IV
LICENSING

Authorised persons to transmit, supply, etc., electricity

12. No person shall
- (a) transmit electricity; or
 - (b) distribute electricity; or
 - (c) undertake trading in electricity,

unless he is authorised to do so by a licence issued under section 14, or is exempt under section 13.

Power to exempt

13. The Appropriate Commission may, on the recommendations, of the Appropriate Government, in accordance with the national policy formulated under section 5 and in public interest, direct, by notification that subject to such conditions and restrictions, if any, and for such period or periods, as may be specified in the notification, the provisions of section 12 shall not apply to any local authority, Panchayat Institution, users' association, co-operative societies, non-governmental organizations, or franchisees:

Grant of Licence

14. The Appropriate Commission may, on 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 which may be specified in the licence:

Provided that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule, and the provisions of the repealed laws or such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified, at the request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business:

Provided further that the Central Transmission Utility or the State Transmission Utility shall be deemed to be a transmission licensee under this Act:

Provided also that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government shall be deemed to be a licensee under this Act, but shall not be required to obtain a licence under this Act:

14 of 1948

Provided also that the Damodar Valley Corporation, established under sub-section (1) of section 3 of the Damodar Valley Corporation Act, 1948, shall be deemed to be a licensee under this Act but shall not be required to obtain a licence under this Act and the provisions of the Damodar Valley Corporation Act, 1948, in so far as they are not inconsistent with the provisions of this Act, shall continue to apply to that Corporation:

Provided also that the Government company or the company referred to in sub-section (2) of section 131 of this Act and the company or companies created in pursuance of the Acts specified in the Schedule, shall be deemed to be a licensee under this Act:

Provided also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the condition that the applicant for grant of licence

within the same area, subject to the conditions that the applicant for grant of licence within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements (including 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:

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:

Provided also that where a person intends to generate and distribute electricity in a rural area to be notified by the State Government, such person shall not require any licence for such generation and distribution of electricity, but he shall comply with the measures which may be specified by the Authority under section 53:

Provided also that a distribution licensee shall not require a licence to undertake trading in electricity.

Procedure for
Grant of
Licence

15. (1) Every application under section 14 shall be made in such form and in such manner as may be specified by the Appropriate Commission and shall be accompanied by such fee as may be prescribed.

(2) Any person who has made an application for grant of licence shall, within seven days after making such application, publish a notice of his application with such particulars and in such manner as may be specified and a licence shall not be granted -

(i) until the objections, if any, received by the Appropriate Commission in response to publication of the application have been considered by it:

Provided that no objection shall be so considered unless it is received before the expiration of thirty days from the date of the publication of such notice as aforesaid;

(ii) until, in the case of an application for a licence for an area including the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for defence purposes, the Appropriate Commission has ascertained that there is no objection to the grant of the licence on the part of the Central Government.

(3) A person intending to act as a transmission licensee shall, immediately on making the application, forward a copy of such application to the Central Transmission Utility or the State Transmission Utility, as the case may be.

(4) The Central Transmission Utility or the State Transmission Utility, as the case may be, shall, within thirty days after the receipt of the copy of the application referred to in sub-section (3), send its recommendations, if any, to the Appropriate Commission:

Provided that such recommendations shall not be binding on the Commission.

(5) Before granting a licence under section 14, the Appropriate Commission shall -

(a) publish a notice in two such daily newspapers, as that Commission may consider necessary, stating the name of the person to whom it proposes to issue the licence;

(b) consider all suggestions or objections and the recommendations, if any, of the Central Transmission Utility or State Transmission Utility, as the case may be.

(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, -

(a) issue a licence subject to the provisions of this Act and the rules and regulations made thereunder; or

(b) reject the application for reasons to be recorded in writing if such application does not conform to the provisions of this Act or the rules and regulations made thereunder or the provisions of any other law for the time being in force:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.

(7) The Appropriate Commission shall, immediately after issue of licence, forward a copy of the licence to the Appropriate Government, Authority, local authority, and to such other person as the Appropriate Commission considers necessary.

(8) A licence shall continue to be in force for a period of twenty-five years unless such licence is revoked.

Conditions of licence.

16. The Appropriate Commission may specify any general or specific conditions which shall apply either to a licensee or class of licensees and such conditions shall be deemed to be conditions of such licence:

Provided that the Appropriate Commission shall, within one year from the appointed date, specify any general or specific conditions of licence applicable to the licensees referred to in the first, second, third, fourth and fifth provisions to section 14 after the expiry of one year from the commencement of this Act.

Licensee not to do certain things.

17. (1) No licensee shall, without prior approval of the Appropriate Commission, -

(a) undertake any transaction to acquire by purchase or takeover or otherwise, the utility of any other licensee; or

(b) merge his utility with the utility of any other licensee:

Provided that nothing contained in this sub-section shall apply if the utility of the licensee is situate in a State other than the State in which the utility referred to in clause (a) or clause (b) is situate.

(2) Every licensee shall, before obtaining the approval under sub-section (1), give not less than one month's notice to every other licensee who transmits or distributes, electricity in the area of such licensee who applies for such approval.

(3) No licensee shall at any time assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Appropriate Commission.

(4) Any agreement relating to any transaction specified in sub-section (1) or sub-section (3), unless made with, the prior approval of the Appropriate Commission, shall be void.

Amendment
of licence

18. (1) Where in its opinion the public interest so permits, the Appropriate Commission, may, on the application of the licensee or otherwise, make such alterations and amendments in the terms and conditions of a licence as it thinks fit:

Provided that no such alterations or amendments shall be made except with the consent of the licensee unless such consent has, in the opinion of the Appropriate Commission, been unreasonably withheld.

(2) Before any alterations or amendments in the licence are made under this section, the following provisions shall have effect, namely: -

- (a) where the licensee has made an application under sub-section (1) proposing any alteration or modifications in his licence, the licensee shall publish a notice of such application with such particulars and in such manner as may be specified;
- (b) in the case of an application proposing alterations or modifications in the area of supply comprising the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for defence purposes, the Appropriate Commission shall not make any alterations or modifications except with the consent of the Central Government;
- (c) where any alterations or modifications in a licence are proposed to be made otherwise than on the application of the licensee, the Appropriate Commission shall publish the proposed alterations or modifications with such particulars and in such manner as may be specified;
- (d) the Appropriate Commission shall not make any alterations or modification unless all suggestions or objections received within thirty days from the date of the first publication of the notice have been considered.

Revocation of
licence

19. (1) If the Appropriate Commission, after making an enquiry, is satisfied that public interest so requires, it may revoke a licence in any of the following cases, namely: -

- (a) where the licensee, in the opinion of the Appropriate Commission, makes wilful and prolonged default in doing anything required of him by or under this Act or the rules or regulations made thereunder;
- (b) where the licensee breaks any of the terms or conditions of his licence the breach of which is expressly declared by such licence to render it liable to revocation;
- (c) where the licensee fails, within the period fixed in this behalf by his licence, or any longer period which the Appropriate Commission may have granted therefor –
- (i) to show, to the satisfaction of the Appropriate Commission, that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his licence; or

and obligations imposed on him by his licence; or

- (ii) to make the deposit or furnish the security, or pay the fees or other charges required by his licence;
- (d) where in the opinion of the Appropriate Commission the financial position of the licensee is such that he is unable fully and efficiently to discharge the duties and obligations imposed on him by his licence.

(2) Where in its opinion the public interest so requires, the Appropriate Commission may, on application, or with the consent of the licensee, revoke his licence as to the whole or any part of his area of distribution or transmission or trading upon such terms and conditions as it thinks fit.

(3) No licence shall be revoked under sub-section (1) unless the Appropriate Commission has given to the licensee not less than three months' notice, in writing, stating the grounds on which it is proposed to revoke the licence, and has considered any cause shown by the licensee within the period of that notice, against the proposed revocation.

(4) The Appropriate Commission may, instead of revoking a licence under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose, and any further terms or conditions so imposed shall be binding upon and be observed by the licensee and shall be of like force and effect as if they were contained in the licence.

(5) Where the Commission revokes a licence under this section, it shall serve a notice of revocation upon the licensee and fix a date on which the revocation shall take effect.

(6) Where an Appropriate Commission has given notice for revocation of licence under sub-section (5), without prejudice to any penalty which may be imposed or prosecution proceeding which may be initiated under this Act, the licensee may, after prior approval of that Commission, sell his utility to any person who is found eligible by that Commission for grant of licence.

Sale of utilities
of licensees.

20. (1) Where the Appropriate Commission revokes under section 19 the licence of any licensee, the following provisions shall apply, namely:-

- (a) the Appropriate Commission shall invite applications for acquiring the utility of the licensee whose licence has been revoked and determine which of such applications should be accepted, primarily on the basis of the highest and best price offered for the utility;
- (b) the Appropriate Commission may, by notice in writing, require the licensee to sell his utility and thereupon the licensee shall sell his utility to the person (hereafter in this section referred to as the "purchaser") whose application has been accepted by that Commission;
- (c) all the rights, duties, obligations and liabilities of the licensee, on and from the date of revocation of licence or on and from the date, if earlier, on which the utility of the licensee is sold to a purchaser, shall absolutely cease except for any liabilities which have accrued prior to that date;
- (d) the Appropriate Commission may make such interim arrangements in regard to the operation of the utility as may be

considered appropriate including the appointment of Administrators;

(e) The Administrator appointed under clause (d) shall exercise such powers and discharge such functions as the Appropriate Commission may direct.

(2) Where a utility is sold under sub-section (1), the purchaser shall pay to the licensee the purchase price of the utility in such manner as may be agreed upon.

(3) Where the Appropriate Commission issues any notice under sub-section (1) requiring the licensee to sell the utility, it may, by such notice, require the licensee to deliver the utility, and thereupon the licensee shall deliver on a date specified in the notice, the utility to the designated purchaser on payment of the purchase price thereof.

(4) Where the licensee has delivered the utility referred to in sub-section(3) to the purchaser but its sale has not been completed by the date fixed in the notice issued under that sub-section, the Appropriate Commission may, if it deems fit, permit the intending purchaser to operate and maintain the utility system pending the completion of the sale.

Vesting of utility in purchaser

21. Where a utility is sold under section 20 or section 24, then, upon completion of the sale or on the date on which the utility is delivered to the intending purchaser, as the case may be, whichever is earlier-

(a) the utility shall vest in the purchaser or the intending purchaser, as the case may be, free from any debt, mortgage or similar obligation of the licensee or attaching to the utility:

Provided that any such debt, mortgage or similar obligation shall attach to the purchase money in substitution for the utility; and

(b) the rights, powers, authorities, duties and obligations of the licensee under his licence shall stand transferred to the purchaser and such purchaser shall be deemed to be the licensee.

Provisions where no purchase takes place

22. (1) If the utility is not sold in the manner provided under section 20 or section 24, the Appropriate Commission may, to protect the interest of consumers or in public interest, issue such directions or formulate such scheme as it may deem necessary for operation of the utility.

(2) Where no directions are issued or scheme is formulated by the Appropriate Commission under sub-section (1), the licensee referred to in section 20 or section 24 may dispose of the utility in such manner as it may deem fit:

Provided that, if the licensee does not dispose of the utility, within a period of six months from the date of revocation under section 20 or section 24, the Appropriate Commission may cause the works of the licensee in, under, over, along, or across any street or public land to be removed and every such street or public land to be reinstated, and recover the cost of such removal and reinstatement from the licensee.

Directions to licensees.

23. If the Appropriate Commission is of the opinion that it is necessary or expedient so to do for maintaining the efficient supply, securing the equitable distribution of electricity and promoting competition, it may, by order, provide for regulating supply, distribution, consumption or use thereof.

Suspension of distribution licence and sale of utility.

24. (1) If at any time the Appropriate Commission is of the opinion that a distribution licensee –

- (a) has persistently failed to maintain uninterrupted supply of electricity conforming to standards regarding quality of electricity to the consumers; or
- (b) is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or
- (c) has persistently defaulted in complying with any direction given by the Appropriate Commission under this Act; or
- (d) has broken the terms and conditions of licence,

and circumstances exist which render it necessary for it in public interest so to do, the Appropriate Commission may, for reasons to be recorded in writing, suspend, for a period not exceeding one year, the licence of the distribution licensee and appoint an Administrator to discharge the functions of the distribution licensee in accordance with the terms and conditions of licence:

Provided that before suspending a licence under this section, the Appropriate Commission shall give a reasonable opportunity to the distribution licensee to make representations against the proposed suspension of licence and shall consider the representations, if any, of the distribution licensee.

(2) Upon suspension of licence under sub-section (1) the utilities of the distribution licensee shall vest in the Administrator for a period not exceeding one year or up to the date on which such utility is sold in accordance with the provisions contained in section 20, whichever is later.

(3) The Appropriate Commission shall, within one year of appointment of the Administrator under sub-section (1) either revoke the licence in accordance with the provisions contained in section 19 or revoke suspension of the licence and restore the utility to the distribution licensee whose licence had been suspended, as the case may be.

(4) In case where the Appropriate Commission revokes the licence under sub-section (3), the utility of the distribution licensee shall be sold within a period of one year from the date of revocation of the licence in accordance with the provisions of section 20 and the price after deducting the administrative and other expenses on sale of utilities be remitted to the distribution licensee.

PART- V

TRANSMISSION OF ELECTRICITY

Inter-State transmission

Inter-State,
regional and Inter-
Regional
transmission.

25. For the purposes of this Part, the Central Government may, make region-wise demarcation of the country, and, from time to time, make such modifications therein as it may consider necessary for the efficient, economical and integrated transmission and supply of electricity, and in particular to facilitate voluntary inter-connections and co-ordination of facilities for the inter-State, regional and inter-regional generation and transmission of electricity.

National Load
Despatch Centre.

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 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.

Constitution of
Regional Load
Despatch Centre.

27. (1) The Central Government shall establish a centre for each region to be known as the Regional Load Despatch Centre having territorial jurisdiction as determined by the Central Government in accordance with section 25 for the purposes of exercising the powers and discharging the power and discharging the functions under this Part.

(2) The Regional 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:

Provided that until a Government company or authority or corporation referred to in this sub-section is notified by the Central Government, the Central Transmission Utility shall operate the Regional Load Despatch Centre:

Provided further that no Regional Load Despatch Centre shall engage in the business of generation of electricity or trading in electricity.

Functions of
Regional Load
Despatch Centre.

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;

(b) monitor grid operations;

(c) keep accounts of the quantity of electricity transmitted through the regional grid;

(d) exercise supervision and control over the inter-State transmission system; and

(e) be responsible for carrying out real time operations for grid control and despatch of electricity within the region through secure and economic operation of the regional grid in accordance with the Grid Standards and the Grid Code.

(4) The Regional Load Despatch Centre may levy and collect such fee and charges from the generating companies or licensees engaged in inter-State transmission of electricity as may be specified by the Central Commission.

Compliance of directions.

29. (1) The Regional Load Despatch Centre may give such directions and exercise such supervision and control as may be required for ensuring stability of grid operations and for achieving the maximum economy and efficiency in the operation of the power system in the region under its control.

(2) Every licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall comply with the direction issued by the Regional Load Despatch Centres under sub-section (1).

(3) All directions issued by the Regional Load Despatch Centres to any transmission licensee of State transmission lines or any other licensee of the State or generating company (other than those connected to inter State transmission system) or sub-station in the State shall be issued through the State Load Despatch Centre and the State Load Despatch Centres shall ensure that such directions are duly complied with the licensee or generating company or sub-station.

(4) The Regional Power Committee in the region may, from time to time, agree on matters concerning the stability and smooth operation of the integrated grid and economy and efficiency in the operation of the power system in that region.

(5) If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the regional grid or in relation to any direction given under sub-section (1), it shall be referred to the Central Commission for decision :

Provided that pending the decision of the Central Commission, the directions of the Regional Load Despatch Centre shall be complied with by the State Load Despatch Centre or the licensee or the generating company, as the case may be.

(6) If any licensee, generating company or any other person fails to comply with the directions issued under sub-section (2) or sub-section (3), he shall be liable to penalty not exceeding rupees fifteen lacs.

Intra-State transmission

Transmission within a State

30. The State Commission shall facilitate and promote transmission, wheeling and inter-connection arrangements within its territorial jurisdiction for the transmission and supply of electricity by economical and efficient utilisation of the electricity.

Constitution of State Load Despatch Centres

31. (1) The State Government shall establish a Centre to be known as the State Load Despatch Centre for the purposes of exercising the powers and discharging the functions under this Part.

(2) The State Load Despatch Centre shall be operated by a Government company or any authority or corporation established or constituted

Government company or any authority or corporation established or constituted by or under any State Act, as may be notified by the State Government.

Provided that until a Government company or any authority or corporation is notified by the State Government, the State Transmission Utility shall operate the State Load Despatch Centre:

Provided further that no State Load Despatch Centre shall engage in the business of trading in electricity.

Functions of State Load Despatch Centres

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;

(c) keep accounts of the quantity of electricity transmitted through the State grid;

(d) exercise supervision and control over the intra-state transmission system; and

(e) be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.

(3) The State Load Despatch Centre may levy and collect such fee and charges from the generating companies and licensees engaged in intra-State transmission of electricity as may be specified by the State Commission.

Compliance of directions

33. (1) The State Load Despatch Centre in a State may give such directions and exercise such supervision and control as may be required for ensuring the integrated grid operations and for achieving the maximum economy and efficiency in the operation of power system in that State.

(2) Every licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall comply with the direction issued by the State Load Despatch Centre under sub-section (1).

(3) The State Load Despatch Centre shall comply with the directions of the Regional Load Despatch Centre.

(4) If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the State grid or in relation to any direction given under sub-section (1), it shall be referred to the State Commission for decision:

Provided that pending the decision of the State Commission, the direction of the State Load Despatch Centre shall be complied with by the licensee or generating company.

(5) If any licensee, generating company or any other person fails to comply with the directions issued under sub-section(1), he shall be liable to penalty not exceeding rupees five lacs.

Other provisions relating to transmission

Grid Standards	<p>34. Every transmission licensee shall comply with such technical standards, of operation and maintenance of transmission lines, in accordance with the Grid Standards, as may be specified by the Authority.</p>
Intervening transmission facilities.	<p>35. The Appropriate Commission may, on an application by any licensee, by order require any other licensee owning or operating intervening transmission facilities to provide the use of such facilities to the extent of surplus capacity available with such licensee.</p> <p>Provided that any dispute regarding the extent of surplus capacity available with the licensee, shall be adjudicated upon by the Appropriate Commission.</p>
Charges for intervening transmission facilities.	<p>36. (1) Every licensee shall, on an order made under section 35, provided his intervening transmission facilities at rates, charges and terms and conditions as may be mutually agreed upon :</p> <p>Provided that the Appropriate Commission may specify rates, charges and terms and conditions if these cannot be mutually agreed upon by the licensees.</p> <p>(2) The rates, charges and terms and conditions referred to in sub-section (1) shall be fair and reasonable, and may be allocated in proportion to the use of such facilities.</p> <p>Explanation. - For the purposes of section 35 and 36, the expression “intervening transmission facilities” means the electric lines owned or operated by a licensee where such electric lines can be utilised for transmitting electricity for and on behalf of another licensee at his request and on payment of a tariff or charge.</p>
Direction by appropriate Government.	<p>37. The Appropriate Government may issue directions to the Regional Load Despatch Centres or State Load Despatch Centres, as the case may be, to take such measures as may be necessary for maintaining smooth and stable transmission and supply of electricity to any region or State.</p>
Central Transmission Utility and functions.	<p>38. (1) The Central Government may notify any Government company as the Central Transmission Utility:</p> <p>Provided that the Central Transmission Utility shall not engage in the business of generation of electricity or trading in electricity:</p> <p>Provided further that, the Central Government may transfer, and vest any property, interest in property, rights and liabilities connected with, and personnel involved in transmission of electricity of such Central Transmission Utility, to a company or companies to be incorporated under the Companies Act, 1956 to function as a transmission licensee, through a transfer scheme to be effected in the manner specified under Part XIII and such company or companies shall be deemed to be transmission licensees under this Act.</p> <p>(2) The functions of the Central Transmission Utility shall be -</p> <p>(a) to undertake transmission of electricity through inter-State transmission system;</p> <p>(b) to discharge all functions of planning and co-ordination relating to inter-state transmission system with -</p> <p>(i) State Transmission Utilities;</p>
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- (ii) Central Government;
- (iii) State Governments;
- (iv) generating companies;
- (v) Regional Power Committees;
- (vi) Authority;
- (vii) licensees;
- (viii) any other person notified by the Central Government in this behalf;

(c) to ensure development of an efficient, co-ordinated and economical system of inter-State transmission lines for smooth flow of electricity from generating stations to the load centres;

(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:

Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced and eliminated in the manner as may be specified by the Central Commission:

Provided also that such surcharge may be levied till such time the cross subsidies are not eliminated:

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the Central 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.

State
Transmission
Utility and
functions

39. (1) The State Government may notify the Board or a Government company as the State Transmission Utility:

Provided that the State Transmission Utility shall not engage in the business of trading in electricity:

Provided further that the State Government may transfer, and vest any property, interest in property, rights and liabilities connected with, and personnel involved in transmission of electricity, of such State Transmission Utility, to a company or companies to be incorporated under the Companies Act, 1956 to function as transmission licensee through a transfer scheme to be effected in the

function as transmission licensee through a transfer scheme to be effected in the manner specified under Part XIII and such company or companies shall be deemed to be transmission licensees under this Act.

(2) The functions of the State Transmission Utility shall be -

(a) to undertake transmission of electricity through intra-State transmission system;

(b) to discharge all functions of planning and co-ordination relating to intra-state transmission system with -

(i) Central Transmission Utility;

(ii) State Governments;

(iii) generating companies;

(iv) Regional Power Committees;

(v) Authority;

(vi) licensees;

(vii) any other person notified by the State Government in this behalf;

(c) to ensure development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centres;

(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:

Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced and eliminated in the manner as may be specified by the State Commission:

Provided also that such surcharge may be levied till such time the cross subsidies are not eliminated:

Provided also that the manner of payment and utilisation of the surcharge shall 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.

40. It shall be the duty of a transmission licensee -

(a) to build, maintain and operate an efficient, co-ordinated and economical intra-State transmission system or intra-State transmission

Duties of
Transmission
licensees

economical inter-State transmission system or intra-State transmission system, as the case may be;

(b) to comply with the directions of the Regional Load Despatch Centre and the State Load Despatch Centre as the may be,;

(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:

Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced and eliminated in the manner as may be specified by the Appropriate Commission:

Provided also that such surcharge may be levied till such time the cross subsidies are not eliminated:

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the Appropriate 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.

Other business of
Transmission
Licensee

41. A transmission licensee may, with prior intimation to the Appropriate Commission, engage in any business for optimum utilisation of its assets:

Provided that a proportion of the revenues derived from such business shall, as may be specified by the Appropriate Commission, be utilised for reducing its charges for transmission and wheeling:

Provided further that the transmission licensee shall maintain separate accounts for each such business undertaking to ensure that transmission business neither subsidises in any way such business undertaking nor encumbers its transmission assets in any way to support such business:

Provided also that no transmission licensee shall enter into any contract or otherwise engage in the business to in trading electricity :

PART VI

DISTRIBUTION OF ELECTRICITY

Provisions with respect to distribution licensees

Duties of
distribution
Licensee and
open access

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 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 may be allowed before the cross subsidies are eliminated 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 and eliminated 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.

(3) Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access .

(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.

(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.

(8) The provisions of sub-sections (5),(6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those sub-sections.

Duty to supply on request

43. (1) Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply :

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or

commissioning or within such period as may be specified by the Appropriate Commission.

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) :

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission .

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

Exceptions from duty to supply electricity.

44. Nothing contained in section 43 shall be taken as requiring a distribution licensee to give supply of electricity to any premises if he is prevented from doing so by cyclone, floods, storms or other occurrences beyond his control.

Power to recover charges

45. (1) Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.

(2) The charges for electricity supplied by a distribution licensee shall be -

(a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission ;

(b) published in such manner so as to give adequate publicity for such charges and prices.

(3) The charges for electricity supplied by a distribution licensee may include -

(a) a fixed charge in addition to the charge for the actual electricity supplied;

(b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.

(4) Subject to the provisions of section 62, in fixing charges under this section a distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons.

(5) The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission.

Power to recover expenditure

46. The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.

Power to require security.

47. (1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as determined by regulations, for the payment to him of all monies which may become due to him -

(a) in respect of the electricity supplied to such persons; or

(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to person, in respect of the provision of such line or plant or meter,

and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply or to provide the line or plant or meter for the period during which the failure continues.

(2) Where any person has not given such security as is mentioned in subsection (1) or the security given by any person has become invalid or insufficient, the distribution licensee may, by notice, require that person, within thirty days after the service of the notice, to give him reasonable security for the payment of all monies which may become due to him in respect of the supply of electricity or provision of such line or plant or meter.

(3) If the person referred to in sub-section(2) fails to give such security, the distribution licensee may, if he thinks fit, discontinue the supply of electricity for the period during which the failure continues.

(4) The distribution licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security referred to in sub-section (1) and refund such security on the request of the person who gave such security.

(5) A distribution licensee shall not be entitled to require security in pursuance of clause (a) of sub-section (1) if the person requiring the supply is prepared to take the supply through a pre-payment meter.

Additional terms of supply.

48. A distribution licensee may require any person who requires a supply of electricity in pursuance of section 43 to accept -

(a) any restrictions which may be imposed for the purpose of enabling the distribution licensee to comply with regulations made under section 53;

(b) any terms restricting any liability of the distribution licensee for economic loss resulting from negligence of the person to whom the electricity is supplied.

Agreements with respect to supply or purchase of electricity.

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.

The Electricity Supply Code.

50. The State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges disconnection of supply of electricity for non-payment thereof; restoration of supply of electricity; tampering, distress or damage to electrical plant, electric lines or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter; entry for replacing, altering or maintaining electric lines or electrical plant or meter.

Other businesses of distribution licensees.

51. (1) A distribution licensee may, with prior intimation to the Appropriate Commission, engage in any other business for optimum utilisation of its assets:

Provided that a proportion of the revenues derived from such business shall, as may be specified by the concerned State Commission, be utilised for reducing its charges for wheeling :

Provided further that the distribution licensee shall maintain separate accounts for each such business undertaking to ensure that distribution business neither subsidies in any way such business undertaking nor encumbers its distribution assets in any way to support such business.

Provided also that nothing contained in this section shall apply to a local authority engaged, before the commencement of this Act, in the business of distribution of electricity.

Provisions with respect to electricity traders

Provisions with respect to electricity trader.

52. (1) Without prejudice to the provisions contained in clause (c) of section 12, the Appropriate Commission may, specify the technical requirement, capital adequacy requirement and credit worthiness for being an electricity trader.

(2) Every electricity trader shall discharge such duties, in relation to supply and trading in electricity, as may be specified by the Appropriate Commission.

Provisions with respect to supply generally

Provisions relating to safety and electricity supply

53. (1) The Authority may in consultation with the State Government, specify suitable measures for –

(a) protecting the public (including the persons engaged in the generation, transmission or distribution or trading) from dangers arising from the generation, transmission or distribution or trading of electricity, or use of electricity supplied or installation, maintenance or use of any electric line or electrical plant;

(b) eliminating or reducing the risks of personal injury to any person, or damage to property of any person or interference with use of such property ;

(c) prohibiting the supply or transmission of electricity except by means of a system which conforms to the specification as may be specified;

(d) giving notice in the specified form to the Appropriate Commission and the Electrical Inspector, of accidents and failures of supplies or transmissions of electricity;

(e) keeping by a generating company or licensee the maps, plans and sections relating to supply or transmission of electricity;

(f) inspection of maps, plans and sections by any person authorised by it or by Electrical Inspector or by any person on payment of specified fee;

(g) specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer for the purpose of eliminating or reducing a risk of personal injury or damage to property or interference with its use;

Control of transmission and use of electricity

54. (1) Save as otherwise exempted under this Act, no person other than Central Transmission Utility or a State Transmission Utility, or a licensee shall transmit or use electricity at a rate exceeding two hundred and fifty watts and one hundred volts –

(a) in any street, or

(b) in any place,-

(i) in which one hundred or more persons are ordinarily likely to be assembled; or

(ii) which is a factory within the meaning of the Factories Act, 1948 63 of 1948. or a mine within the meaning of the Mines Act, 1952; or 35 of 1952.

(iii) to which the State Government, by general or special order, declares the provisions of this sub-section to apply,

without giving, before the commencement of transmission or use of electricity, not less than seven days' notice in writing of his intention to the Electrical Inspector and to the District Magistrate, or the Commissioner of Police, as the case may be, containing particulars of the electrical installation and plant, if any, the nature and the purpose of supply and complying with such of the provisions of Part XI of this Act, as may be applicable:

Provided that nothing in this section shall apply to electricity used for the public carriage of passengers, animals or goods, on, or for the lighting or ventilation of the rolling stock of any railway or tramway subject to the provisions of the Railways Act, 1989. 24 of 1989

(2) Where any difference or dispute arises as to whether a place is or is not one in which one hundred or more persons are ordinarily likely to be assembled, the matter shall be referred to the State Government, and the decision of the State Government thereon shall be final.

(3) The provisions of this section shall be binding on the Government.

55. (1) No licensee shall supply electricity, after the expiry of two years from the appointed date, except through installation of a correct meter in accordance with regulations to be made in this behalf by the Authority: Use, etc., of meters

Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter:

Provided further that the State Commission may, by notification extend the said period of two years for a class or classes of persons or for such area as may be specified in that notification.

(2) For proper accounting and audit in the generation, transmission and distribution or trading of electricity, the Authority may direct the installation of meters by a generating company or licensee at such stages of generation, transmission or distribution or trading of electricity and at such locations of generation, transmission or distribution or trading, as it may deem necessary.

(3) If a person makes default in complying with the provisions contained in this section or regulations made under sub-section (1), the Appropriate Commission may make such order as it thinks fit for requiring the default to be made good by the generating company or licensee or by any officers of a company or other association or any other person who is responsible for its default.

Disconnection of supply in default of payment.

56. (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,

whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity:

Consumer protection: Standards of performance

Standard of performance of licensee.

57. (1) The Appropriate Commission may, after consultation with the licensees and persons likely to be affected, specify standards of performance of a licensee or a class of licensees.

(2) If a licensee fails to meet the standards specified under sub-section (1), without prejudice to any penalty which may be imposed or prosecution be initiated, he shall be liable to pay such compensation to the person affected as may be determined by the Appropriate Commission:

Provided that before determination of compensation, the concerned licensee shall be given a reasonable opportunity of being heard.

(3) The compensation determined under sub-section (2) shall be paid by the concerned licensee within ninety days of such determination.

Different Standards of performance by licensee.

58. The Appropriate Commission may specify different standards under sub-section (1) of section 57 for a class or classes of licensee.

Information with respect to levels of performance.

59. (1) Every licensee shall, within the period specified by the Appropriate Commission, furnish to the Commission the following information, namely:-

(a) the level of performance achieved under sub-section (1) of the section 57;

(b) the number of cases in which compensation was made under sub-section (2) of section 57 and the aggregate amount of the compensation.

(2) The Appropriate Commission shall at least once in every year arrange for the publication, in such form and manner as it considers appropriate, of such of the information furnished to it under sub-section (1).

Market
destination

60. The Appropriate Commission may such issue directions as it considers appropriate to a licensee or a generating company if such licensee or generating company enters into any agreement or abuses its dominant position or enters into a combination which is likely to cause or causes an adverse effect on competition in electricity industry.

PART – VII

TARIFF

Tariff
Regulations.

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:-

(a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;

(b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;

(c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;

(d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;

(e) the principles rewarding efficiency in performance;

(f) multi year tariff principles;

(g) that the tariff progressively reflects the cost of supply of electricity and also, reduces and eliminates cross-subsidies within the period to be 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:

Provided that the terms and conditions for determination of tariff under the Electricity (Supply) Act, 1948, the Electricity Regulatory Commission Act, 1998 and the enactments specified in the Schedule as they stood immediately before the appointed date, shall continue to apply for a period of one year or until the terms and conditions for tariff are specified under this section, whichever is earlier.

54 of 1948
14 of 1998

Determination of
Tariff.

62. (1) The Appropriate Commission shall determine the tariff in accordance with 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 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.

(2) The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.

(3) The Appropriate Commission 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.

(4) No tariff or part of any tariff may ordinarily be amended more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.

(5) The Commission may require a licensee or a generating company to comply with such procedures as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover.

(6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.

Determination of
tariff by bidding
process.

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.

Procedure for
tariff order.

64. (1) An application for determination of tariff under section 62 shall be made by a generating company or licensee in such manner and accompanied by such fee, as may be determined by regulations.

(2) Every applicant shall publish the application, in such abridged form and manner, as may be specified by the Appropriate Commission.

(3) The Appropriate Commission shall, within one hundred and twenty days from receipt of an application under sub-section (1) and after considering all suggestions and objections received from the public,-

(a) issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order;

(b) reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and the rules and regulations made thereunder or the provisions of any other law for the time being in force:

Provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application.

(4) The Appropriate Commission shall, within seven days of making the order, send a copy of the order to the Appropriate Government, the Authority, and the concerned licensees and to the person concerned.

(5) Notwithstanding anything contained in Part X, the tariff for any inter-State supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor:

(6) A tariff order shall, unless amended or revoked, shall continue to be in force for such period as may be specified in the tariff order.

Provision of
subsidy by State
Government.

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, within in advance in the manner as may be specified, by the State Commission 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.

Development of
market.

66. The Appropriate Commission shall endeavour to promote the development of a market (including trading) in power in such manner as may be specified and shall be guided by the National Electricity Policy referred to in section 3 in this regard..

PART – VIII

WORKS

Works of licensees

Provision as to opening up of streets, railways etc.

67. (1) A licensee may, from time to time but subject always to the terms and conditions of his licence, within his area of supply or transmission or when permitted by the terms of his licence to lay down or place electric supply lines without the area of supply, without that area carry out works such as -

(a) to open and break up the soil and pavement of any street, railway or tramway;

(b) to open and break up any sewer, drain or tunnel in or under any street, railway or tramway;

(c) to alter the position of any line or works or pipes, other than a main sewer pipe;

(d) to lay down and place electric lines, electrical plant and other works;

(e) to repair, alter or remove the same;

(f) to do all other acts necessary for transmission or supply of electricity.

(2) The Appropriate Government may, by rules made by it in this behalf, specify, -

(a) the cases and circumstances in which the consent in writing of the Appropriate Government, local authority, owner or occupier, as the case may be, shall be required for carrying out works;

(b) the authority which may grant permission in the circumstances where the owner or occupier objects to the carrying out of works;

(c) the nature and period of notice to be given by the licensee before carrying out works;

(d) the procedure and manner of consideration of objections and suggestion received in accordance with the notice referred to in clause (c);

(e) the determination and payment of compensation or rent to the persons affected by works under this section;

(f) the repairs and works to be carried out when emergency exists;

(g) the right of the owner or occupier to carry out certain works under this section and the payment of expenses therefor;

(h) the procedure for carrying out other works near sewers, pipes or other electric lines or works;

(i) the procedure for alteration of the position of pipes, electric lines, electrical plant, telegraph lines, sewer lines, tunnels, drains, etc.;

(j) the procedure for fencing, guarding, lighting and other safety measures relating to works on streets, railways, tramways, sewers, drains or tunnels and immediate reinstatement thereof;

(k) the avoidance of public nuisance, environmental damage and unnecessary damage to the public and private property by such works;

(l) the procedure for undertaking works which are not reparable by the Appropriate Government, licensee or local authority;

(m) the manner of deposit of amount required for restoration of any railways, tramways, waterways, etc.;

(n) the manner of restoration of property affected by such works and maintenance thereof;

(o) the procedure for deposit of compensation payable by the licensee and furnishing of security; and

(p) such other matters as are incidental or consequential to the construction and maintenance of works under this section.

(3) A licensee shall, in exercise of any of the powers conferred by or under this section and the rules made thereunder, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.

(4) Where any difference or dispute [including amount of compensation under sub-section (3)] arises under this section, the matter shall be determined by the Appropriate Commission.

(5) The Appropriate Commission, while determining any difference or dispute arising under this section in addition to any compensation under sub-section (3), may impose a penalty not exceeding the amount of compensation payable under that sub-section.

Provisions relating to overhead lines

Overhead lines.

68. (1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).

(2) The provisions contained in sub-section (1) shall not apply-

(a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;

(b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or

(c) in such other cases as may be prescribed.

(3) The Appropriate Government shall, while granting approval under sub-section (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary

(4) The Appropriate Government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by it.

(5) Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the convenience or transmission of electricity on the

to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.

(6) When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

Explanation. - For purposes of this section, the expression "tree" shall be deemed to include any shrub, hedge, jungle growth or other plant.

Notice to
telegraph
authority.

69. (1) A licensee shall, before laying down or placing, within ten meters of any telegraph line, electric line, electrical plant or other works, not being either service lines, or electric lines or electrical plant, for the repair, renewal or amendment of existing works of which the character or position is not to be altered,-

(a) submit a proposal in case of a new installation to an authority to be designated by the Central Government and such authority shall take a decision on the proposal within thirty days;

(b) give not less than ten days' notice in writing to the telegraph authority in case of repair, renewal or amendment of existing works, specifying-

- (i) the course of the works or alterations proposed ;
- (ii) the manner in which the works are to be utilised ;
- (iii) the amount and nature of the electricity to be transmitted;
- (iv) the extent to, and the manner in which (if at all), earth returns are to be used ,

and the licensee shall conform to such reasonable requirements, either general or special, as may be laid down by the telegraph authority within that period for preventing any telegraph line from being injuriously affected by such works or alterations:

Provided that in case of emergency (which shall be stated by the licensee in writing to the telegraph authority) arising from defects in any of the electric lines or electrical plant or other works of the licensee, the licensee shall be required to give only such notice as may be possible after the necessity for the proposed new works or alterations has arisen.

(2) Where the works of the laying or placing of any service line is to be executed the licensee shall, not less than forty-eight hours before commencing the work, serve upon the telegraph authority a notice in writing of his intention to execute such works.

PART – IX

CENTRAL ELECTRICITY AUTHORITY

Constitution and functions of Authority

Constitution,
etc., of Central
Electricity
Authority.

70. (1) There shall be a body to be called the Central Electricity Authority to exercise such functions and perform such duties as are assigned to it under this Act.

54 of 1948.

(2) The Central Electricity Authority, established under section 3 of the Electricity (Supply) Act, 1948 and functioning as such immediately before the appointed date, shall be the Central Electricity Authority for the purposes of this Act and the Chairperson, Members, Secretary and other officers and employees thereof shall be deemed to have been appointed under this Act and they shall continue to hold office on the same terms and conditions on which they were appointed under the Electricity (Supply) Act, 1948.

(3) The Authority shall consist of not more than fourteen Members (including its Chairperson) of whom not more than eight shall be full-time Members to be appointed by the Central Government.

(4) The Central Government may appoint any person, eligible to be appointed as Member of the Authority, as the Chairperson of the Authority, or, designate one of the full time Members as the Chairperson of the Authority.

(5) The Members of the Authority shall be appointed from amongst persons of ability, integrity and standing who have knowledge of, and adequate experience and capacity in, dealing with problems relating to engineering, finance, commerce, economics or industrial matters, and at least one Member shall be appointed from each of the following categories, namely:-

(a) engineering with specialisation in design, construction, operation and maintenance of generating stations;

(b) engineering with specialisation in transmission and supply of electricity;

(c) applied research in the field of electricity;

(d) applied economics, accounting, commerce or finance.

(6) The Chairperson and all the Members of the Authority shall hold office during the pleasure of the Central Government.

(7) The Chairperson shall be the Chief Executive of the Authority.

(8) The head quarters of the Authority shall be at Delhi.

(9) The Authority 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.

(10) The Chairperson, or if he is unable to attend a meeting of the Authority, any other Member nominated by the Chairperson in this behalf and in the absence of such nomination or where there is no Chairperson, any Member chosen by the Members present from among themselves shall preside at the meeting.

(11) All questions which come up before any meeting of the Authority shall be decided by a majority of votes of the Members present and voting, and in

the event of an equality of votes, the Chairperson or the person presiding shall have the right to exercise a second or casting vote.

(12) All orders and decisions of the Authority shall be authenticated by the Secretary or any other officer of the Authority duly authorised by the Chairperson in this behalf.

(13) No act or proceedings of the Authority shall be questioned or shall be invalidated merely on the ground of existence of any vacancy in, or any defect in, the constitution of, the Authority.

(14) The Chairperson of the Authority and other full time Members shall receive such salary and allowances as may be determined by the Central Government and other Members shall receive such allowances and fees for attending the meetings of the Authority, as the Central Government may prescribe.

(15) The other terms and conditions of service of the Chairperson and Members of the Authority including, subject to the provisions of sub-section (6), their terms of office shall be such as the Central Government may prescribe.

Members not to have certain interest.

71. No Member of the Authority shall have any share or interest, whether in his own name or otherwise, in any company or other body corporate or an association of persons (whether incorporated or not), or a firm engaged in the business of generation, transmission, distribution and trading of electricity or fuel for the generation thereof or in the manufacture of electrical equipment.

Officers and staff of Authority.

72. The Authority may appoint a Secretary and such other officers and employees as it considers necessary for the performance of its functions under this Act and on such terms as to salary, remuneration, fee, allowance, pension, leave and gratuity, as the authority may in consultation with the Central Government, fix:

Provided that the appointment of the Secretary shall be subject to the approval of the Central Government.

Functions and duties of Authority.

73. The Authority shall perform such functions and duties as the Central Government may prescribe or direct, and in particular to -

(a) advise the Central Government on the matters relating to the national electricity policy, formulate short-term and perspective plans for development of the electricity system and co-ordinate the activities of the planning agencies for the optimal utilisation of resources to subserve the interests of the national economy and to provide reliable and affordable electricity for all consumers;

(b) specify the technical standards for construction of electrical plants, electric lines and connectivity to the grid;

(c) specify the safety requirements for construction, operation and maintenance of electrical plants and electric lines;

(d) specify the Grid Standards for operation and maintenance of transmission lines;

(e) specify the conditions for installation of meters for transmission and supply of electricity;

(f) promote and assist in the timely completion of schemes and projects for improving and augmenting the electricity system;

(g) promote measures for advancing the skill of persons engaged in the electricity industry;

(h) advise the Central Government on any matter on which its advice is sought or make recommendation to that Government on any matter if, in the opinion of the Authority, the recommendation would help in improving the generation, transmission, trading, distribution and utilisation of electricity;

(i) collect and record the data concerning the generation, transmission, trading, distribution and utilisation of electricity and carry out studies relating to cost, efficiency, competitiveness and such like matters;

(j) make public from time to time information secured under this Act, and provide for the publication of reports and investigations;

(k) promote research in matters affecting the generation, transmission, distribution and trading of electricity;

(l) carry out, or cause to be carried out, any investigation for the purposes of generating or transmitting or distributing electricity;

(m) advise any State Government, licensees or the generating companies on such matters which shall enable them to operate and maintain the electricity system under their ownership or control in an improved manner and where necessary, in co-ordination with any other Government, licensee or the generating company owning or having the control of another electricity system;

(n) advise the Appropriate Government and the Appropriate Commission on all technical matters relating to generation, transmission and distribution of electricity; and

(o) discharge such other functions as may be provided under this Act.

Certain powers and directions

Power to require statistics and returns.

74. It shall be the duty of every licensee, generating company or person generating electricity for its or his own use to furnish to the Authority such statistics, returns or other information relating to generation, transmission, distribution, trading and use of electricity as it may require and at such times and in such form and manner as may be specified by the Authority.

Directions by Central Government to Authority.

75. (1) In the discharge of its functions, the Authority shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it in writing.

(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final.

PART X

REGULATORY COMMISSIONS

Constitution, powers and functions of Central Commission

Constitution of Central Commission.

76. (1) There shall be a Commission to be known as the Central Electricity Regulatory Commission to exercise the powers conferred on, and discharge the functions assigned to, it under this Act.

14 of 1998.

(2) The Central Electricity Regulatory Commission, established under section 3 of the Electricity Regulatory Commissions Act, 1998 and functioning as such immediately before the appointed date, shall be deemed to be

the Central Commission for the purposes of this Act and the Chairperson, Members, Secretary, and other officers and employees thereof shall be deemed to have been appointed under this Act and they shall continue to hold office on the same terms and conditions on which they were appointed under the Electricity Regulatory Commissions Act, 1998.

Provided that the Chairperson and other Members of the Central Commission appointed, before the commencement of this Act, under the Electricity Regulatory Commissions Act, 1998, may, on the recommendations of the Selection Committee constituted under sub-section (1) of section 78, be allowed, to opt for the terms and conditions under this Act by the Central Government.

(3) The Central 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.

(4) The head office of the Central Commission shall be at such place as the Central Government may, by notification, specify.

(5) The Central Commission shall consist of the following Members namely:-

(a) a Chairperson and three other Members;

(b) the Chairperson of the Authority who shall be the Member, ex officio.

(6) The Chairperson and Members of the Central Commission shall be appointed by the Central Government on the recommendation of the Selection Committee referred to in section 78.

Qualification for appointment of Members of Central Commission.

77. (1) The Chairperson and the Members of the Central Commission shall be persons having adequate knowledge 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 the 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.

(3) The Chairperson or any other Member of the Central Commission shall not hold any other office.

(4) The Chairperson shall be the Chief Executive of the Central Commission

Commission.

Constitution of
Selection
Committee to
recommend
Members

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)..... 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.

1 of 1956

(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.

(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 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

person is, or has been , a Judge of the Supreme Court or the Chief Justice of a High Court.

Functions of
Central
Commission

79. (1) The Central Commission shall discharge the following functions, namely:-

- (a) to regulate the tariff of generating companies owned or controlled by the Central Government;
- (b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;
- (c) to regulate the inter-State transmission of electricity ;
- (d) to determine tariff for inter-State transmission of electricity;
- (e) to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations.
- (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;
- (g) to levy fees for the purposes of this Act;
- (h) to specify Grid Code having regard to Grid Standards;
- (i) to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees.
- (j) to fix the trading margin in the inter-State trading of electricity, if considered, necessary;
- (k) to discharge such other functions as may be assigned under this Act.

(2) The Central Commission shall advise the Central Government on all or any of the following matters, namely :-

(a) Advise the Central Government on all or any of the following matters, namely:-

- (i) formulation of National electricity Policy and tariff policy;
- (ii) promotion of competition, efficiency and economy in activities of the electricity industry;
- (iii) promotion of investment in electricity industry;
- (iv) any other matter referred to the Central Commission by that Government.

(3) The Central Commission shall ensure transparency while exercising its powers and discharging its functions.

(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.

Central Advisory Committee

80 (1) The Central Commission may, by notification, establish with effect from such date as it may specify in such notification, a Committee to be known as the Central Advisory Committee.

(2) The Central Advisory Committee shall consist of not more than thirty-one members to represent the interests of commerce, industry, transport, agriculture, labour, consumers, non-governmental organisations and academic and research bodies in the electricity sector.

(3) The Chairperson of the Central Commission shall be the ex-officio Chairperson of the Central Advisory Committee and the Members of that Commission and Secretary to the Government of India in charge of the Ministry or Department of the Central Government dealing with Consumer Affairs and Public Distribution System shall be the ex-officio Members of the Committee.

Objects of Central Advisory Committee

81. The objects of the Central Advisory Committee shall be to advise the Central Commission on:--

- (i) major questions of policy;
- (ii) matters relating to quality, continuity and extent of service provided by the licensees;
- (iii) compliance by the licensees with the conditions and requirements of their licence;
- (iv) protection of consumer interest;
- (v) electricity supply and overall standards of performance by utilities.

Constitution, powers and functions of the State Commissions

Constitution of State Commission

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:

14 of 1998

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, Secretary, and other 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 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.

Joint Commission 83. (1) Notwithstanding anything to the contrary contained in section 82, a Joint Commission may be constituted by an agreement to be entered into -

- (a) by two or more Governments of States; or
- (b) by the Central Government, in respect of one or more Union territories, and one or more Governments of States,

and shall be in force for such period and shall be subject to renewal for each further period, if any, as may be stipulated in the agreement:

Provided that the Joint Commission, constituted under section 21 A of Electricity Regulatory Commissions Act, 1998 and functioning as such immediately before the appointed day, shall be the Joint Commission for the purposes of this Act and the Chairperson, members, Secretary and other officers and employees thereof shall be deemed to have been appointed as such under this Act and they shall continue to hold office, on the same terms and conditions on which they were appointed under the Electricity Regulatory Commissions Act, 1998.

14 of 1998

(2) The Joint Commission shall consist of 1 Member from each of the participating States and Union Territories and the Chairperson shall be appointed from amongst the Members by consensus, failing which by rotation.

(3) An agreement under sub-section (1) shall contain provisions as to the name of the Joint Commission, the manner in which the participating States may be associated in the selection of the Chairperson and Members of the Joint Commission, manner of appointment of Members and appointment of Chairperson by rotation or consensus, places at which the Commission shall sit, apportionment among the participating States of the expenditure in connection with the Joint Commission, manner in which the differences of opinion between the Joint Commission and the State Government concerned would be resolved and may also contain such other supplemental, incidental and consequential provisions not inconsistent with this Act as may be deemed necessary or expedient for giving effect to the agreement.

(4) The Joint Commission shall determine tariff in respect of the participating States or Union Territories separately and independently.

(5) Notwithstanding anything contained in this section, the Central Government may, if so authorised by all the participating States, constitute a Joint Commission and may exercise the powers in respect of all or any of the matters specified under sub-section (3) and specifically so authorized by the participating States.

Qualifications of appointment of Chairperson and Members of State Commission.

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 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.

(3) The Chairperson or any other Member of the State Commission shall not hold any other office.

(4) The Chairperson shall be the Chief Executive of the State Commission.

Constitution of Selection Committee to select Members of State Commission.

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 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 month 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.

(6) No appointment of Chairperson or other Member shall be invalid merely by reason of any vacancy in the Selection Committee.

Functions of State Commission

86. (1) The State Commission shall discharge the following functions, namely: -

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:

Providing that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

(b) regulate 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;

(c) facilitate intra-state transmission and wheeling of electricity;

(d) issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;

(e) promote conglomeration and 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 licence;

(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;

(g) levy fee for the purposes of this Act;

(h) specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of section 79;

(i) specify or enforce standards with respect to quality, continuity and reliability of service by licensees;

(j) fix the trading margin in the intra-State trading of electricity, if considered, necessary; and

(k) discharge such other functions as may be assigned to it under this Act.

(2) The State Commission shall advise the State Government on all or any of the following matters, namely :-

(i) promotion of competition, efficiency and economy in activities of the electricity industry;

(ii) promotion of investment in electricity industry;

(iii) reorganization and restructuring of electricity industry in the State;

(iv) matters concerning generation, transmission, distribution and trading of electricity or any other matter referred to the State Commission by that Government.

(3) The State Commission shall ensure transparency while exercising its powers and discharging its functions.

(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.

State
Advisory
Committee

87. (1) The State Commission may, by notification, establish with effect from such date as it may specify in such notification, a Committee to be known as the State Advisory Committee.

(2) The State Advisory Committee shall consist of not more than twenty-one members to represent the interests of commerce, industry, transport, agriculture, labour, consumers, non-governmental organisations and academic and research bodies in the electricity sector.

(3) The Chairperson of the State Commission shall be the ex-officio Chairperson of the State Advisory Committee and the Members of the State Commission and the Secretary to State Government in charge of the Ministry or

Commission and the Secretary to State Government in charge of the Ministry or Department dealing with Consumer Affairs and Public Distribution System shall be the ex-officio Members of the Committee.

Objects of State
Advisory
Committee

88. The objects of the State Advisory Committee shall be to advise the Commission on –

- (i) major questions of policy;
- (ii) matters relating to quality, continuity and extent of service provided by the licensees;
- (iii) compliance by licensees with the conditions and requirements of their licence;
- (iv) protection of consumer interest; and
- (v) electricity supply and overall standards of performance by utilities.

Appropriate Commission – Other Provisions

Term of office and
conditions of
service of
members

89. (1) The Chairperson or other Member shall hold office for a term of five years from the date he enters upon his office;

Provided that the Chairperson or other Member in the Central Commission or the State Commission shall not be eligible for re-appointment in the same capacity as the Chairperson or a Member in that Commission in which he had earlier held office as such :

Provided further that no Chairperson or Member shall hold office as such after he has attained the age of sixty-five years.

(2) The salary, allowances and other terms and conditions of service of the Chairperson and Members shall be such as may be prescribed by the Appropriate Government.

Provided that the salary, allowances and other terms and conditions of service of the Members, shall not be varied to their disadvantage after appointment.

(3) Every Member shall, before entering upon his office, make and subscribe to an oath of office and secrecy in such form and in such manner and before such authority as may be prescribed.

(4) Notwithstanding anything contained in sub-section (1), a Member may-

(a) Relinquish his office by giving in writing to the Appropriate Government a notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 90.

(5) Any member ceasing to hold office as such shall –

(a) not accept any commercial employment for a period of two years from the date he ceases to hold such office; and

(b) not represent any person before the Central Commission or any State Commission in any manner.

Explanation. - For the purposes of this sub-section "commercial employment" means employment in any capacity in any organisation which has been a party to the proceedings before the Appropriate Commission or employment in any capacity under, or agency of, a person engaged in trading, commercial, industrial or financial business in electricity industry and includes a director of a company or partner of a firm or setting up practice either independently or as partner of a firm or as an advisor or a consultant.

Removal of member. 90. (1) No Member shall be removed from office except in accordance with the provisions of this section.

(2) The Central Commission, in the case of a Member of the Central Commission, and the State Government, in the case of a Member of the State Commission, may by order remove from office any Member, if he-

(a) has been adjudged an insolvent;

b) has been convicted of an offence which, in the opinion of the Appropriate Government, involves moral turpitude;

(c) has become physically or mentally incapable of acting as a Member;

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member;

(e) has so abused his position as to render his continuance in office prejudicial to the public interest; or

(f) has been guilty of proved misbehaviour:

Provided that no Member shall be removed from his office on any ground specified in clauses (d), (e) and (f) unless the Chairperson of the Appellate Tribunal on a reference being made to him in this behalf by the Central Government, or the State Government, as the case may be, has, on an inquiry, held by him in accordance with such procedure as may be prescribed by the Central Government, reported that the Member ought on such ground or grounds to be removed.

(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, 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.

Proceedings and powers of the Appropriate Commission

Secretary Officers and other 91. (1) The Appropriate Commission may appoint a Secretary to exercise such powers and perform such duties as may be specified.

employees of
Appropriate
Commission .

such powers and perform such duties as may be specified.

5 of 1908

(2) The Appropriate Commission may, with the approval of the Appropriate Government, specify the numbers, nature and categories of other officers and employees.

(3) The salaries and allowances payable to, and other term and conditions of service of, the Secretary, officers and other employees shall be such as may be specified with the approval of the Appropriate Government.

(4) The Appropriate Commission may appoint consultants required to assist that Commission in the discharge of its functions on the terms and conditions as may be specified.

Proceedings of
Appropriate
Commission.

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.

(2) The Chairperson, or if he is unable to attend a meeting of the Appropriate Commission, any other Member nominated by the Chairperson in this behalf and, in the absence of such nomination or where there is no Chairperson, any Member chosen by the Members present from among themselves, shall preside at the meeting.

(3) All questions which come up before any meeting of the Appropriate Commission shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote.

(4) Save as otherwise provided in sub-section (3), every Member shall have one vote.

(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.

Vacancies, etc.,
not to invalidate
proceedings.

93. No act or proceedings of the Appropriate Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Appropriate Commission.

Powers of
Appropriate
Commission .

94. (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -

5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) discovery and production of any document or other material object producible as evidence;

(c) receiving evidence on affidavits;

(d) requisitioning of any public record;

(e) issueing commission for the examination of witnesses;

(f) reviewing its decisions, directions and orders;

(g) any other matter which may be prescribed.

(2) The Appropriate Commission shall have the powers to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate.

(3) The Appropriate Commission may authorise any person, as it deems fit, to represent the interest of the consumers in the proceedings before it.

Proceedings
before
Commission.

45 of 1860.
2 of 1974.

Powers of entry
and seizure.

2 of 1974

95. All proceedings before the Appropriate Commission shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appropriate Commission shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

96. The Appropriate Commission or any officer, not below the rank of a Gazetted Officer specially authorised in this behalf by the Commission, may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, insofar as it may be applicable.

Delegation .

97. The Appropriate Commission may, by general or special order in writing, delegate to any Member, Secretary officer of the Appropriate Commission or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers to adjudicate disputes under Section 79 and Section 86 and the powers to make regulations under section 178 or section 181) as it may deem necessary.

Grants, Fund, Accounts, Audit and Report

Grants and loans
by Central
Government

98. The Central Government may, after due appropriation made by Parliament in this behalf, make to the Central Commission grants and loans of such sums of money as that Government may consider necessary.

Establishment of
Fund by Central
Government

99. (1) There shall be constituted a Fund to be called the Central Electricity Regulatory Commission Fund and there shall be credited thereto-

- (a) any grants and loans made to the Central Commission by the Central Government under section 98;
- (b) all fees received by the Central Commission under this Act;
- (c) all sums received by the Central Commission from such other sources as may be decided upon by the Central Government.

(2) The Fund shall be applied for meeting –

- (a) the salary, allowances and other remuneration of Chairperson, Members, Secretary, officers and other employees of the Central Commission;
- (b) the expenses of the Central Commission in discharge of its function under section 79;
- (c) the expenses on objects and for purposes authorised by this Act.

(3) The Central Government may, in consultation with the Comptroller and Auditor-General of India, prescribe the manner of applying the Fund for meeting the expenses specified in clause (b) or clause (c) of sub-section (2).

Accounts and
Audit of Central
Commission.

100. (1) The Central Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Central Commission shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Central Commission to the Comptroller and Auditor General of India.

(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the auditing of the accounts of the Central Commission under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Central Commission.

(4) The accounts of the Central Commission, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government and that Government shall cause the same to be laid, as soon as may be after it is received, before each House of Parliament.

Annual Report of
Central
Commission

101. (1) The Central Commission shall prepare once every year, in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the Central Government.

(2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before each House of Parliament.

Grants and
Loans by State
Government

102. The State Government may, after due appropriation made by Legislature of a State in this behalf, make to the State Commission grants and loans of such sums of money as that Government may consider necessary.

Establishment of
Fund by State
Government

103. (1) There shall be constituted a Fund to be called the State Electricity Regulatory Commission fund and there shall be credited thereto-

- (a) any grants and loans made to the State Commission by the State Government under Section 102;
- (b) all fees received by the State Commission under this Act;
- (c) all sums received by the State Commission from such other sources as may be decided upon by the State Government.

(2) The Fund shall be applied for meeting –

- (a) the salary, allowances and other remuneration of Chairperson, Members, Secretary, officers and other employees of the State Commission;
- (b) the expenses of the State Commission in discharge of its function under Section 86; and
- (c) the expenses on objects and for purposes authorised by this Act.

(3) The State Government may, in consultation with the Comptroller and Auditor-General of India, prescribe the manner of applying the Fund for meeting the expenses specified in clause (b) or clause (c) of sub-section (2).

Accounts and audit of State Commission	<p>104. (1) The State Commission shall maintain proper accounts and other relevant records and prepare annual statement of accounts in such forms as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.</p> <p>(2) The Accounts of the State Commission shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the State Commission to the Comptroller and Auditor- General of India.</p> <p>(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the State Commission under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the State Commission.</p> <p>(4) The accounts of the State Commission, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the State Government and that Government shall cause the same to be laid , as soon as may be after it is received, before the State Legislature.</p>
Annual report of State Commission	<p>105. (1) The State Commission shall prepare once every year in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the State Government.</p> <p>(2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before the State Legislature.</p>
Budget of Appropriate Commission	<p>106. The Appropriate Commission shall prepare, in such form and at such time in each financial year as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of that Commission and forward the same to the Appropriate Government.</p>
Directions by Central Government.	<p>107. (1) In the discharge of its functions, the Central Commission shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it in writing.</p> <p>(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final.</p>
Directions by State Government.	<p>108. (1) In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the State Government may give to it in writing.</p> <p>(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final.</p>
Directions to Joint Commission.	<p>109. Notwithstanding anything contained in this Act, where any Joint Commission is established under section 83 –</p> <p>(a) the Government of the State, for which the Joint Commission is</p>

established, shall be competent to give any direction under this Act only in cases where such direction relates to matter within the exclusive territorial jurisdiction of the State;

(b) the Central Government alone shall be competent to give any direction under this Act where such direction relates to a matter within the territorial jurisdiction of two or more States or pertaining to a Union territory if the participating Governments fail to reach an agreement or the participating States or majority of them request the Central Government to issue such directions.

CHAPTER XI

APPELLATE TRIBUNAL FOR ELECTRICITY

Establishment of
Appellate
Tribunal.

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.

Appeal to
Appellate
Tribunal.

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:

Provided that any person appealing against the order of the adjudicating officer levying and penalty shall, while filling the appeal, deposit the amount of such penalty:

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the adjudicating officer or the Appropriate Commission is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer or the Appropriate Commission, as the case may be.

(5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal:

Provided that where any appeal could not be disposed off within the said period of one hundred and eighty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within the said period.

(6) The Appellate Tribunal may, for the purpose of examining the

legality, propriety or correctness of any order made by the adjudicating officer or the Appropriate Commission under this Act, as the case may be, in relation to any proceeding, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit.

Composition of Appellate Tribunal.

112. (1) The Appellate Tribunal shall consist of a Chairperson and three other Members.

(2) Subject to the provisions of this Act,-

(a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson of the Appellate Tribunal with two or more Members of the Appellate Tribunal as the Chairperson of the Appellate Tribunal may deem fit:

Provided that every Bench constituted under this clause shall include at least one Judicial Member and one Technical Member;

(c) the Benches of the Appellate Tribunal shall ordinarily sit at Delhi and such other places as the Central Government may, in consultation with the Chairperson of the Appellate Tribunal, notify;

(d) the Central Government shall notify the areas in relation to which each Bench of the Appellate Tribunal may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson of the Appellate Tribunal may transfer a Member of the Appellate Tribunal from one Bench to another Bench.

Explanation.- For the purposes of this Chapter,-

(i) "Judicial Member" means a Member of the Appellate Tribunal appointed as such under sub-clause (i) of clause (b) of sub-section (1) of section 113, and includes the Chairperson of the Appellate Tribunal;

(ii) "Technical Member" means a Member of the Appellate Tribunal appointed as such under sub-clause (ii) or sub-clause (iii) of clause (b) of sub-section (1) of section 113.

Qualifications for appointment of Chairperson and Member of the Appellate Tribunal.

113. (1) A person shall not be qualified for appointment as the Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal unless he-

(a) in the case of the Chairperson of the Appellate Tribunal, is, or has been, a judge of the Supreme Court or the Chief Justice of a High Court; and

(b) in the case of a Member of the Appellate Tribunal,-

(i) is, or has been, or is qualified to be, a Judge of a High Court; or

(ii) is, or has been, a Secretary for at least one year in the Ministry or Department of the Central Government dealing with economic affairs or matters or infrastructure; or

(iii) 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 and distribution and regulation or economics, commerce, law or management.

(2) The Chairperson of the Appellate Tribunal shall be appointed by the Central Government after consultation with the Chief Justice of India.

(3) The Members of the Appellate Tribunal shall be appointed by the Central Government on the recommendation of the Selection Committee referred to in section 78.

(4) Before appointing any person for appointment as Chairperson or other Member of the Appellate Tribunal, 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.

Term of office.

114. The Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall hold office as such for a term of three years from the date on which he enters upon his office:

Provided that such Chairperson or other Member shall be eligible for reappointment for a second term of three years:

Provided further that no Chairperson of the Appellate Tribunal or Member of the Appellate Tribunal shall hold office as such after he has attained,-

(a) in the case of the Chairperson of the Appellate Tribunal, the age of seventy years;

(b) in the case of a Member of the Appellate Tribunal, the age of sixty-five years.

Terms and conditions of service.

115. 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 shall be such as may be prescribed by the Central Government :

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall be varied to his disadvantage after appointment.

Vacancies.

116. If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal, the Central 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 Appellate Tribunal from the stage at which the vacancy is filled.

Resignation and removal

117. (1) The Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal 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 Appellate Tribunal or a Member of the Appellate Tribunal shall not be removed from his office except by an order by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a judge of the Supreme Court as the Central

Government may appoint for this purpose in which the Chairperson or a Member of the Appellate Tribunal concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges.

Member to act as Chairperson in certain circumstances.

118. (1) In the event of the occurrence of any vacancy in the office of the Chairperson of the Appellate Tribunal by reason of his death, resignation or otherwise, the senior-most Member of the Appellate Tribunal shall act as the Chairperson of the Appellate Tribunal 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 Appellate Tribunal is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member of the Appellate Tribunal shall discharge the functions of the Chairperson of the Appellate Tribunal until the date on which the Chairperson of the Appellate Tribunal resumes his duties.

Officers and other employees of Appellate Tribunal.

119. (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.

5 of 1908

Procedure and powers of Appellate Tribunal.

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, in respect of the following matters, namely:-

5 of 1908

- (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 a representation of default or deciding it *ex parte*;
- (h) setting aside any order of dismissal or any representation for default or any order passed by it *ex parte*;
- (i) any other matter which may be prescribed by the Central Government.

1 of 1872

(3) An order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(4) Notwithstanding anything contained in sub-section (3), the Appellate Tribunal 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.

45 of 1860.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian

2 of 1974.	Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 345 and 346 of the Code of Criminal Procedure, 1973 .
Power of Chairperson of Appellate Tribunal	121. The Chairperson of the Appellate Tribunal shall exercise general power of super-intendance and control over the Appropriate Commission.
Distribution of business amongst Benches and transfer of cases from one Bench to another Bench.	<p>122. (1) Where Benches are constituted, the Chairperson of the Appellate Tribunal may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.</p> <p>(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 Appellate Tribunal may transfer any case pending before one Bench, for disposal, to any other Bench.</p>
Decision to be by majority.	<p>123. If the Members of the Appellate Tribunal 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 reference to the Chairperson of the Appellate Tribunal 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 Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.</p>
Right of appellants to take assistance of legal practitioner and of Appropriate Commission to appoint presenting officers.	<p>124. (1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Appellate Tribunal, as the case may be.</p> <p>(2) The Appropriate Commission may authorise one or more legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal, as the case may be.</p>
Appeal to Supreme Court.	<p>125. Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908:</p>

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Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

PART – XII

INVESTIGATION AND ENFORCEMENT

Assessment.	<p>126 (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.</p> <p>(2) The order of provisional assessment shall be served upon the</p>
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person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom a notice has been served under sub-section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who may, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

Provided that in case the person deposits the assessed amount he shall not be subjected to any further liability or any action by any authority whatsoever.

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, it shall be presumed that such unauthorised use of electricity was continuing for a period of three months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services, unless the onus is rebutted by the person, occupier or possessor of such premises or place.

(6) The assessment under this section shall be made at a rate equal to one-and-half times the tariff rates applicable for the relevant category of services specified in sub-section (5).

Explanation.- For the purposes of this section,-

- (a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government ;
- (b) "unauthorised use of electricity" means the usage of electricity –
 - (i) by any artificial means; or
 - (ii) by a means not authorised by the concerned person or authority or licensee; or
 - (iii) through a tampered meter; or
 - (iv) for the purpose other than for which the usage of electricity was authorised.

Appeal to
Appellate
Authority.

127. (1) Any person aggrieved by a final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to one third of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.

(6) When a person default in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent per annum compounded every six months.

Investigation of
certain matters

128. (1) The Appropriate Commission may, on being satisfied that a licensee has failed to comply with any of the conditions of licence or a generating company or a licensee has failed to comply with any of the provisions of this Act or rules or regulations made thereunder, at any time, by order in writing, direct any person (hereafter in this section referred to as "Investigating Authority") specified in the order to investigate the affairs of any generating company or licensee and to report to that Commission on any investigation made by such Investigating Authority:

Provided that the Investigating Authority may, wherever necessary, employ any auditor or any other person for the purpose of assisting him in any investigation under this section.

(2) Notwithstanding anything to the contrary contained in section 235 of the Companies Act, 1956, the Investigating Authority may, at any time, and shall, on being directed so to do by the Appropriate Commission, cause an inspection to be made, by one or more of his officers, of any licensee or generating company and his books of account; and the Investigating Authority shall supply to the licensee or generating company, as the case may be, a copy of his report on such inspection.

(3) It shall be the duty of every manager, managing director or other officer of the licensee or generating company, as the case may be, to produce before the Investigating Authority directed to make the investigation under sub-section (1), or inspection under sub-section (2), all such books of account, registers and other documents in his custody or power and to furnish him with any statement and information relating to the affairs of the licensee or generating company, as the case may be, as the said Investigating Authority may require of him within such time as the said Investigating Authority may specify.

(4) Any Investigating Authority, directed to make an investigation under sub-section (1), or inspection under sub-section (2), may examine on oath any manager, managing director or other officer of the licensee or generating company, as the case may be, in relation to his business and may administer oaths accordingly.

(5) The Investigating Authority, shall, if it has been directed by the Appropriate Commission to cause an inspection to be made, and may, in any other case, report to the Appropriate Commission on any inspection made under this section.

(6) On receipt of any report under sub-section (1) or sub-section (5), the Appropriate Commission may, after giving such opportunity to the licensee or generating company, as the case may be, to make a representation in connection with the report as in the opinion of the Appropriate Commission, seems reasonable, by order in writing—

(a) require the licensee or the generating company to take such action in respect of any matter arising out of the report as the Appropriate Commission may think fit; or

(b) cancel the licence; or

(c) direct the generating company to cease to carry on the business of generation of electricity.

(7) The Appropriate Commission may, after giving reasonable notice to the licensee or the generating company, as the case may be, publish the report submitted by the Investigating Authority under sub-section (5) or such portion thereof as may appear to it to be necessary.

(8) The Appropriate Commission may specify the minimum information to be maintained by the licensee or the generating company in their books, the manner in which such information shall be maintained, the checks and other verifications to be adopted by licensee or the generating company in that connection and all other matters incidental thereto as are, in its opinion, necessary to enable the Investigating Authority to discharge satisfactorily its functions under this section.

Explanation.- For the purposes of this section, the expression “licensee or the generating company” shall include in the case of a licensee incorporated in India—

(a) all its subsidiaries formed for the purpose of carrying on the business of generation or transmission or distribution or trading of electricity exclusively outside India; and

(b) all its branches whether situated in India or outside India.

(9) All expenses of, and incidental to, any investigation made under this section shall be defrayed by the licensee or generating company, as the case may be, and shall have priority over that debts due from the licensee or the generating company and shall be recoverable as an arrear of land revenue.

Orders for securing compliance

129 (1) Where the Appropriate Commission, on the basis of material in its possession, is satisfied that a licensee is contravening, or is likely to contravene, any of the conditions mentioned in his licence or conditions for grant of exemption or the licensee or the generating company has contravened or is likely to contravene any of the provisions of this Act, it shall, by an order, give such directions as may be necessary for the purpose of securing compliance with that condition or provision.

(2) While giving direction under sub-section (1), the Appropriate Commission shall have due regard to the extent to which any person is likely to sustain loss or damage due to such contravention.

Procedure for issuing directions by Appropriate Commission.

130. The Appropriate Commission, before issuing any direction under section 129, shall--

(a) serve notice in the manner as may be specified to the concerned licensee or generating company;

(b) publish the notice in the manner as may be specified for the purpose of bringing the matters to the attention of persons, likely to be affected, or affected;

(c) Consider suggestions and objections from the concerned licensee or generating company and the persons, likely to be affected, or affected.

PART – XIII

REORGANISATION OF BOARD

Vesting of
property of Board
in State
Government.

131. (1) With effect from the date on which a transfer scheme, prepared by the State Government to give effect to the objects and purposes of this Act, is published or such further date as may be stipulated by the State Government (hereafter in this Part referred to as the effective date), any property, interest in property, rights and liabilities which immediately before the effective date belonged to the State Electricity Board (hereafter referred to as the Board) shall vest in the State Government on such terms as may be agreed between the State Government and the Board.

(2) Any property, interest in property, rights and liabilities vested in the State Government under sub-section (1) shall be re-vested by the State Government in a Government company or in a company or companies, in accordance with the transfer scheme so published along with such other property, interest in property, rights and liabilities of the State Government as may be stipulated in such scheme, on such terms and conditions as may be agreed between the State Government and such company or companies being State Transmission Utility or generating company or transmission licensee or distribution licensee, as the case may be :

Provided that the transfer value of any assets transferred hereunder shall be determined, as far as may be, based on the revenue potential of such assets at such terms and conditions as may be agreed between the State Government and the State Transmission Utility or generating company or transmission licensee or distribution licensee, as the case may be.

(3) Notwithstanding anything contained in this section, where,-

(a) the transfer scheme involves the transfer of any property or rights to any person or undertaking not wholly owned by the State Government, the scheme shall give effect to the transfer only for fair value to be paid by the transferee to the State Government;

(b) a transaction of any description is effected in pursuance of a transfer scheme, it shall be binding on all persons including third parties and even if such persons or third parties have not consented to it.

(4) The State Government may, after consulting the Government company or company or companies being State Transmission Utility or generating company or transmission licensee or distribution licensee, referred to in sub-section (2) (hereinafter referred to as the transferor), require such transferor to draw up a transfer scheme to vest in a transferee being any other generating company or transmission licensee or distribution licensee, the property, interest in property, rights and liabilities which have been vested in the transferor under this section, and publish such scheme as statutory transfer scheme under this Act.

(5) A transfer scheme under this section may-

(a) provide for the formation of subsidiaries, joint venture companies or other schemes of division, amalgamation, merger, reconstruction or arrangements which shall promote the profitability and viability of the resulting entity, ensure economic efficiency, encourage competition and protect consumer interests;

(b) define the property, interest in property, rights and liabilities to be allocated -

- (i) by specifying or describing the property, rights and liabilities in question; or
- (ii) by referring to all the property, interest in property, rights and liabilities comprised in a described part of the transferor's undertaking; or
- (iii) partly in one way and partly in the other;
- (c) provide that any rights or liabilities stipulated or described in the scheme shall be enforceable by or against the transferor or the transferee;
- (d) impose on the transferor an obligation to enter into such written agreements with or execute such other instruments in favour of any other subsequent transferee as may be stipulated in the scheme;
- (e) mention the functions and duties of the transferee;
- (f) make such supplemental, incidental and consequential provisions as the transferor considers appropriate including provision stipulating the order as taking effect; and
- (g) provide that the transfer shall be provisional for a stipulated period.

(6) All debts and obligations incurred, all contracts entered into and all matters and things engaged to be done by the Board, with the Board or for the Board, or the State Transmission Utility or generating company or transmission licensee or distribution licensee, before a transfer scheme becomes effective shall, to the extent specified in the relevant transfer scheme, be deemed to have been incurred, entered into or done by the Board, with the Board or for the State Government or the transferee and all suits or other legal proceedings instituted by or against the Board or transferor, as the case may be, may be continued or instituted by or against the State Government or concerned transferee, as the case may be.

(7) The Board shall cease to be charged with and shall not perform the functions and duties with regard to transfers made on and after the effective date.

Explanation.- For the purpose of this Part, -

- (a) "Government company" means a Government Company formed and registered under the Companies Act, 1956. 1 of 1956
- (b) "company" means a company to be formed and registered under the Companies Act, 1956 to undertake generation or transmission or distribution in accordance with the scheme under this Part. 1 of 1956

Use of proceeds of sale or transfer of the Board etc.

132. In the event that a Board or any utility owned or controlled by the Appropriate Government is sold or transferred in any manner to a person who is not owned or controlled by the Appropriate Government, the proceeds from such sale or transfer shall be utilised in priority to all other dues in the following order, namely :-

- (a) dues (including retirement benefits due) to the officers and employees of such Board or utility, who have been affected by the aforesaid sale or transfer;
- (b) payment of debt or other liabilities of the transferor as may be

required by the existing loan covenants.

Provisions relating to officers and employees.

133. (1) The State Government may, by a transfer scheme, provide for the transfer of the officers and employees to the transferee on the vesting of properties, rights and liabilities in such transferee as provided under section 131.

(2) Upon such transfer under the transfer scheme, the personnel shall hold office or service under the transferee on such terms and conditions as may be determined in accordance with the transfer scheme:

Provided that such terms and conditions on the transfer shall not in any way be less favourable than those which would have been applicable to them if there had been no such transfer under the transfer scheme:

Provided further that the transfer can be provisional for a stipulated period.

Explanation: - For the purposes of this section and the transfer scheme, the expression "officers and employees" shall mean all officers and employees who on the date specified in the scheme are the officers and employees of the Board or transferor, as the case may be.

Payment of compensation or damages on transfer.

134. Notwithstanding anything contained in the Industrial Disputes Act, 1947 or any other law for the time being in force and except for the provisions made in this Act, the transfer of the employment of the officers and employees referred to in sub-section (1) of section 133 shall not entitle such officers and employees to any compensation or damages under this Act, or any other Central or State law, save as provided in the transfer scheme.

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PART – XIV

OFFENCES AND PENALTIES

Theft of Electricity.

135. (1) Whoever, dishonestly, --

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity,

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use -

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that if it is proved that any artificial means or means not authorized by the Board or licensee exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(2) Any officer authorized in this behalf by the State Government may -

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been, is being, or is likely to be, used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been, is being, or is likely to be, used for unauthorized use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

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(4) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

Theft of electric lines and materials.

136. (1) Whoever, dishonestly --

(a) cuts or removes or takes away or transfers any electric line, material or meter from a tower, pole, any other installation or place of installation or any other place, or site where it may be rightfully or lawfully stored, deposited, kept, stocked, situated or located including during transportation, without the consent of the licensee or the owner, as the case may be, whether or not the act is done for profit or gain; or

(b) stores, possesses or otherwise keeps in his premises, custody or control, any electric line, material or meter without the consent of the owner, whether or not the act is committed for profit or gain; or

(c) loads, carries, or moves from one place to another any electric line, material or meter without the consent of its owner, whether or not the act is done for profit or gain.

done for profit or gain,

is said to have committed an offence of theft of electric lines and materials, and shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(2) If a person, having been convicted of an offence punishable under sub-section (1) is again guilty of an offence punishable under that sub-section, he shall be punishable for the second or subsequent offence for a term of imprisonment which shall not be less than six months but which may extend to five years and shall also be liable to fine which shall not be less than ten thousand rupees.

Punishment for receiving stolen property

137. Whoever, dishonestly receives any stolen electric lines or materials knowing or having reasons to believe the same to be stolen property, shall be punishable with imprisonment of either description for a term which may extend to three years or with fine or with both.

Interference with meters or works of licensee.

138. (1) Whoever, -

(a) unauthorisedly connects any meter, indicator or apparatus with any electric line through which electricity is supplied by a licensee or disconnects the same from any such electric line; or

(b) unauthorisedly reconnects any meter, indicator or apparatus with any electric line or other works being the property of a licensee when the said electric line or other works has or have been cut or disconnected; or

(c) lays or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee; or

(d) maliciously injures any meter, indicator, or apparatus belonging to a licensee or willfully or fraudulently alters the index of any such meter, indicator or apparatus or prevents any such meter, indicator or apparatus from duly registering,

shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both, and , in the case of a continuing offence, with a daily fine which may extend to five hundred rupees; and if it is proved that any means exist for making such connection as is referred to in clause (a) or such re-connection as is referred to in clause (b), or such communication as is referred to in clause (c), for causing such alteration or prevention as is referred to in clause (d), and that the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, it shall be presumed, until the contrary is proved, that such connection, reconnection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and willfully caused by such consumer.

Negligently wasting electricity or injuring works.

139. Whoever, negligently causes electricity to be wasted or diverted or negligently breaks, injures, throws down or damages any material connected with the supply of electricity, shall be punishable with fine which may extend to ten thousand rupees.

Penalty for maliciously wasting electricity or injuring works.

140. Whoever, maliciously causes electricity to be wasted or diverted, or , with intent to cut off the supply of electricity, cuts or injures, or attempts to cut or injure, any electric supply line or works, shall be punishable with fine which may

extend to ten thousand rupees.

Extinguishing public lamps.	141. Whoever, maliciously extinguishes any public lamp shall be punishable with fine which may be extend to two thousand rupees.
Punishment for non-compliance of directions by Appropriate Commission.	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 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 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.
Power to adjudicate.	143 (1) For the purpose of adjudging under this Act, the Appropriate Commission shall appoint any of its Members to be an adjudicating officer for holding an inquiry in such manner as may be prescribed by the Appropriate Government ,after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty. (2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry, and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of section 29 or section 33 or section 43, he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.
Factors to be taken into account by adjudicating officer.	144. While adjudicating the quantum of penalty under section 29 or section 33 or section 43, the adjudicating officer shall have due regard to the following factors, namely:- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; (b) the repetitive nature of the default.
Civil court not to have jurisdiction	145. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 or an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.
Punishment for non-compliance of orders or directions.	146. Whoever, fails to comply with any 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.
Penalties not to affect other liabilities.	147. The penalties imposed under this Act shall be in addition to, and not in derogation of, any liability in respect of payment of compensation or, in the case of a licensee, the revocation of his licence which the offender may have incurred.

Penalty where works belong to Government.

148. The provisions of this Act shall, so far as they are applicable, be deemed to apply also when the acts made punishable thereunder are committed in the case of electricity supplied by or of works belonging to the Appropriate Government.

Offences by companies.

149. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of having committed the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of having committed such offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purpose of this section,-

(a) "company" means a body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

Abatement.
45 of 1860.

150. (1) Whoever abets an offence punishable under this Act, shall, notwithstanding anything contained in the Indian Penal Code, be punished with the punishment provided for the offence.

(2) Without prejudice to any penalty or fine which may be imposed or prosecution proceeding which may be initiated under Act or any other law for the time being in force, if any officer or other employee of the Board or the licensee enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals or connives at any act or thing whereby any theft of electricity is committed, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Cognizance of offences.

151. No court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose.

Compounding of offences.
2 of 1974.

152. (1) Notwithstanding anything contained in the Code of Criminal Procedure 1973, the Appropriate Government or any officer authorized by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table below:

TABLE

Nature of Service	Rate at which the sum of money for Compounding to be collected per Kilowatt(KW)/Horse Power(HP) or part thereof for Low Tension (LT) supply and per Kilo Volt Ampere(KVA) of contracted demand for High Tension (HT)
(1)	(2)
1. Industrial Service	twenty thousand rupees;
2. Commercial Service	ten thousand rupees;
3. Agricultural Service	two thousand rupees;
4. Other Services	four thousand rupees;

Provided that the Appropriate Government may, by notification in the Official Gazette, amend the rates specified in the Table above.

(2) On payment of the sum of money in accordance with sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal court.

(3) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer authorised in this behalf empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973.

(4) The Compounding of an offence under sub-section (1) shall be allowed only once for any person or consumer.

PART – XV

SPECIAL COURTS

Constitution of Special Courts.

153. (1) The State Government may, for the purposes of providing speedy trial of offences referred to in sections 135 to 139, by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.

(2) A Special Court shall consist of a single Judge who shall be appointed by the State Government with the concurrence of the High Court.

(3) A person shall not be qualified for appointment as a Judge of a Special Court unless he was, immediately before such appointment, an Additional District and Sessions Judge.

(4) Where the office of the Judge of a Special Court is vacant, or such Judge is absent from the ordinary place of sitting of such Special Court, or he is incapacitated by illness or otherwise for the performance of his duties, any urgent business in the Special Court shall be disposed of –

(a) by a Judge, if any, exercising jurisdiction in the Special Court;

(b) where there is no such other Judge available, in accordance with the direction of District and Sessions Judge having jurisdiction over the ordinary place of sitting of Special Court, as notified under sub-section(1).

154. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under sections 135 to 139 shall be triable only by the Special Court within whose jurisdiction such offence has been committed.

(2) Where it appears to any court in the course of any inquiry or trial that an offence punishable under sections 135 to 139 in respect of any offence that the case is one which is triable by a Special Court constituted under this Act for the area in which such case has arisen, it shall transfer such case to such Special Court, and thereupon such case shall be tried and disposed of by such Special Court in accordance with the provisions of this Act :

2 of 1974

Provided that it shall be lawful for such Special Court to act on the evidence, if any, recorded by any court in the case of presence of the accused before the transfer of the case to any Special Court :

Provided further that if such Special Court is of opinion that further examination, cross-examination and re-examination of any of the witnesses whose evidence has already been recorded, is required in the interest of justice, it may re-summon any such witness and after such further examination, cross-examination or re-examination, if any, as it may permit, the witness shall be discharged.

(3) The Special Court may, notwithstanding anything contained in subsection (1) of section 260 or section 262 of the Code of Criminal Procedure, 1973, try the offence referred to in sections 135 to 139 in a summary way in accordance with the procedure prescribed in the said Code and the provisions of sections 263 to 265 of the said Code shall, so far as may be, apply to such trial :

Provided that where in the course of a summary trial under this subsection, it appears to the Special Court that the nature of the case is such that it is undesirable to try such case in summary way, the Special Court shall recall any witness who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the said Code for the trial of such offence:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding five years.

(4) A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to, any offence tender pardon to such person on condition of his making a full and true disclosure of the circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof, and any pardon so tendered shall , for the purposes of section 308 of the Code of Criminal Procedure, 1973, be deemed to have been tendered under section 307 thereof.

(5) The Special Court may determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined which ever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil court.

(6) In case the civil liability so determined finally by the Special Court is less than the amount deposited by the consumer or the person, the excess amount so deposited by the consumer or the person, to the Board or licensee or the concerned person, as the case may be, shall be refunded by the Board or licensee or the concerned person, as the case may be, within a fortnight from the date of communication of the order of the Special Court together with interest at the prevailing Reserve Bank of India prime lending rate for the period from the date of such deposit till the date of payment.

Explanation. - For the purposes of this section, "civil liability" means loss or damage incurred by the Board or licensee or the concerned person, as the case may be, due to the commission of an offence referred to in sections 135 to 139.

2 of 1974.

155. Save as otherwise provided in this Act, the Code of Criminal Procedure, 1973, in so far as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the Special Court and for the purpose of the provisions of the said enactments, the Special Court shall be deemed to be a Court of Session and shall have all powers of a Court of Session and the person conducting a prosecution before the Special Court shall be deemed to be a Public Prosecutor.

Special Court to have powers of court of session

2 of 1974.

156. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973, as if the Special Court within the local limits of the jurisdiction of the High Court is a District Court, or as the case may be, the Court of Session, trying cases within the local limits of jurisdiction of the High Court.

Appeal and revision.

157. The Special Court may, on a petition or otherwise and in order to prevent miscarriage of justice, review its judgment or order passed under section 154, but no such review petition shall be entertained except on the ground that it was such order passed under a mistake of fact, ignorance of any material fact or any error apparent on the face of the record :

Review.

Provided that the Special Court shall not allow any review petition and set aside its previous order or judgment without hearing the parties affected.

Explanation.- For the purpose of this Part, "Special Courts" means the Special Courts constituted under sub-section (1) of section 153.

PART XVI

DISPUTE RESOLUTION

Arbitration

Arbitration.

158. Where any matter is, by or under this Act, directed to be determined by arbitration, the matter shall, unless it is otherwise expressly provided in the licence of a licensee, be determined by such person or persons as the Appropriate Commission may nominate in that behalf on the application of either party; but in all other respects the arbitration shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

26 of 1996.

PART XVII

OTHER PROVISION

Protective clauses

Protection of railways, highways, airports and canals, docks, wharfs and piers.

159. No person shall, in the generation, transmission, distribution, supply or use of electricity, in any way injure any railway, highway, airports, tramway, canal or water-way or any dock, wharf or pier vested in or controlled by a local authority, or obstruct or interfere with the traffic on any railway, airway, tramway, canal or water-way.

Protection of telegraphic, telephonic and electric signalling

160. (1) Every person generating, transmitting, distributing, supplying or using electricity (hereinafter in this section referred to as the "operator") shall take all reasonable precautions in constructing, laying down and placing his electric

lines.

lines, electrical plant and other works and in working his system, so as not injuriously to affect, whether by induction or otherwise, the working of any wire or line used for the purpose of telegraphic, telephone or electric signalling communication, or the currents in such wire or line.

(2) Where any difference or dispute arises between the operator, and the telegraph authority as to whether the operator has constructed, laid down or placed his electric lines, electrical plant or other works, or worked his system, in contravention of sub-section (1), or as to whether the working of any wire, line or current is or is not injuriously affected thereby, the matter shall be referred to the Central Government and the Central Government, unless it is of opinion that the wire or line has been placed in unreasonable proximity to the electric lines, electrical plant or works of the operator after the construction of such lines, plant or works, may direct the operator to make such alterations in, or additions to, his system as may be necessary in order to comply with the provisions of this section, and the operator shall make such alterations or additions accordingly:

Provided that nothing in this sub-section shall apply to the repair, renewal or amendment of any electric line or electrical plant so long as the course of the electric line or electrical plant and the amount and nature of the electricity transmitted thereby are not altered.

(3) Where the operator makes default in complying with the requirements of this section, he shall make full compensation for any loss or damage incurred by reason thereof, and, where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by arbitration.

Explanation. - For the purposes of this section, a telegraph line shall be deemed to be injuriously affected if telegraphic, telephonic or electric signalling communication by means of such line is, whether through induction or otherwise, prejudicially interfered with by an electric line, electrical plant or other work or by any use made thereof.

Notice of accidents and inquiries.

161. (1) If any accident occurs in connection with the generation, transmission, distribution, supply or use of electricity in or in connection with, any part of the electric lines or electrical plant of any person and the accident results or is likely to have resulted in loss of human or animal life or in any injury to a human being or an animal, such person shall give notice of the occurrence and of any such loss or injury actually caused by the accident, in such form and within such time as may be prescribed, to the Electrical Inspector or such other person as aforesaid and to such other authorities as the Appropriate Government may by general or special order, direct.

(2) The Appropriate Government may, if it thinks fit, require any Electrical Inspector, or any other person appointed by it in this behalf, to inquire and report-

(a) as to the cause of any accident affecting the safety of the public, which may have been occasioned by or in connection with, the generation, transmission, distribution, supply or use of electricity, or

(b) as to the manner in, and extent to, which the provisions of this Act or rules and regulations made thereunder or of any licence, so far as those provisions affect the safety of any person, have been complied with.

(3) Every Electrical Inspector or other person holding an inquiry under sub-section (2) shall have all the powers of a civil court under the Code of Civil Procedure, 1908 for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects, and every person required by an Electrical Inspector be legally bound to do so within the meaning of section 176 of the Indian Penal Code.

5 of 1908.

45 of 1860.

Appointment of Chief Electrical Inspector and Electrical Inspector.

162. (1) The Appropriate Government may, by notification, appoint duly qualified persons to be Chief Electrical Inspector or Electrical Inspectors and every such Inspector so appointed shall exercise the powers and perform the functions of a Chief Electrical Inspector or an Electrical Inspector under this Act and exercise such other powers and perform such other functions as may be prescribed within such areas or in respect of such class of works and electric installations and subject to such restrictions as the Appropriate Government may direct.

(2) In the absence of express provision to the contrary in this Act, or any rule made thereunder, an appeal shall lie from the decision of a Chief Electrical Inspector or an Electrical Inspector to the Appropriate Government or if the Appropriate Government, by general or special order so directs, to an Appropriate Commission.

Power for licensee to enter premises and to remove fittings or other apparatus of licensee.

163. (1) A licensee or any person duly authorised by a licence may, at any reasonable time, and on informing the occupier of his intention, enter any premises to which electricity is, or has been, supplied by him, of any premises or land, under, over, along, across, in or upon which the electric supply-lines or other works have been lawfully placed by him for the purpose of –

(a) inspecting, testing, repairing or altering the electric supply lines, meters, fittings, works and apparatus for the supply of electricity belonging to the licensee; or

(b) ascertaining the amount of electricity supplied or the electrical quantity contained in the supply; or

(c) removing where a supply of electricity is no longer required, or where the licensee is authorised to take away and cut off such supply, any electric supply-lines, meters, fittings, works or apparatus belonging to the licensee.

(2) A licensee or any person authorised as aforesaid may also, in pursuance of a special order in this behalf made by an Executive Magistrate and after giving not less than twenty-four hours notice in writing to the occupier, -

(a) enter any premises or land referred to in sub-section (1) for any of the purposes mentioned therein;

(b) enter any premises to which electricity is to be supplied by him, for the purpose of examining and testing the electric wires fittings, works and apparatus for the use of electricity belonging to the consumer.

(3) Where a consumer refuses to allow a licensee or any person authorised as aforesaid to enter his premises or land in pursuance of the provisions of sub-section (1) or, sub-section (2), when such licensee or person has so entered, refuses to allow him to perform any act which he is authorised by those sub-sections to perform, or fails to give reasonable facilities for such entry or performance, the licensee may, after the expiry of twenty-four hours from the service of a notice in writing on the consumer, cut off the supply to the consumer for so long as such refusal or failure continues, but for no longer.

Exercise of powers of Telegraph Authority in certain cases.

164. The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885, any of the powers which the telegraph authority possesses under that Act with respect to the placing of

13 of 1885.

telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained.

Amendment of Sections 40 and 41 of Act I of 1894.

165. (1) In section 40, sub-section (1) of clause (b) and section 41, sub-section (5) of the Land Acquisition Act, 1894, the term "work" shall be deemed to include electricity supplied or to be supplied by means of the work to be constructed. 1 of 1894.

(2) The Appropriate Government may, on recommendation of the Appropriate Commission in this behalf, if it thinks fit, on the application of any person, not being a company desirous of obtaining any land for its purposes, direct that he may acquire such land under the provisions of the Land Acquisition Act, 1894 in the same manner and on the same conditions as it might be acquired if the person were a company. 1 of 1894.

PART- XVIII

MISCELLANEOUS

Coordination Forum

166. (1) The Central Government shall constitute a Coordination Forum consisting of the Chairperson of the Central Commission and Members thereof, the Chairperson of the Authority, representatives of generating companies and transmission licensees engaged in inter-State transmission of electricity for smooth and coordinated development of the power system in the country.

(2) The Central Government shall also constitute a forum of regulators consisting of the Chairperson of the Central Commission and Chairpersons of the State Commissions.

(3) The Chairperson of the Central Commission shall be the Chairperson of the Forum of regulators referred to in sub-section (2).

(4) The State Government shall constitute a Coordination Forum consisting of the Chairperson of the State Commission and Members thereof representatives of the generating companies, transmission licensee and distribution licensees engaged in generation, transmission and distribution of electricity in that State for smooth and coordinated development of the power system in the State.

(5) There shall be a committee in each district to be constituted by the Appropriate Government -

(a) to coordinate and review the extension of electrification in each district;

(b) to review the quality of power supply and consumer satisfaction;

(c) to promote energy efficiency and its conservation.

Exemption of electric lines or electrical plants from attachment in certain cases.

167. Where any electric lines or electrical plant, belonging to a licensee are placed in or upon any premises or land not being in the possession of the licensee, such electric lines or electrical plant shall not be liable to be taken in execution under any process of any civil court or in any proceedings in insolvency against the person in whose possession the same may be.

Protection of action taken in good faith.

168. No suit, prosecution or other proceeding shall lie against the Appropriate Government or Appellate Tribunal or the Appropriate Commission or any officer of Appropriate Government, or any Member, Officer or other employees of the Appellate Tribunal or any Members, officer or other employees of the

Appropriate Commission or the assessing officer or any public servant for anything done or in good faith purporting to be done under this Act or the rules or regulations made thereunder.

Members, officers, etc., of Appellate Tribunal, Appropriate Commission to be public servants 45 of 1860.

169. The Chairperson, Members, officers and other employees of the Appellate Tribunal and the Chairperson, Members, Secretary, officers and other employees of the Appropriate Commission and the assessing officer referred to in section 126 shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act to be public servants within the meaning of section 21 of the Indian Penal Code.

Recovery of penalty payable under Act.

170. Any penalty payable by a person under this Act, if not paid, may be recovered as if it were an arrear of land revenue.

Service of notices, orders or documents

171. (1) Every notice, order or document by or under this Act required, or authorised to be addressed to any person may be served on him by delivering the same after obtaining signed acknowledgement receipt therefor or by registered post or such means of delivery as may be prescribed -

(a) where the Appropriate Government is the addressee, at the office of such officer as the Appropriate Government may prescribe in this behalf;

(b) where the Appropriate Commission is the addressee, at the office of the Appropriate Commission;

(c) where a company is the addressee, at the registered office of the company or, in the event of the registered office of the company not being in India, at the head office of the company in India;

(d) where any other person is the addressee, at the usual or last known place of abode or business of the person.

(2) Every notice, order or document by or under this Act required or authorised to be addressed to the owner or occupier of any premises shall be deemed to be properly addressed if addressed by the description of the owner or occupier of the premises (naming the premises), and may be served by delivering it, or a true copy thereof, to some person on the premises, or if there is no person on the premises to whom the same can with reasonable diligence be delivered, by affixing it on some conspicuous part of the premises.

Transitional provisions.

172. Notwithstanding anything to the contrary contained in this Act,-

(a) a State Electricity Board constituted under the repealed laws shall be deemed to be the State Transmission Utility and a licensee under the provisions of this Act for a period of one year from the appointed date or such earlier date as the State Government may notify, and shall perform the duties and functions of the State Transmission Utility and a licensee in accordance with the provisions of this Act and rules and regulations made thereunder:

Provided that the State Government may, by notification, authorise the State Electricity Board to continue to function as the State Transmission Utility or a licensee for such further period beyond the said period of one year as may be mutually decided by the Central Government and the State Government.

(b) all licences, authorisations approvals, clearances and permissions granted under the provisions of the repealed laws may, for a period not exceeding one year from the appointed date or such earlier period; as may be notified by the Appropriate Government, continue to operate as if the repealed laws were in force with respect to such licence, authorisations, approvals,

clearances and permissions, as the case may be, and thereafter such licences, authorisations, approvals, clearances and permissions shall be deemed to be licences, authorisation, approvals, clearances and permission under this Act and all provisions of this Act shall apply accordingly to such licences authorisations approvals, clearances and permissions.

54 of 1948

(c) the undertaking of the State Electricity Boards established under section 5 of the Electricity (Supply) Act, 1948 may after the expiry of the period specified in clause (a) be transferred in accordance with the provisions of Part XIII of this Act;

(d) the State Government may, by notification, declare that any or all the provisions contained in this Act, shall not apply in that State for such period, not exceeding six months from the appointed date, as may be stipulated in the notification.

Inconsistency in laws

173. Nothing contained in this Act or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962 or the Railways Act, 1989.

68 of 1986
33 of 1962

Act to have overriding effect.

174. Save as otherwise provided in section 173, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Provisions of this Act to be in addition to and not in derogation of other laws.

175. The provisions of this Act are in addition to and not in derogation of any other law for the time being in force.

Power of Central Government to make rules.

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 Plan to be invited by the Authority under the proviso to sub-section (4) of section 3;

(b) the additional requirements (including the capital adequacy, creditworthiness or code of conduct) under sixth proviso to section 14;

(c) the payment of fees for application for grant of licence under sub-section (1) of section 15;

(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;

(f) such other works which may be prescribed under clause (c) of sub-section (2) of Section 68;

(g) allowances and fees payable to others Members for attending the meetings of Authority under sub-section (14) of section 70.

(h) other terms and conditions of service of the Chairperson and Members of the Authority under sub-section (15) of section 70;

- (i) the functions and duties of the Central Electricity Authority under section 73;
- (j) the salary, allowances and other conditions of service of Chairperson and Member of Central Commission under sub-section (2) of section 89;
- (k) the form and manner in which and the authority before whom oath of office and secrecy should be subscribed under sub-section (3) of section 89;
- (l) the procedure to be prescribed by the Central Commission under the proviso to sub-section (2) of section 90;
- (m) any other matter required to be prescribed under clause (g) of sub-section (1) of section 94;
- (n) the form in which the Central Commission shall prepare its annual statements of accounts under sub-section (1) of section 100;
- (o) the form in which and time at which the Central Commission shall prepare its annual report under sub-section (1) 101;
- (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 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;
- (t) the additional matters in respect of which the Appellate Tribunal may exercise the powers of a civil court under clause (i) of sub-section (2) of section 120;
- (u) the authority to whom the appeal shall be filed under sub-section (1) of section 127;
- (v) manner of holding inquiry by an adjudicating officer and sub-section (1) of section 143;
- (w) the form in which and the time at which service of notices to any person or to the Central Government for the purpose under sub-section (1) of section 161;
- (x) the powers to be exercised and the functions to be performed by the Inspectors under sub-section (1) of section 162;
- (y) the manner of delivery of every notice, order or document to be served under sub-section (1) of section 171;
- (z) any other matter which is required to be, or may be, prescribed.

Powers of Authority to make regulations.

177. (1) The Authority 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 conferred in sub-section (1), such regulations may provide for all or any of the following matters, namely:--

- (a) the Grid Standards under section 34;
 - (b) suitable measures relating to safety and electric supply under section 53;
 - (c) the installation and operation of meters under section 55;
 - (d) the rules of procedure for transaction of business under sub-section (9) of section 70;
 - (e) the technical standards for construction of electrical plants and electric lines and connectivity to the grid under clause (b) of section 73;
 - (f) the form and manner in which and the time at which the State Government and licensees shall furnish statistics, returns or other information under section 74.
 - (g) any other matter which is to be, or may be, specified;
- (3) All regulations made by the Authority under this Act shall be subject to the conditions of previous publication.

Powers of Central Commission to make regulations.

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 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;

(k) reduction and elimination of 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 and elimination of 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 period within which the cross-subsidies shall be reduced and eliminated under clause (g) of 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 draft tariff order under sub-section (3) of section 64;

(x) issue of tariff order with modifications or conditions under sub-section (4) 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;

(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.

(3) All regulations made by the Central Commission under this Act shall be subject to the conditions of previous publication.

Rules and regulations to be laid before Parliament.

179. Every rule made by the Central Government, every regulation made by the Authority, and every regulation made by the Central Commission shall be laid, as soon as may be after it is made, before each House of the Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Powers of State Governments to make rules

180. (1) The State Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of foregoing power, such rules may provide for all or any of the following matters, namely: -

(a) the payment of fees for application for grant of licence under sub-section (1) of section 15;

(b) the works of licensees affecting the property of other persons under sub-section(2) of section 67;

(c) such other matters which may be prescribed under clause (c) of sub-section (2) of section 68;

(d) the salary, allowances and other terms and conditions of service of the Chairperson and Members of the State Commission under sub-section (2) of section 89;

(e) the form and manner in which and the authority before whom oath of office and secrecy should be subscribed under sub-section (3) of section 89;

(f) any other matter required to be prescribed by the State Commission under clause (g) of sub-section (1) of section 94;

(g) the manner of applying the Fund under sub-section (3) of section 103;

(h) the form in which and time at which the State Commission shall prepare its annual accounts under sub-section (1) of section 104;

(i) the form in which and time at which the State Commission shall prepare its annual report under sub-section (1) of section 105;

(j) the form in which and time at which the State Commission shall prepare its budget under section 106;

(k) manner of service of provisional order of assessment under sub-section (2) of section 126;

(l) manner of holding inquiry by an adjudicating officer under sub-section (1) of section 143;

(m) the form in which and the time at which notice to the Electrical

Inspector under sub-section (1) of section 161;

(n) the manner of delivery of every notice, order or document under sub-section (1) of section 171; and

(o) any other matter which is required to be, or may be, prescribed.

Powers of State Commissions to make regulations.

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), 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 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 term and conditions in respect of intervening transmission facilities 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 and elimination of 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 and elimination of 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;

(p) reduction and elimination of 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 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;
- (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;
- (zaa) the period within which information to be furnished by the licensee under sub-section (1) of section 59;
- (zb) the period within which the cross-subsidies shall be reduced and eliminated under clause (g) of section 61;
- (zc) the terms and conditions for the determination of tariff under section 61;
- (zd) details to be furnished by licensee or generating company under sub-section (2) of section 62;
- (ze) the methodologies and procedures for calculating the expected revenue from tariff and charges under sub-section (1) of section 62;
- (zf) the manner of making an application before the State Commission and the fee payable therefor under sub-section (1) of section 64;
- (zg) issue of tariff order with modifications or conditions under sub-section (3) of section 64;
- (zh) the manner by which development of market in power including trading specified under section 66;
- (zi) the powers and duties of the Secretary of the State Commission under sub-section (1) of section 91;
- (zj) the terms and conditions of service of the secretary, officers and other employees of the State Commission under sub-section (2) of section 91;
- (zk) rules of procedure for transaction of business under sub-section (1) of section 92;

(zl) 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;

(zm) the manner of service and publication of notice under section 130;

(zn) the form of and 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;

(zo) 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.

Rules and regulations to be laid before State Legislature

182. Every rule made by the State Government and every regulation made by the State Commission shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

Power to remove difficulties.

183. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Provisions of Act not to apply in certain cases.

184. The provisions of this Act shall not apply to the Ministry or Department of the Central Government dealing with Defence, Atomic Energy or such other similar Ministries or Departments or undertakings or Boards or institutions under the control of such Ministries or Departments as may be notified by the Central Government.

Repeal and saving.

185. (1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 are hereby repealed.

9 of 1910.
54 of 1948.
14 of 1998.

(2) Notwithstanding such repeal, -

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

9 of 1910

(b) the provisions contained in sections 12 to 18 of the Indian Electricity Act, 1910 and rules made thereunder shall have effect until the rules under section 67 to 69 of this Act are made;

9 of 1910

(c) Indian Electricity Rules, 1956 made under section 37 of the Indian Electricity Act, 1910 as it stood before such repeal shall continue to be in force till the regulations under section 53 of this Act are made

force till the regulations under section 53 of this Act are made.

(d) all rules made under sub-section (1) of section 69 of the Electricity (Supply) Act, 1948 shall continue to have effect until such rules are rescinded or modified, as the case may be;

(e) all directives issued, before the commencement of this Act, by a State Government under the enactments specified in the Schedule shall continue to apply for the period for which such directions were issued by the State Government.”.

(3) The provisions of the enactments specified in the Schedule, not inconsistent with the provisions of this Act, shall apply to the States in which such enactments are applicable. 10 of 1897

(4) The Central Government may, as and when considered necessary, by notification, amend the Schedule.

(5) Save as otherwise provided in sub-section (2), the mention of particular matters in that section, shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeals.

THE SCHEDULE

ENACTMENTS

(See sub-Section (3) of Section 185)

1. The Orissa Electricity Reform Act, 1995 (Orissa Act no. 2 of 1996)
2. The Haryana Electricity Reform Act, 1997 (Haryana Act no. 10 of 1998)
3. The Andhra Pradesh Electricity Reform Act, 1998 (Andhra Pradesh Act no. 30 of 1998)
4. The Uttar Pradesh Electricity Reform Act, 1999 (Uttar Pradesh Act no. 24 of 1999)
5. The Karnataka Electricity Reform Act, 1999 (Karnataka Act no. 25 of 1999)
6. The Rajasthan Electricity Reform Act, 1999 (Rajasthan Act no. 23 of 1999)
7. The Delhi Electricity Reforms Act, 2000 (Delhi Act No.2 of 2001)
8. The Madhya Pradesh Vidyut Sudhar Adhiniyam, 2000 (Madhya Pradesh Act No. 4 of 2001)

CENTRAL ELECTRICITY AUTHORITY

THIS INFORMATION IS REGARDING ROLE OF STATES AS PER THE ELECTRICITY ACT, 2003

ROLE OF STATE GOVT.	ELECTRICITY ACT 2003 ---- CLAUSE No. & DESCRIPTION <i>(NOTIFIED ON 2nd JUNE, 2003 AND IN FORCE w.e.f 10th JUNE, 2003)</i>
	PART II NATIONAL ELECTRICITY POLICY AND PLAN
Clause 3 State Government to provide consultation to Central Government for preparing the National Electricity Policy and tariff policy for development of power system based on optimal utilization of resources.	<p>3. (1) The Central Government shall, from time to time, prepare the National Electricity Policy and tariff policy, in consultation with the State Governments and the Authority, for development of the power system based on optimal utilisation of resources such as coal ,natural gas, nuclear substances or materials , hydro and renewable sources of energy.</p> <p>(2) The Central Government shall publish the National Electricity Policy and tariff policy from time to time.</p> <p>(3) The Central Government may, from time to time in consultation with the State Governments and the Authority review or revise, the National Electricity Policy and tariff Policy referred to in sub-section (1).</p> <p>(4) The Authority shall prepare a National Electricity Plan in accordance with the National Electricity Policy and notify such plan once in five years.</p> <p>Provided that the Authority in preparing the National Electricity Plan shall publish the draft National Electricity Plan and invite suggestions and objections thereon from licensees, generating companies and the public within such time as may be prescribed.</p> <p>Provided further that the Authority shall -</p> <p>(a) notify the plan after obtaining the approval of the Central Government.</p> <p>(b) revise the plan incorporating therein in directions, if any, given by the Central Government while granting approval under clause (a).</p> <p>(5) The Authority may review or revise the National Electricity Plan in accordance with the National Electricity Policy.</p>
Clause 4 State Government to provide consultation to Central Government for preparing National Policy permitting stand alone systems for rural areas.	4. The Central Government shall, after consultation with the State Governments, prepare and notify a national policy, for rural and remote areas, permitting stand alone systems (including those based on renewable sources of energy and non-conventional sources of energy) for rural areas.

ROLE OF STATE GOVT.	ELECTRICITY ACT 2003 ---- CLAUSE No. & DESCRIPTION <i>(NOTIFIED ON 2nd JUNE, 2003 AND IN FORCE w.e.f 10th JUNE, 2003)</i>
Clause 5 State Government to provide consultation to Central Government for rural electrification and for bulk purchase of power and management of local distribution in rural areas through Panchayat institutions, User's associations, Cooperative Societies, NGOs or Franchisees.	5. The Central Government shall also formulate a national policy, in consultation with the State Governments and the State Commissions, for rural electrification and for bulk purchase of power and management of local distribution in rural areas through Panchayat Institutions, users' associations, co-operative societies, Non-Governmental Organisations or franchisees .
Clause 6 State Government to supply electricity to all areas including villages and hamlets.	6. The Appropriate Government shall endeavor to supply electricity to all areas including villages and hamlets.
	PART III GENERATION OF ELECTRICITY
Clause 7 Any generating company may establish, operate and maintain a generating station without obtaining a licence. State Government to encourage generating companies to establish, operate and maintain a generating station.	7. Any generating company may establish, operate and maintain a generating station without obtaining a licence under this Act if it complies with the technical standards relating to connectivity with the grid referred to in clause (b) of section 73.

ROLE OF STATE GOVT.	ELECTRICITY ACT 2003 ---- CLAUSE No. & DESCRIPTION <i>(NOTIFIED ON 2nd JUNE, 2003 AND IN FORCE w.e.f 10th JUNE, 2003)</i>
<ul style="list-style-type: none"> - State Government to identify the demand in the whole state and earmark ranking of a thermal/hydro generating station and identify the supply based on the demand. - It would be better to open a single window system indicating the clearances required to be taken like environment pollution, availability of water, land, disposal of ash in case of TPS and allocation of power. - The State Government to oversee the technical standards relating to connectivity with the grid referred to in Section 73(b) 	
<p>Clause 8</p> <ul style="list-style-type: none"> - State Government to provide consultation to CEA for concurrence. - State Government shall also to provide norms and requirements for setting up HEPs - Role of State Government and CEA enhanced for optimum utilization of water 	<p>8. (1) Notwithstanding anything contained in Section 7, any generating company intending to set up a hydro generating station shall prepare and submit to the Authority for its concurrence, a scheme estimated to involve a capital expenditure exceeding such sum, as may be fixed by the Central Government from time to time, by notification.</p> <p>(2) The Authority shall, before concurring in any scheme submitted to it under sub-section (1), have particular regard to, whether or not in its opinion –</p> <p>(a) the proposed river works will prejudice the prospects for the best ultimate development of the river or its tributaries for power generation, consistent with the requirements of drinking water, irrigation, navigation, flood control or other public purposes and for this purpose the Authority shall satisfy itself, after consultation with the State Government, the Central Government, or such other agencies as it may deem appropriate, that an adequate study has been made of the optimum location of dams and other river-works;</p> <p>(b) the proposed scheme meets the norms regarding dam design and safety</p>

ROLE OF STATE GOVT.	ELECTRICITY ACT 2003 ---- CLAUSE No. & DESCRIPTION <i>(NOTIFIED ON 2nd JUNE, 2003 AND IN FORCE w.e.f 10th JUNE, 2003)</i>
resources. - State Government to inform about irrigation, flood control, location of Dam, other river works and navigation (public/ luggage navigation)	(3) Where a multi-purpose scheme for the development of any river in any region is in operation, the State Government and the generating company shall co-ordinate their activities with the activities of the person responsible for such scheme in so far as they are inter-related.
Clause 9 State Govt. to examine the plant operation and connectivity to Grid and report to SERC	9. (1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines : Provided that supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company. (2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use: Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be. Provided further that any dispute regarding availability of adequate transmission facility shall be adjudicated upon by the Appropriate Commission.
	11. (1) The Appropriate Government may specify that a generating company shall, in extraordinary circumstances operate and maintain any generating station in accordance with the directions of that Government. <u>Explanation.-</u> For the purpose of this section, the expression "extraordinary circumstances " means circumstances arising out of threat to security of the State, public order or a natural calamity or such other circumstances arising in public interest. (2) The Appropriate Commission may offset the adverse financial impact of the directions referred to in sub-section (1) on any generating company in such manner as it considers appropriate.
	PART IV LICENSING
Clause 13 State Government to provide recommendation to the	13. The Appropriate Commission may, on the recommendations, of the Appropriate Government in accordance with the National Policy formulated under section 5 and in the public interest, direct, by notification that subject to such conditions and restrictions, if any, and for such period or periods, as may be specified in the

ROLE OF STATE GOVT.	ELECTRICITY ACT 2003 ---- CLAUSE No. & DESCRIPTION <i>(NOTIFIED ON 2nd JUNE, 2003 AND IN FORCE w.e.f 10th JUNE, 2003)</i>
<p>Appropriate Commission in accordance with national policy u/s 5 in public interest. State Government to register local authority, panchayat institutions, user's association, cooperative societies, NGOs as licensees u/s 12 is not applicable for transmission, distribution and trading.</p>	<p>notification, the provisions of section 12 shall not apply to any local authority, Panchayat Institution, users' association, cooperative societies, non-governmental organizations, franchisees:</p>
<p>Clause 14 In case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government shall be deemed to be a licensee under this Act, but shall not be required to obtain a licence under this Act.</p>	<p>14. (1) The Appropriate Commission may, on an application made to it under section 15, grant a 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 which may be specified in the licence: Provided that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule and the provisions of the repealed laws or such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified at the request of the licensee by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business: Provided further that the Central Transmission Utility or the State Transmission Utility shall be deemed to be a transmission licensee under this Act: Provided also that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government shall be deemed to be a licensee under this Act, but shall not be required to obtain a licence under this Act. Provided also that the Damodar Valley Corporation, established under sub-section (1) of section 3 of the Damodar Valley Corporation Act, 1948, shall be deemed to be a licensee under this Act but shall not be required to obtain a licence under this Act and the provisions of the Damodar Valley Corporation Act, 1948, in so far as they are not inconsistent with the provisions of this Act, shall continue to apply to that Corporation.</p>

ROLE OF STATE GOVT.	ELECTRICITY ACT 2003 ---- CLAUSE No. & DESCRIPTION <i>(NOTIFIED ON 2nd JUNE, 2003 AND IN FORCE w.e.f 10th JUNE, 2003)</i>
	<p>Provided also that the Government company or the company referred to in sub-section (2) of section 131 and the company or companies created in pursuance of the Acts specified in the Schedule shall be deemed to be a licensee under this Act:</p> <p>Provided also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system with in the same area ,subject to the condition that the applicant for grant of licence within the same area shall without prejudice to the other conditions or requirements under this act ,comply with the additional requirements (including 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>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;</p> <p>Provided also that where a person intends to generate and distribute electricity in a rural area to be notified by the State Government such person shall not require any licence for such generation and distribution of electricity, but he shall comply with the measures which may be specified by the Authority under section 53.</p> <p>Provided also that a distribution licensee shall not require a licence to undertake trading in electricity.</p>
	<p>15. (1) Every application under section 14 shall be made in such form and in such manner as may be specified by the Appropriate Commission and shall be accompanied by such fee as may be prescribed.</p> <p>(2) Any person who has made an application for grant of licence shall, within seven days after making such application, publish a notice of his application with such particulars and in such manner as may be specified and a licence shall not be granted –</p> <p>(i) until the objections, if any, received by the Appropriate Commission in response to publication of the application have been considered by it:</p> <p>Provided that no objection shall be so considered unless it is received before the expiration of thirty days from the date of the publication of such notice as aforesaid;</p> <p>(ii) until, in the case of an application for a licence for an area including the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for defence purposes, the Appropriate Commission has ascertained that there is no objection to the grant of the licence on the part of the Central Government.</p> <p>(3) A person intending to act as a Transmission Licensee shall, immediately on making of the application, forward a copy of such application to the Central Transmission Utility or the State Transmission Utility, as the case may be.</p>

ROLE OF STATE GOVT.	ELECTRICITY ACT 2003 ---- CLAUSE No. & DESCRIPTION <i>(NOTIFIED ON 2nd JUNE, 2003 AND IN FORCE w.e.f 10th JUNE, 2003)</i>
<p>Clause 15(7) State Government, CEA to receive a copy of licence from SERC (valid for 25 years) after issued by SERC</p>	<p>(4) The Central Transmission Utility or the State Transmission Utility, as the case may be, shall, within thirty days after the receipt of the copy of the application referred to in sub-section (3), send its recommendations, if any, to the Appropriate Commission: Provided that such recommendations shall not be binding on the Commission.</p> <p>(5) Before granting a licence under section 14, the Appropriate Commission shall -</p> <p>(a) publish a notice in two such daily newspapers as that Commission may consider necessary stating the name of the person to whom it proposes to issue the licence;</p> <p>(b) consider all suggestions or objections and the recommendations, if any of the Central Transmission Utility or State Transmission Utility, as the case may be.</p> <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>(a) issue a licence subject to the provisions of this Act and the rules and regulations made there under; or</p> <p>(b) reject the application for reasons to be recorded in writing if such application does not conform to the provisions of this Act or the rules and regulations made there under or the provisions of any other law for the time being in force: Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.</p> <p>(7) The Appropriate Commission shall, immediately after issue of license, forward a copy of the licence to the Appropriate Government, the Authority, local authority, and to such other person as the Appropriate Commission considers necessary.</p> <p>(8) A licence shall, continue to be in force for such period of twenty five years unless such licence is revoked.</p>
	PART V

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	TRANSMISSION OF ELECTRICITY Inter-State transmission
	Intra-State transmission
Clause 31 State Government to constitute State Load Despatch Centre (SLDC) to be operated by a Govt. company/ any authority/ corporation established under any State Act (to be notified by State Government).	31. (1) The State Government shall establish a centre to be known as the State Load Despatch Centre for the purposes of exercising the powers and discharging the functions under this Part: (2) The State Load Despatch Centre shall be operated by Government Company or any authority or corporation established or constituted by or under any State Act, as may be notified by the State Government. Provided that until a Government company or any authority or corporation is notified by the State Government, the State Transmission utility shall operate the State Load Despatch Centre: Provided further that no State Load Despatch Centre shall engage in the business of trading in electricity.
	Other provisions relating to Transmission
Clause 37 State Government to issue directions to Regional Load Despatch Centre (RLDC) or SLDC as the case may be.	37. The Appropriate Government may issue directions to the Regional Load Despatch Centres or State Load Despatch Centres, as the case may be, to take such measures as may be necessary for maintaining smooth and stable transmission and supply of electricity to any region or State.
Clause 38 (2)(b) State Govt. to see that CTU plans and co-ordinates with State Govt. for Inter-state transmission system	38. (1) The Central Government may, notify any Government company as the Central Transmission Utility: Provided that the Central Transmission Utility shall not engage in the business of generation of electricity or trading in electricity: Provided further that the Central Government may transfer and vest any property, interest in property, rights and liabilities connected with and personnel involved in transmission of electricity of such Central Transmission Utility, to a company or companies to be incorporated under the Companies Act, 1956 to function as a Transmission Licensee, through a transfer scheme to be effected in the manner specified under Part XIII and such company or companies shall be deemed to be transmission licensees under this Act. (2) The functions of the Central Transmission Utility shall be to : (a) To undertake transmission of electricity through inter-state transmission system; (b) To discharge all functions of planning and co-ordination relating to inter-state transmission system with –

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	<p>(i) State Transmission Utilities; (ii) Central Government; (iii) State Governments; (iv) Generating Companies; (v) Regional Power Committees; (vi) Authority; (vii) licensees; (viii) any other person notified by the Central Government in this behalf; (c) ensure development of an efficient, co-ordinated and economical system of inter-state transmission lines for smooth flow of electricity from generating stations to the load centres. (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: Provided that such surcharge shall be utilized for the purpose of meeting the requirement of current level cross-subsidy. Provided further that such surcharge and cross subsidies shall be progressively reduced and eliminated in the manner as may be specified by the Central Commission. Provided also that such may be levied till such time the cross subsidies are not eliminated: Provided also that the manner of payment and utilisation of the surcharge shall be specified by the Central 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.</p>
<p>Clause 39 State Government may notify the Board or a Government company as STU.</p>	<p>39. (1) The State Government, may notify the Board or a Government company as the State Transmission Utility: Provided that the State Transmission Utility shall not engage in the business of trading in electricity; Provided further that the State Government may transfer and vest any property, interest in property, rights and liabilities connected with and personnel involved in transmission of electricity of such State Transmission Utility to a company or companies to be incorporated under the Companies Act, 1956 to function as Transmission Licensee through a transfer scheme to be effected in the manner specified under Part XIII and such company or companies shall be deemed to be transmission licensees under this Act. (2) The functions of the State Transmission Utility shall be - (a) To undertake transmission of electricity through intra-state transmission system;</p>

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	<p>(b) To discharge all functions of planning and co-ordination relating to intra-state transmission system with -</p> <ul style="list-style-type: none"> (i) Central Transmission Utility; (ii) State Governments; (iii) Generating Companies; (iv) Regional Power Committees; (v) Authority; (vi) licensees; (vii) any other person notified by the State Government in this behalf; <p>(c) To ensure development of an efficient, co-ordinated and economical system of intra-state transmission lines for smooth flow of electricity from a generating station to the load centres.</p> <p>(d) to provide non-discriminatory open access to its transmission system for use by -</p> <ul style="list-style-type: none"> (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: <p>Provided that such surcharge shall be utilized for the purpose of meeting the requirement of current level cross-subsidy.</p> <p>Provided further that such surcharge and cross subsidies shall be progressively reduced and eliminated in the manner as may be specified by the State Commission.</p> <p>Provided also that such surcharge may be levied till such time the cross subsidies are not eliminated:</p> <p>Provided also that the manner of payment and utilisation of the surcharge shall be specified by the State Commission.</p> <p>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.</p>
	<p>PART VI DISTRIBUTION OF ELECTRICITY Provisions with respect to Distribution Licensees</p>
<p>Clause 53 State Government to provide consultation to CEA for specifying suitable measures for safety and electricity</p>	<p>53. The Authority may in consultation with the State government specify suitable measures for –</p> <ul style="list-style-type: none"> (a) protecting the public (including the persons engaged in the generation, transmission or distribution or trading) from dangers arising from the generation, transmission or distribution or trading of electricity, or use of electricity supplied or installation, maintenance or use of any electric line or electrical plant; (b) eliminating or reducing the risks of personal injury to any person, or damage to property of any person or

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supply in respect of thermal/ hydro generation, transmission, distribution or trading.	<p>interference with use of such property;</p> <p>(c) prohibiting the supply or transmission of electricity except by means of a system which conforms to the specification as may be specified;</p> <p>(d) giving notice in the specified form to the Appropriate Commission and the Electrical Inspector, of accidents and failures of supplies or transmissions of electricity;</p> <p>(e) keeping by a generating company or licensee the maps, plans and sections relating to supply or transmission of electricity;</p> <p>(f) inspection of maps, plans and sections by any person authorised by it or by Electrical Inspector or by any person on payment of specified fee;</p> <p>(g) specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer for the purpose of eliminating or reducing a risk of personal injury or damage to property or interference with its use.</p>

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<p>Clause 54 Control of transmission and use of electricity</p>	<p>54. (1) Save as otherwise exempted under this Act, no person other than Central Transmission Utility or a State Transmission Utility, or a licensee shall transmit or use electricity at a rate exceeding two hundred and fifty watts and one hundred volts -</p> <ul style="list-style-type: none"> (a) in any street, or (b) in any place - <ul style="list-style-type: none"> (i) in which one hundred or more persons are ordinarily likely to be assembled; or (ii) which is a factory within the meaning of the Factories Act, 1948 or a mine within the meaning of the Mines Act, 1952; or (iii) To which the State Government, by general or special order, declares the provisions of this sub-section to apply, <p>Without giving, before the commencement of transmission or use of electricity, not less than seven days, notice in writing of his intention to the Electrical Inspector and to the District Magistrate or the Commissioner of Police as the case may be, containing particulars of the electrical installation and plant, if any, the nature and the purpose of supply and complying with such of the provisions of Part XI of this Act, as may be applicable. Provided that nothing in this section shall apply to electricity used for the public carriage of passengers, animals or goods, on, or for the lighting or ventilation of the rolling stock of any railway or tramway subject to the provisions of the Railways Act, 1989.</p> <p>(2) Where any difference or dispute arises as to whether a place is or is not one in which one hundred or more persons are ordinarily likely to be assembled, the matter shall be referred to the State Government, and the decision of the State Government thereon shall be final.</p> <p>(3) The provisions of this section shall be binding on the Government.</p>
<p>Clause 55 Use of meters</p>	<p>55. (1) No licensee shall supply electricity, after the expiry of two years from the appointed date, except through installation of a correct meter in accordance with the regulations to be made in this behalf by the Authority:</p> <p>Provided that the Licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter:</p> <p>Provided further that the State Commission may, by notification extend the said period of two years for a class or classes of persons or for such area as may be specified in that notification.</p> <p>(2) For proper accounting and audit in the generation, transmission and distribution or trading of electricity, the Authority may direct the installation of meters by a generating company or licensee at such stages of generation, transmission or distribution or trading of electricity and at such locations of generation, transmission or distribution or trading, as it may deem necessary.</p> <p><i>(3) If a person makes default in complying with the provisions contained in this section, or regulations made</i></p>

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	under sub-section (1), the Appropriate Commission may, make such order as it thinks fit for requiring the default to be made good by the generating company or licensee or by any officers of a company or other association or any other person who is responsible for its default.
	PART – VII TARIFF
<p>Section 64(4) Appropriate Commission shall send a copy of tariff orders within 7 days after issue to the State Government and CEA. State Government to compile such tariff orders issued from time to time.</p>	<p>64.(1) An application for determination of tariff under section 62 shall be made by a generating company or licensee in such manner and accompanied by such fee, as may be determined by regulations.</p> <p>(2) Every applicant shall publish the application in such abridged form & manner, as may be specified by the Appropriate Commission.</p> <p>(3) The Appropriate Commission shall, within one hundred and twenty days of application under sub-section (1), after considering all suggestions & objections 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) reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and the rules and regulations made there under or the provisions of any other law for the time being in force:</p> <p>Provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application.</p> <p>(4) The Appropriate Commission shall, within seven days of making the order, send a copy of the order to the Appropriate Government, the Authority, and the concerned licensees and to the person concerned.</p> <p>(5) Notwithstanding anything contained in Part X, the tariff for any inter-state supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor.</p> <p>(6) A tariff order shall, unless amended or revoked, shall continue to be in force for such period as may be specified in the tariff order.</p>

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<p>Clause 65 State Government to compensate any type of consumer if it requires grant of subsidy as per directions State Commission. State Government may do so u/s 108.</p>	<p>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 within in advance in the manner as may be specified by State Commission 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.</p>
	<p>PART – VIII WORKS Works of licensees</p>
<p>Clause 67 (2) State Government to make rules for granting permission to carry out works determination of compensation or rent for affected works, repairs during emergency, for civil facilities, railways and tunnels.</p>	<p>67. (1) A licensee may, from time to time but subject always to the terms and conditions of his licence, within his area of supply or transmission or when permitted by the terms of his licence to lay down or place electric supply lines without the area of supply, without that area carry out works such as -- (a) open and break up the soil and pavement of any street, railway or tramway; (b) open and break up any sewer, drain or tunnel in or under any street, railway or tramway; (c) alter the position of any line or works or pipes, other than a main sewer pipe; (d) lay down and place electric lines, electrical plant and other works; or (e) repair, alter or remove the same; (f) do all other acts necessary for transmission or supply of electricity. (2) The Appropriate Government may, by rules made by it in this behalf, specify, - (a) the cases and circumstances in which the consent in writing of the Appropriate Government, local authority, owner or occupier, as the case may be, shall be required for carrying out works; (b) the authority which may grant permission in the circumstances where the owner or occupier objects to the carrying out of works; (c) the nature and period of notice to be given by the licensee before carrying out works; (d) the procedure and manner of consideration of objections and suggestion received in accordance with the notice referred to in clause (c); (e) the determination and payment of compensation or rent to the persons affected by works under this section; (f) the repairs and works to be carried out when emergency exists; (g) the right of the owner or occupier to carry out certain works under this section and the payment of expenses</p>

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	<p>therefor;</p> <p>(h) the procedure for carrying out other works near sewers, pipes or other electric lines or works;</p> <p>(i) the procedure for alteration of the position of pipes, electric lines, electrical plant, telegraph lines, sewer lines, tunnels, drains, etc.;</p> <p>(j) the procedure for fencing, guarding, lighting and other safety measures relating to works on streets, railways, tramways, sewers, drains or tunnels and immediate reinstatement thereof;</p> <p>(k) the avoidance of public nuisance, environmental damage and unnecessary damage to the public and private property by such works;</p> <p>(l) the procedure for undertaking works which are not reparable by the Appropriate Government, licensee or local authority;</p> <p>(m) the manner of deposit of amount required for restoration of any railways, tramways, waterways, etc.;</p> <p>(n) the manner of restoration of property affected by such works and maintenance thereof;</p> <p>(o) the procedure for deposit of compensation payable by the licensee and furnishing of security; and</p> <p>(p) such other matters as are incidental or consequential to the construction and maintenance of works under this section.</p> <p>(3) A licensee shall, in exercise of any of the powers conferred by or under this section and the rules made there under, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.</p> <p>(4) Where any difference or dispute (including amount of compensation under sub section (3) arises under this section. the matter shall be determined by the Appropriate Commission.</p>
	Provisions relating to overhead lines
<p>Clause 68 Overhead lines to be installed with the approval of Appropriate Government.</p>	<p>68. (1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).</p> <p>(2) The provisions contained in sub-section (1) shall not apply -</p> <p>(a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;</p> <p>(b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or</p> <p>(c) in such other cases, as may be prescribed.</p> <p>(3) The Appropriate Government shall, while granting approval under sub-section (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear it to be necessary.</p> <p>(4) The Appropriate Government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by any time after the end of such period as may be stipulated in the</p>

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State Govt. to interact with Executive Magistrate or authority	<p>approval granted by it.</p> <p>(5) Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequently to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he thinks fit.</p> <p>(6) When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.</p> <p><u>Explanation.</u>-- For purposes of this section, the expression "tree" shall be deemed to include any shrub, hedge, jungle growth or other plant.</p>
	<p>PART – IX CENTRAL ELECTRICITY AUTHORITY <i>Constitution and functions of the Authority</i></p>
	<p>70. (1) There shall be a body called the Central Electricity Authority to exercise such functions and perform such duties as are assigned to it.</p> <p>(2) The Central Electricity Authority established under section 3 of the Electricity (Supply) Act, 1948 and functioning as such immediately before the appointed date shall be the Central Electricity Authority for the purposes of this Act and the Chairperson, Members, Secretary and other officers and employees thereof shall be deemed to have been appointed under this Act and they shall continue to hold office on the same terms and conditions on which they were appointed under the Electricity (Supply) Act, 1948.</p> <p>(3) The Authority shall consist of not more than fourteen Members (including its Chairman) of whom not more than Eight shall be full time Members to be appointed by the Central Government.</p> <p>(4) The Central Government may appoint any person, eligible to be appointed as Member of the Authority, as the Chairperson of the Authority, or designate one of the full-time Members as the Chairperson of the Authority.</p> <p>(5) The Members of the Authority shall be appointed from amongst persons of ability, integrity and standing who have knowledge of and adequate experience and capacity in dealing with problems relating to engineering, finance, commerce, economics or industrial matters, and at least one Member shall be appointed from each of the following categories, namely:-</p> <p>(a) engineering with specialisation in design, construction, operation and maintenance of generating stations;</p>

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	<p>(b) engineering with specialisation in transmission and supply of electricity;</p> <p>(c) applied research in the field of electricity;</p> <p>(d) applied economics accounting, commerce or finance.</p> <p>(6) The Chairperson and all the Members of the Authority shall hold office during the pleasure of the Central Government.</p> <p>(7) The Chairperson shall be the Chief Executive of the Authority.</p> <p>(8) The head quarters of the Authority shall be at Delhi.</p> <p>(9) The Authority 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.</p> <p>(10) The Chairperson, or if he is unable to attend a meeting of the Authority, any other Member nominated by the Chairperson in this behalf and in the absence of such nomination or where there is no Chairperson, any Member chosen by the Members present from among themselves shall preside at the meeting.</p> <p>(11) All questions which come up before any meeting of the Authority shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson or the person presiding shall have the right to exercise a second or casting vote.</p> <p>(12) All orders and decisions of the Authority shall be authenticated by the Secretary or any other officer of the Authority duly authorised by the Chairperson in this behalf.</p> <p>(13) No act or proceedings of the Authority shall be questioned or shall be invalidated merely on the ground of existence of any vacancy in or any defect in the constitution of the Authority.</p> <p>(14) The Chairperson of the Authority and other full time Members shall receive such salary and allowances as may be determined by the Central Government and other Members shall receive such allowances and fees for attending the meetings of the Authority, as the Central Government may prescribe.</p> <p>(15) The other terms and conditions of service of the Chairperson and Members of the Authority including, subject to the provisions of sub-section (6), their terms of office shall be such as the Central Government may prescribe.</p>
	<p>71. No Member of the Authority shall have any share or interest whether in his own name or otherwise, in any company or other body corporate or an association of persons, (whether incorporated or not), or a firm engaged in the business of generation, transmission, distribution and trading of electricity or fuel for the generation thereof, or in the manufacture of electrical equipment.</p>
	<p>72. The Authority may appoint a Secretary and such other officers and employees as it considers necessary for the performance of its functions under this Act, on such terms as to salary, remuneration, fee, allowance, pension, leave and gratuity, as the Authority may in consultation with the Central Government, fix:</p>

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	Provided that the appointment of the Secretary shall be subject to the approval of the Central Government.

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<p>Clause 73 State Government to take the advice of Central Electricity Authority on such matters which shall enable them to operate and maintain the electricity system under their ownership or control in an improved manner</p>	<p>73. The Authority shall perform such functions and duties as the Central Government may prescribe or direct, and in particular to -</p> <ul style="list-style-type: none"> (a) advise the Central Government on the matters relating to the national electricity policy, formulate short-term and perspective plans for development of the electricity system and co- ordinate the activities of the planning agencies for the optimal utilisation of resources to subserve the interests of the national economy and to provide reliable and affordable electricity for all consumers. (b) specify the technical standards for construction of electrical plants and electric lines and connectivity to the grid; (c) specify the safety requirements for construction, operation and maintenance of electrical plants and electric lines; (d) specify the Grid Standards for operation and maintenance of transmission lines; (e) specify the conditions for installation of meters for transmission and supply of electricity; (f) promote and assist in the timely completion of schemes and projects for improving and augmenting the electricity system; g) promote measures for advancing the skill of persons engaged in the electricity industry; (h) advise the Central Government on any matter on which its advice is sought or make recommendation to that Government on any matter if, in the opinion of the Authority, the recommendation would help in improving the generation, transmission, trading, distribution and utilisation of electricity; (i) collect and record the data concerning the generation, transmission, trading, distribution and utilisation of electricity and carry out studies relating to cost, efficiency, competitiveness and such like matters; (j) make public from time to time information secured under this Act, and provide for the publication of reports and investigations; (k) promote research in matters affecting the generation, transmission, distribution and trading of electricity; (l) carry out, or cause to be carried out, any investigation for the purposes of generating or transmitting or

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Clause 73 (m): CEA to advise the State Government, licensees, or the generating companies to operate in improved manner. State Government to coordinate with CEA on all technical matters regarding generation, transmission and distribution.	<p>distributing electricity;</p> <p>(m) advise any State Government, licensees or the generating companies on such matters which shall enable them to operate and maintain the electricity system under their ownership or control in an improved manner and where necessary, in co-ordination with any other Government, licensee or the generating company owning or having the control of another electricity system;</p> <p>(n) advise the Appropriate Government and the Appropriate Commission on all technical matters relating to generation, transmission and distribution of electricity and</p> <p>(o) discharge such other functions as may be provided under this Act.</p>
	<p>PART X REGULATORY COMMISSIONS Constitution and powers and functions of the Central Commission</p>
	<p>Constitution and powers and functions of the State Commissions</p>
Clause 82 State Government to constitute a Commission within six months from the date of its notification (SERC).	<p>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 or 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 ,Secretary and other 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 Commission 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</p> <p>(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.</p> <p>(3) The head office of the State Commission shall be at such place as the State Government may, by</p>

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	notification, specify. (4) The State Commission shall consist of 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.
Clause 84 Qualifications for appointment of Chairperson and Members for consideration of State Government.	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: Provided that where the State Commission consists of more than one Member, not more than one Member shall be appointed under the same category under clauses (a) to (c). (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. (3) The Chairperson or any other Member of the State Commission shall not hold any other office. (4) The Chairperson shall be the Chief Executive of the State Commission.
Clause 85 To constitute Selection Committee for SERC	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 State – Member; (c) the Chairperson of the Central Electricity Authority or Chairperson of the Central Commission – Member; Provided that nothing contained in this clause 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 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

<p>ROLE OF STATE GOVT.</p>	<p>ELECTRICITY ACT 2003 ---- CLAUSE No. & DESCRIPTION <i>(NOTIFIED ON 2nd JUNE, 2003 AND IN FORCE w.e.f 10th JUNE, 2003)</i></p>
	<p>Selection Committee.</p>
<p>Clause 86(2) To seek the advice of SERC regarding restructuring/ promotion of competition matters covering generation. Transmission, distribution and trading.</p>	<p>86. (1) The State Commission shall discharge the following functions, namely:--</p> <ul style="list-style-type: none"> (a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State: Provided that where open access has been permitted to a category of consumers under Section 42, the State Commission shall determine only the wheeling charges and surcharge thereon if any, for the said category of consumers; (b) regulate 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; (c) facilitate intra-state transmission and wheeling of electricity; (d) issue licensees to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State; (e) promote cogeneration and 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 licence; (f) adjudicate upon the disputes between licensees, and generating companies and to refer any dispute for arbitration; (g) levy fee for the purposes of this Act; (h) specify State Grid Code; (i) Specify or enforce standards with respect to quality, continuity and reliability of service by licensees (j) fix the trading margin in the intra-state trading of electricity if considered necessary; and (k) discharge such other functions as may be assigned to it under this Act; <p>(2) The State Commission shall advise the State Government on all or any of the following matters, namely</p> <ul style="list-style-type: none"> (i) promotion of competition, efficiency and economy in activities of the electricity industry; (ii) promotion of investment in electricity industry; (iii) reorganization and restructuring of electricity industry in the State. (iv) matters concerning generation, transmission, distribution and trading of electricity or any other matter referred to the State Commission by that Government. <p>(3) The State Commission shall ensure transparency while exercising its powers and discharging its functions.</p> <p>(4) In discharge of its functions, the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy notified under section 3.</p>

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	Appropriate Commission –Other Provisions
<p>Clause 89 State Govt. to take note of for compliance in selection of Chairman/ Members.</p> <ul style="list-style-type: none"> • Max. term is 5 yrs • Max. age limit is 65 yrs • Not eligible for re-appointment 	<p>89. (1) The Chairperson or other Member shall hold office for a term of five years from the date he enters office.</p> <p>Provided that the Chairperson or other Member in the Central commission or the State Commission shall not be eligible for re-appointment in the same capacity as the Chairperson or a Member in that Commission in which he had earlier held office as such :</p> <p>Provider further that no Chairperson or Member shall hold office as such after he has attained the age of sixty-five years.</p> <p>(2)The salary, allowances and other conditions of service, of the Chairperson and Member shall be such as may be prescribed by the Appropriate Government: Provided that the salary, allowances and other conditions of service of the Members, shall not be varied to their disadvantage after appointment.</p> <p>(3) Every Member shall, before entering upon his office, make and subscribe to an oath of office and secrecy in such form and in such manner and before such authority as may be prescribed.</p> <p>(4) Notwithstanding anything contained in sub-section (1), a Member may-</p> <p>(a) relinquish his office by giving in writing to the Appropriate Government a notice of not less than three months; or</p> <p>(b) be removed from his office in accordance with the provisions of section 90.</p> <p>(5) Any member ceasing to hold office as such shall -</p> <p>(a) not accept any commercial employment for a period of two years from the date he ceases to hold such office; and</p> <p>(b) not represent any person before the Central Commission or any State Commission in any manner.</p> <p>Explanation.-- For the purposes of this sub-section -"commercial employment" means employment in any capacity in any organization which has been a party to the proceedings before the Appropriate Commission or employment in any capacity under, or agency of, a person engaged in trading, commercial, industrial or financial business in the electricity industry and includes a director of a company or partner of a firm or setting up practice either independently or as partner of a firm or as an adviser or a consultant.</p>
<p>Clause 102 State Government to provide grants & loans to the Commission after due appropriation by the</p>	<p>102. The State Government may, after due appropriation made by Legislature of State in this behalf, make to the State Commission grants and loans of such sums of money as that Government may consider necessary.</p>

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legislature.	
<p>Clause 103 State Government to constitute a fund for the SERC and its establishments in consultation with CAG.</p>	<p>103. (1) There shall be constituted a Fund to be called as the State Electricity Regulatory Commission Fund and there shall be credited thereto-</p> <p>(a) any grants and loans made to the State Commission by the State Government under section 102;</p> <p>(b) all fees received by the State Commission under this Act;</p> <p>(c) all sums received by the State Commission from such other sources as may be decided upon by the State Government.</p> <p>(2) The Fund shall be applied for meeting –</p> <p>(a) The salary, allowances and other remuneration of Chairperson, Members, Secretary, Officers and other employees of the State Commission;</p> <p>(b) expenses of the State Commission in discharge of its function under section 86; and</p> <p>(c) The expenses on objects and for purposes authorised by this Act.</p> <p>(3) The State Government may in consultation with the Comptroller & Auditor General of India, prescribe in the manner of applying the Fund of meeting the expenses specified in Clause (b) or clause (c) of sub-section (2).</p>
<p>Clause 104(1) State Government to advise SERCs for preparing relevant records/ accounts in such forms as prescribed by CAG.</p> <p>Clause 104(4) To lay the audit report & account of SERCs before the State legislature.</p>	<p>104. (1) The State Commission shall maintain proper accounts and other relevant records and prepare annual statement of accounts in such forms as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.</p> <p>(2) The Accounts of the State Commission shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the State Commission to the Comptroller and Auditor- General of India.</p> <p>(3) The Comptroller and Auditor-General and any person appointed by him in connection with the auditing of the accounts of the State Commission under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the State Commission.</p> <p>(4) The accounts of the State Commission, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the State Government and that Government shall cause the same to be laid , as soon as may be after it is received, before the State Legislature.</p>

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Clause 105 To lay the Annual Report of SERC before the State Legislature.	105. (1) The State Commission shall prepare once every year in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the State Government. (2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before the State Legislature.
Clause 106 To receive the budget proposals and finalise them.	106. The Appropriate Commission shall prepare, in such form and at such time in each financial year as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of that Commission and forward the same to the Appropriate Government.
Clause 108 State Government to guide SERC for matters of policy involving public interest.	108 (1) In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the State Government may give to it in writing. (2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final.
	PART- XI APPELLATE TRIBUNAL FOR ELECTRICITY
	PART – XII INVESTIGATION AND ENFORCEMENT
Clause 126 To designate the "assessing officer" to assess the unauthorized use of electricity.	126. If on an inspection of any place or premises or after inspection of the equipment, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use. (2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed. (3) The person, on whom a notice has been served under sub- section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who may, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment of the electricity charges payable by such person. (4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.

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	<p>Provided that in case the person deposits the assessed amount, he shall not be subjected to any further liability or any action by any authority whatsoever.</p> <p>(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, it shall be presumed that such unauthorised use of electricity was continuing for a period of three months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services, unless the onus is rebutted by the person, occupier or possessor or in-charge of such premises or place.</p> <p>(6) The assessment under this section shall be made at a rate equal to one-and-half times of the tariff rates applicable for the relevant category of services.</p> <p>Explanation:- For the purposes of this section :</p> <p>(a) "assessing officer" means an officer of the State Government or Board or Licensee, as the case may be, designated by such State Government.</p> <p>(b) Unauthorised use of electricity means the usages of electricity :</p> <p>(i) By any artificial means or</p> <p>(ii) By a means not authorised by the concerned person or authority or licensee or</p> <p>(iii) Through a tampered meter or</p> <p>(iv) For the purpose other than for which the usage of electricity was authorised</p>
	<p>PART – XIII REORGANISATION OF THE BOARD</p>
<p>Clause 131(1) To prepare a transfer scheme and the Board to vest all properties in the State Government.</p> <p>Clause 131(2) State Government u/s 131(1) to re-vest in a Government Company properties, rights & liabilities. Transfer value to be determined on the revenue</p>	<p>131. (1) With effect from the date on which a transfer scheme, prepared by the State Government to give effect to the objects and purposes of this Act, is published or such further date as may be stipulated by the State Government (hereafter in this Part referred to as the effective date), any property, interest in property, rights and liabilities which immediately before the effective date belonged to the State Electricity Board (hereafter referred to as the Board) shall vest in the State Government on such terms as may be agreed between the State Government and the Board.</p> <p>(2) Any property, interest in property, rights and liabilities vested in the State Government under sub-section (1) shall be re-vested by the State Government in the Government company or in a company or companies, in accordance with the transfer scheme so published along with such other property, interest in property, rights and liabilities of State Government as may be stipulated in such scheme, on such terms and conditions as may be agreed between the State Government and such company or companies being State Transmission Utility or generating company or transmission licensee or distribution licensee, as the case may be :</p> <p>Provided that the transfer value of any assets transferred hereunder shall be determined as far as may be based</p>

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<p>potential as agreed between State Govt. and STU or Generating Co. or transmission/ Distribution licensees.</p> <p>Clause 131(3)(a) In case of undertaking not wholly owned by the State Government, the scheme shall be effective for fair value to be paid by the transferee to the State Government.</p> <p>Clause 131(3)(b) Transaction to be binding on all persons including third parties.</p> <p>Clause 131(4) The transferor to draw up a transfer scheme and publish as statutory transfer scheme.</p>	<p>on the revenue potential of such assets at such terms and conditions as may be agreed between the State Government and the State Transmission Utility or generating company or transmission licensee or distribution licensee, as the case may be.</p> <p>(3) Notwithstanding anything contained in this section, where,-</p> <p>(a) the transfer scheme involves the transfer of any property or rights to any person or undertaking not wholly owned by the State Government, the scheme shall give effect to the transfer only for fair value to be paid by the transferee to the State Government;</p> <p>(b) a transaction of any description is effected in pursuance of a transfer scheme, it shall be binding on all persons including third parties and even if such persons or third parties have not consented to it.</p> <p>(4) The State Government may, after consulting the Government company or company or companies being State Transmission Utility or generating company or transmission licensee or distribution licensee referred to in sub –section (2) (herein referred to as the transferor), require such transferor to draw up a transfer scheme to vest in a transferee being any other generating company or transmission licensee or distribution licensee interest in property, rights and liabilities which have been vested in the transferor entity or generating company, or transmission licensee or distribution licensee, as the case may be, under this section, and publish the same as statutory transfer scheme under this Act.</p> <p>(5) A transfer scheme under this section may,-</p> <p>(a) provide for the formation of subsidiaries, joint venture companies or other schemes of division, amalgamation, merger, reconstruction or arrangements which shall promote the profitability and viability of the resulting entity, ensure economic efficiency, encourage competition and protect consumer interests;</p> <p>(b) define the property, interest in property, rights and liabilities to be allocated-</p> <p>(i) by specifying or describing the property, rights and liabilities in question; or</p> <p>(ii) by referring to all the property, interest in property, rights and liabilities comprised in a described part of the transferor's undertaking; or</p> <p>(iii) partly in one way and partly in the other;</p> <p>(c) provide that any rights or liabilities stipulated or described in the scheme shall be enforceable by or against the transferor or the transferee;</p> <p>(d) impose on the transferor company an obligation to enter into such written agreements with or execute such other instruments in favour of, any other subsequent transferee as may be stipulated in the scheme;</p> <p>(e) mention the functions and duties of transferee;</p> <p>(f) make such supplemental, incidental and consequential provisions as the transferor company considers appropriate including provision stipulating the order as taking effect; and</p> <p>(g) provide that the transfer shall be provisional for a stipulated period.</p> <p>(6) All debts and obligations incurred, all contracts entered into, all matters and things engaged to be done by the Board, with the Board or for the Board, or the State Transmission Utility or generating company or</p>

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<p>Clause 131(6) All debts and obligations to be honored by the transferee.</p>	<p>transmission licensee or distribution licensee, before a transfer scheme becomes effective shall, to the extent specified in the relevant transfer scheme, be deemed to have been incurred, entered into or done by the Board, with the Board or for the State Government or the transferee and all suits or other legal proceedings instituted by or against the Board or transferor, as the case may be, may be continued or instituted by or against the State Government or concerned transferee, as the case may be.</p> <p>(7) The Board shall cease to be charged with and shall not perform the functions and duties with regard to transfers made on and after the effective date.</p> <p>Explanation.- For the purpose of this Part, -</p> <p>(a) "Government company" means a Government Company to be formed and registered under the Companies Act, 1956</p> <p>(b) "company" means a company to be formed and registered under the Companies Act, 1956 to undertake generation or transmission or distribution in accordance with the scheme under this Part.</p>
<p>Clause 132 The proceeds from such sale or transfer shall be utilized first to pay all dues to the employees.</p>	<p>132. In the event that a Board or any utility owned or controlled by the Appropriate Government is sold or transferred in any manner to a person who is not owned or controlled by the Appropriate Government, the proceeds from such sale or transfer shall be utilised in priority to all other dues in the following order, namely :-</p> <p>(a) dues (including retirement benefits due) to the officers and employees of such Board or utility, who have been affected by the aforesaid sale or transfer;</p> <p>(b) payment of debt or other liabilities of the transferor as may be required by the existing loan covenants.</p>
<p>Clause 133 To provide for the transfer of the officer & employees to the transferee on the vesting of properties, rights and liabilities in such transferee as provided under section 131.</p>	<p>133. (1) The State Government may, by a transfer scheme, provide for the transfer of the officer & employees to the transferee on the vesting of properties, rights and liabilities in such transferee as provided under section 131.</p> <p>(2) Upon such transfer under the transfer scheme, the personnel shall hold office or service under the transferee company on such terms and conditions as may be determined in accordance with the transfer scheme: Provided that such terms and conditions on the transfer shall not in any way be less favourable than those which would have been applicable to them if there had been no such transfer under the transfer scheme. Provided further that the transfer can be provisional for a stipulated period.</p> <p><u>Explanation.</u> - For the purposes of this section and the transfer scheme, the term "officers & employees" shall mean all officers & employees who on the date specified in the scheme are the officer & employees of the</p>

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	Board or transferor as the case may be.
	PART – XIV OFFENCES AND PENALTIES
<p>Clause 135 (2) (a) To authorise on its behalf any officer with the objective of preventing theft of electricity to enter, inspect, seize, examine the books of accounts/ documents. Provisions of Code of Criminal Procedure 1973 shall apply u/s 135 (4).</p>	<p>135. (1) Whoever dishonestly, - (a) taps, makes or causes to make any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee; or (b) tampers a meter, installs, or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or (c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity, so as to abstract or consume or use electricity, shall be punishable with imprisonment for a term which may extend to three years or with fine or with both: Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use, (i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity; (ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months but which may extend to five years and with fine, not be less than six times the financial gain on account of such theft of electricity: Provided further that if it is proved that any artificial means or means not authorised by the Board or licensee exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.</p> <p>(2) Any officer authorised in this behalf by the State Government may -- (a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been, is being or is likely to be used unauthorisedly; (b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been, is being or is likely to be used for unauthorised use of electricity; (c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub section (1) and allow the person from whose custody such</p>

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	<p>books of account, or documents are seized to make copies thereof or take extracts there from in his presence.</p> <p>(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared & delivered to such occupant or person who shall be under an obligation to sign the list;</p> <p>Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.</p> <p>(4) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.</p>
	Theft of electric lines and materials
	PART XV SPECIAL COURTS
<p>Clause 153 To constitute as many as Special Courts as may be necessary for the purpose of speedy trial of offenses pertaining to theft (or malicious wastage) of electricity or damaging the works.</p>	<p>153. (1) The State Government may, for the purposes of providing speedy trial of offences referred to in sections 135 to 139, by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.</p> <p>(2) A Special Court shall consist of a single Judge who shall be appointed by the State Government with the concurrence of the High Court.</p> <p>(3) A person shall not be qualified for appointment as a Judge of a Special Court unless he was, immediately before such appointment, an Additional District and Session Judge.</p> <p>(4) Where the office of the Judge of a Special Court is vacant, or such Judge is absent from the ordinary place of sitting of such Special Court, or he is incapacitated by illness or otherwise for the performance of his duties, any urgent business in the Special Court shall be disposed of -</p> <p>(a) by a Judge, if any, exercising jurisdiction in the Special Court;</p> <p>(b) where there is no such other Judge available, in accordance with the direction of District and Session Judge having jurisdiction over the ordinary place of sitting of Special Court, as notified under sub-section(1).</p>
	PART XVI DISPUTE RESOLUTION Arbitration
<p>Clause 180 To make and notify rules for carrying out the provisions of</p>	<p>180. (1) The State Government may, by notification make rules for carrying out the provisions of this Act.</p> <p>(2) In particular and without prejudice to the generality of foregoing power, such rules may provide for all or any of the following matters, namely: -</p> <p>(a) the payment of fees for application for grant of license under sub-section (1) of section 15;</p>

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this Act.	<p>(b) the works of licensees affecting the property of other persons under sub- section(2) of section 67;</p> <p>(c) such other matters which may be prescribed under clause (c) of sub section (2) of section 68;</p> <p>(d) the salary, allowances and other terms and conditions of service of the Chairperson and Members of the State Commission under sub-section (2) of section 89;</p> <p>(e) the form and manner in which and the authority before him oath of office and secrecy should be subscribed under sub-section (3) of section 89;</p> <p>(f) any other matter required to be prescribed by the State Commission under clause (g) of sub- section (1) of section 94;</p> <p>(g) the manner of applying the fund under sub-section of 3 of section 103;</p> <p>(h) the form in which and time at which the State Commission shall prepare its annual accounts under sub-section (1) section 104;</p> <p>(i) the form in which and time at which the State Commission shall prepare its annual report under sub-section (1) of Section 105;</p> <p>(j) the form in which and time at which the State Commission shall prepare its budget under section 106;</p> <p>(k) manner of service of provisional order of assessment under sub-section (2) of section 126.</p> <p>(l) manner of holding inquiry by an adjudicating officer under sub-section (1) of section 143;</p> <p>(m) the form in which and the time at which notices to the Electrical Inspector under sub-section (1) of section 161;</p> <p>(n) the manner of delivery of every notice, order or document under sub-section (1) of section 171; and</p> <p>(o) any other matter which is required to be, or may be, prescribed.</p>
Clause 182 Rules made by the State Government as well as SERC to be laid before the House(s) of State Legislature.	182. Every rule made by the State Government and every regulation made by the State Commission shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

Competitive bidding guidelines for
power procurement



Reliance Energy
A Dhirubhai Ambani Enterprise

Presentation to Hon'ble Central Electricity Regulatory Commission
and Distinguished Invitees
May 7, 2004

1

AGENDA

- **Context and objectives**
- Need and importance of competitive bidding for power procurement
- Guiding principles
- Our suggestions
 - Scope of guidelines
 - Bidding process and evaluation of bids
 - Enablers for speed, transparency, and fairness

2

THE TASK FORCE REPORT ALSO SEEKS TO ENHANCE COMPETITION IN THE SECTOR USING COMPETITIVE BIDDING

The task force report of 2004 specifies five preferred mechanisms for procurement of electricity through competitive bidding*

- Tariff based bid for entire project capacity
 - Tariff based bids for blocks of capacity
 - Competitive tariff based bidding, without being related to any particular generation source
 - Tariff based bidding for peaking requirements
 - Bidding on capital cost of specific project (with overall two part tariff structure)
- } Linked to particular generation capacity

* Page 289 – Report of the Task force on Power Sector Investment and Reforms (Feb 2004 Volume I)

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OBJECTIVES OF TODAY'S DISCUSSIONS

- Share our views on competitive procurement of generation and transmission capacity
- To achieve consensus on how to formulate and implement guidelines for competitive bidding process, so that it embodies the spirit of the Electricity Act 2003
- To discuss and arrive at a consensus on the extent of standardization required in the bidding process and documents in order to expedite the process

6

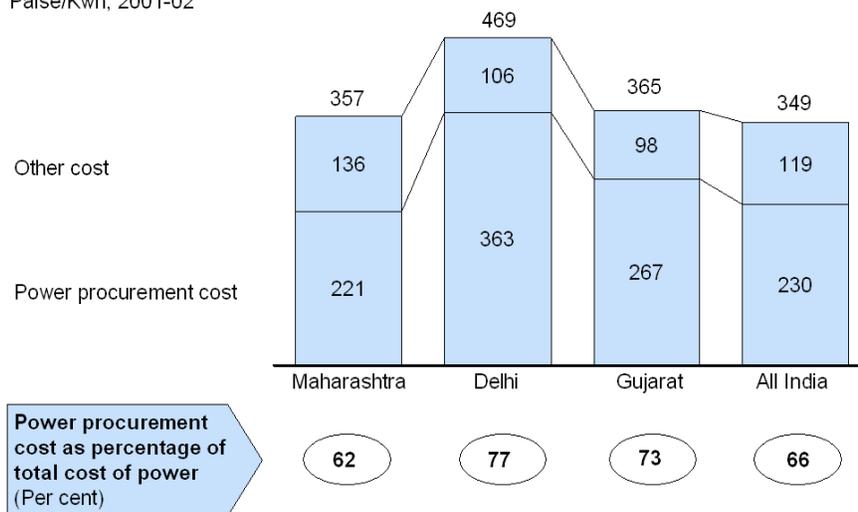
AGENDA

- Context and objectives
- **Need and importance of competitive bidding for power procurement**
- Guiding principles
- Our suggestions
 - Scope of guidelines
 - Bidding process and evaluation of bids
 - Enablers for speed, transparency, and fairness

7

POWER PROCUREMENT COST IS A LARGE PORTION OF THE TOTAL COST OF SUPPLY

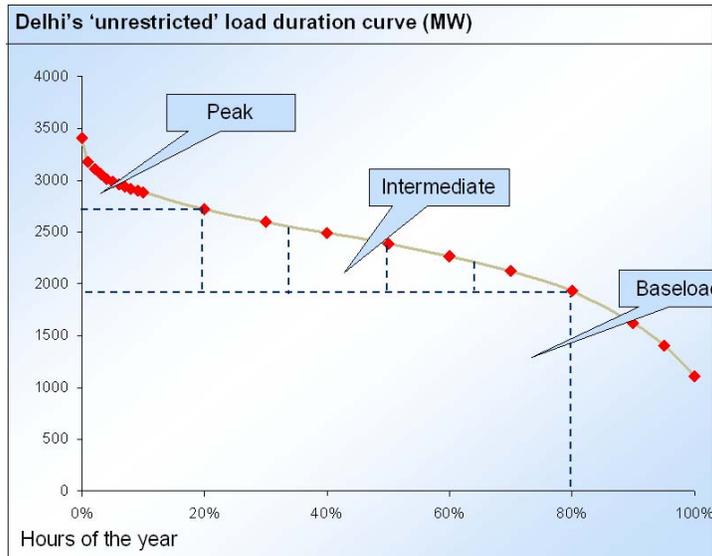
Paise/Kwh, 2001-02



Source: Planning commission report on SEB performance (2001-02)

8

POWER PROCUREMENT IS COMPLEX DUE TO DIFFERENT BASELOAD AND PEAK LOAD REQUIREMENTS



Source: Delhi operations of REL

9

TODAY, SIGNIFICANT COST DIFFERENCES EXIST AMONG GENERATORS

Tariffs of various plants supplying to Delhi			
Power plant	Type	MUs bought	Rs/Kwh
• Salal	• Hydro	358	0.59
• Baira Siul	• Hydro	86	0.63
• Tanakpur	• Hydro	58	1.04
• Singrauli	• Thermal	1,370	1.09
• Chamera	• Hydro	132	1.32
• Rihand	• Hydro	850	1.47
• Anta	• Thermal (GT)	375	1.61
• Auraiya	• Thermal (GT)	600	1.62
• Unchachar-I	• Thermal	190	1.88
• Uri	• Hydro	286	2.08
• Dadri (Gas)	• Gas	640	2.24
• Unchachar-II	• Thermal	400	2.26
• Dadri (Thermal)	• Thermal	5,065	2.27
• Badarpur BTPS	• Thermal	4,600	2.37
• RPH	• Thermal	740	2.50
• IP Station	• Thermal	490	2.50
• GT	• Thermal (GT)	1,060	2.50
• Pragati PPCL	• Thermal (GT)	1,706	2.71
• RAPP(B)-III	• Nuclear	28	2.98
• NJPC	• Hydro	160	3.02
• RAPP (B)-IV	• Nuclear	276	3.25

• While some of these differences can be explained by differences in fuel type, technology, location and vintage, some differences are attributable to differing generation efficiencies

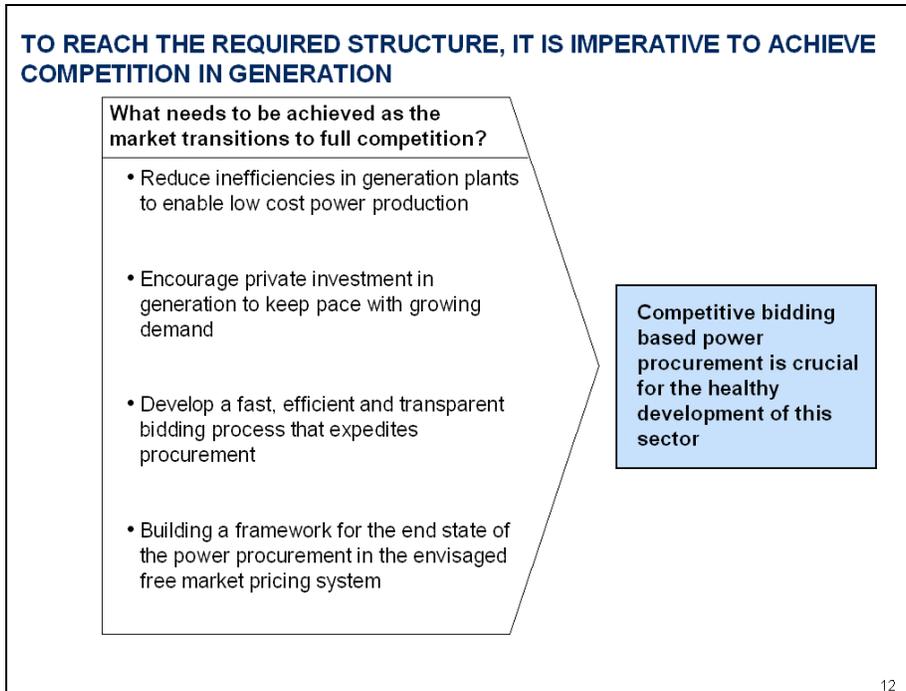
• Current cost plus system does not adequately encourage generators to improve operational efficiencies

Source: Delhi Electricity Regulatory Commission order on Delhi Transco ARR for 2002-03 and 2003-04

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POWER MARKET IS REQUIRED TO EVOLVE TO A NEW STRUCTURE	
Today's wholesale power procurement model	Desired market structure for power procurement (in the end-state)
<ul style="list-style-type: none"> • Single buyer model - SEB/transco pools distribution utility requirements to procure power • Primarily long duration contracts • Cost plus tariff setting <ul style="list-style-type: none"> – CPSUs and SEBs: cost plus tariffs based on CERC/SERC orders – IPPs: mix of cost plus and tariff based bidding • Limited incentives to improve efficiency 	<ul style="list-style-type: none"> • Multiple buyer model (e.g., each distribution company procuring for its own requirements) • Suitable mix of long, medium and short term contracts • Tariff setting driven by market forces • Market rewards players with lower costs and higher efficiencies

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AGENDA

- Context and objectives
- Need and importance of competitive bidding for power procurement
- **Guiding principles**
- Our suggestions
 - Scope of guidelines
 - Bidding process and evaluation of bids
 - Enablers for speed, transparency, and fairness

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GUIDING PRINCIPLES FOR COMPETITIVE BIDDING

Competitive bidding process should ensure

- Free fair and effective competition
- Transparency
- Simplicity and cost effectiveness of process
- Minimal burden on regulator and other stakeholders
- Flexibility to adapt to varying needs of power procurement according to the structure of the sector

The new guidelines should adequately build on CERC and GOI guidelines issued earlier by incorporating new inputs from EA 2003 and the Task Force report

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AGENDA

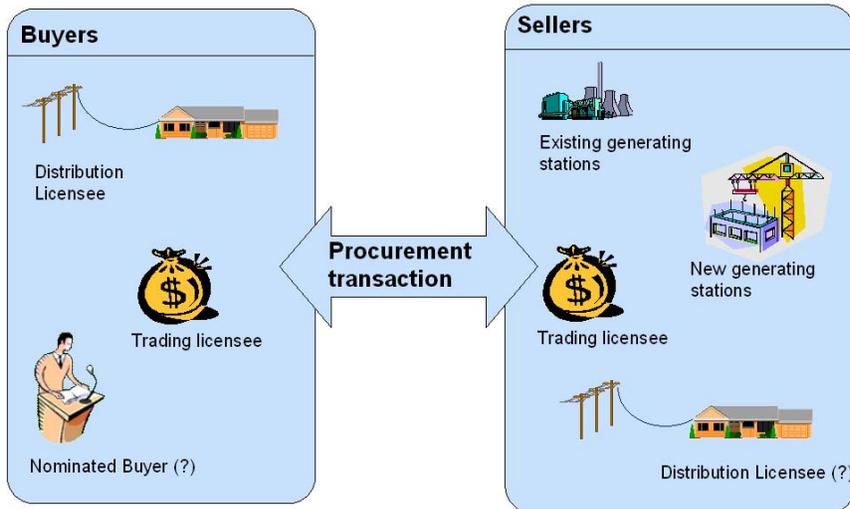
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GUIDELINES SHOULD COVER PROCUREMENT BY VARIOUS ENTITIES



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GUIDELINES SHOULD COVER BOTH GENERATION AND NEW TRANSMISSION CAPACITY

Procurement category	Should guidelines cover it?	Rationale
<ul style="list-style-type: none"> • Generation – Capacity – Energy 	<ul style="list-style-type: none"> • May be baseload/Peak or off peak • Yes 	<ul style="list-style-type: none"> • This would form the bulk of the power procurement bids; hence it is imperative that the guidelines cover these
<ul style="list-style-type: none"> • Transmission capacity – Existing <ul style="list-style-type: none"> • Firm • Non-firm – Setting up new capacity 	<ul style="list-style-type: none"> • May be entire day/part day • Not required • Yes 	<ul style="list-style-type: none"> • Rules for open access on transmission lines already well defined (e.g., transmission service charge bidding) • New capacity addition not based on competitive bidding so far, but lends itself to the process quite naturally
<ul style="list-style-type: none"> • Ancillary services – Spinning reserves – Reactive Power – Harmonics etc. 	<ul style="list-style-type: none"> • Not initially 	<ul style="list-style-type: none"> • The concept of ancillary services not well developed yet • In future as market matures guidelines may be expanded to include these as well

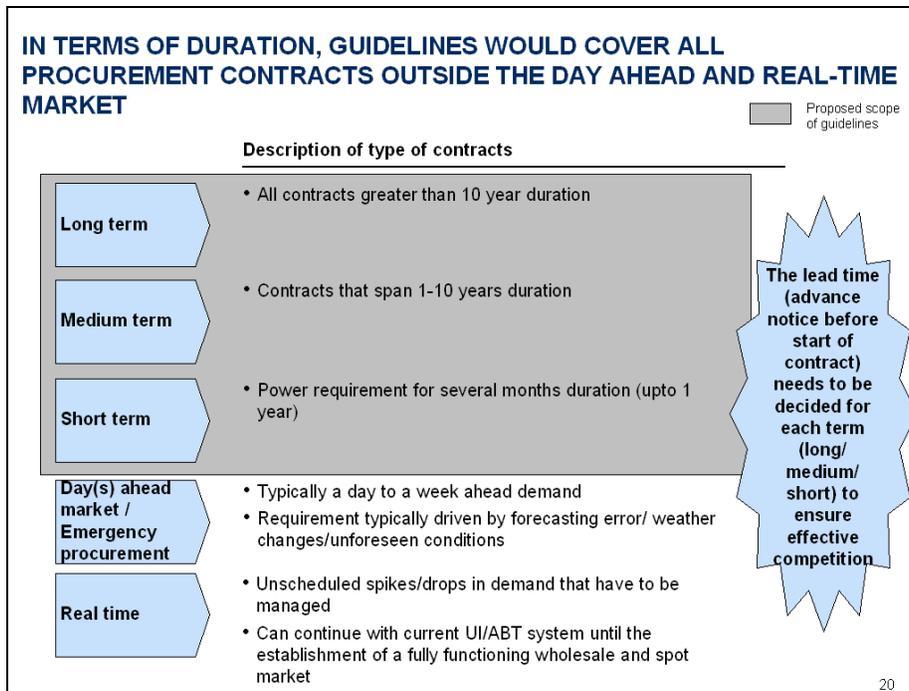
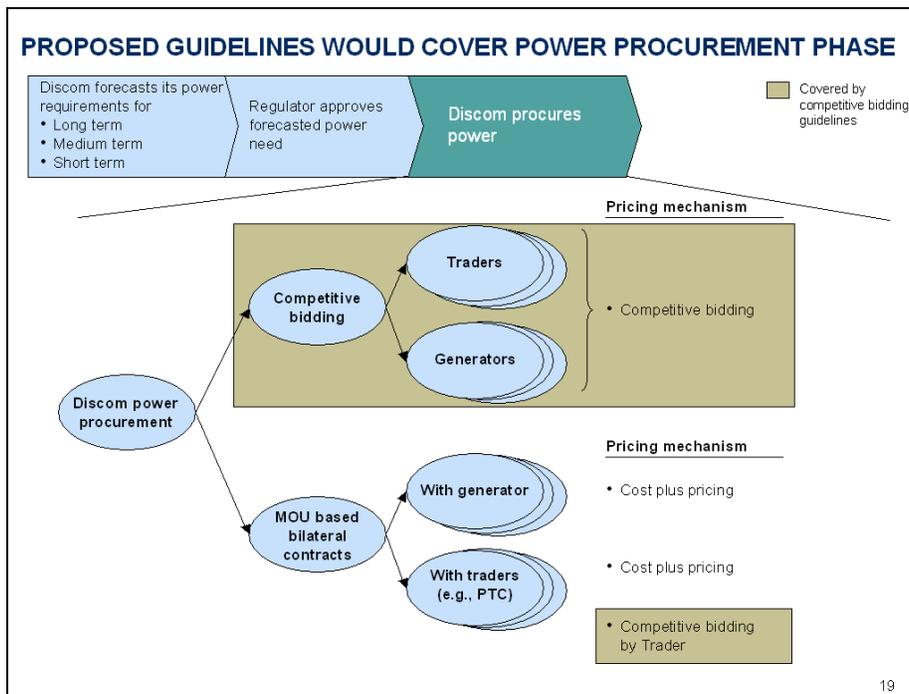
17

TODAY, DISCOMS/TRANSCOS PROCURE POWER MAINLY THROUGH LONG TERM BILATERAL CONTRACTS

Description/Details

<div style="border: 1px solid black; background-color: #e0f0ff; padding: 5px; margin-bottom: 10px;">Long term</div> <div style="border: 1px solid black; background-color: #e0f0ff; padding: 5px; margin-bottom: 10px;">Medium term</div> <div style="border: 1px solid black; background-color: #e0f0ff; padding: 5px; margin-bottom: 10px;">Short term</div> <div style="border: 1px solid black; background-color: #e0f0ff; padding: 5px;">Real time/day to day</div>	<ul style="list-style-type: none"> • Generally 15-25 year contracts. New capacity may be added if needed • Capacity added in three ways - <table border="0" style="margin-left: 20px;"> <tr> <td style="vertical-align: top;"> <ul style="list-style-type: none"> – Self generation (SEB owned generators); capacity cleared by SERC as required </td> <td style="vertical-align: top; padding: 0 10px;"> <ul style="list-style-type: none"> – Allocation from central generating stations; CERC determines tariffs </td> <td style="vertical-align: top;"> <ul style="list-style-type: none"> – Independent power producers; Bid/MOU route for projects; CERC/SERC vets the tariff </td> </tr> </table> <div style="border: 1px solid black; background-color: #e0f0ff; padding: 5px; margin: 10px 0; text-align: center;"> No clear process currently for bridging medium term requirements (i.e. more than one year and less than 15 year duration) </div> <ul style="list-style-type: none"> • Upto one year duration contracts; (form small part of total power procured) • SEBs propose power purchase from third parties in their ARR, prior to actual contract • Some SERCs have taken a hands off view on these bids as long as the total annual power purchase cost remains within budget • No day ahead market • Real time power requirement (in excess or deficit of scheduled draws) drawn directly from grid without any prior permission from regulator • SEB pays/receives UI charges under ABT regime at the end of accounting cycle <div style="text-align: center; margin-top: 10px;"> <div style="border: 2px solid black; background-color: #e0f0ff; padding: 10px; display: inline-block;"> Excessive burden on regulator </div> </div>	<ul style="list-style-type: none"> – Self generation (SEB owned generators); capacity cleared by SERC as required 	<ul style="list-style-type: none"> – Allocation from central generating stations; CERC determines tariffs 	<ul style="list-style-type: none"> – Independent power producers; Bid/MOU route for projects; CERC/SERC vets the tariff
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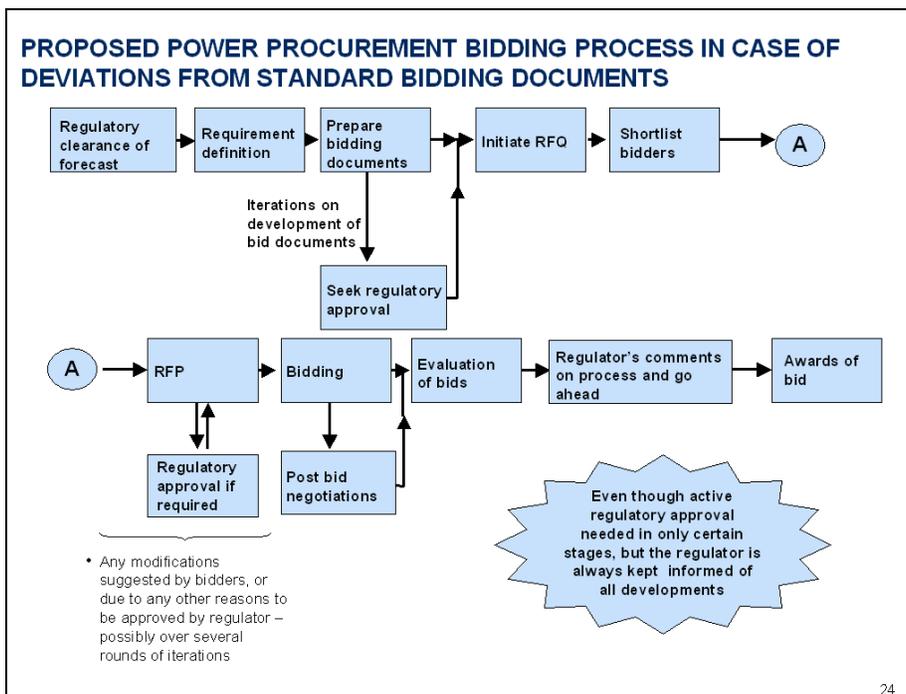
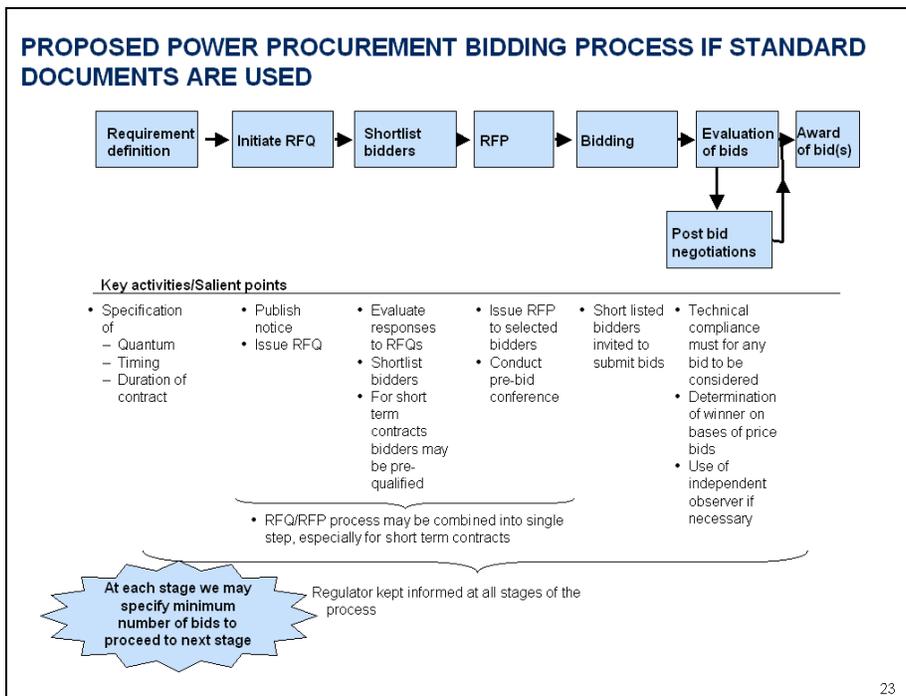
BIDDING PROCESS WOULD START WITH THE REGULATOR APPROVING THE DEMAND FORECAST FOR THE DISTRIBUTION COMPANIES

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    graph LR
      A[Demand forecast for short / medium / long term by discom] --> B[Regulatory approval of forecast]
      B --> C[Procurement process]
      C --> D[Path 1: Using standard bid documents]
      C --> E[Path 2: Using non-standard bid documents]
  
```

- Guidelines specify process to be followed in each case
- Standard documents supplied for following path 1
- Regulator approves documents if path 2 is followed

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IN THE RFQ STAGE, BIDDERS SHOULD BE SCREENED ON THE BASIS OF AN ARRAY OF METRICS

	<u>Technical metrics</u>	<u>Past record</u>	<u>Financial metrics</u>
	<u>To minimise risk of delay/shortfall</u>	<u>To prevent frivolous/mischievous bidders</u>	<u>To ensure supply contracts, in case of default</u>
For generators	<ul style="list-style-type: none"> For new plants <ul style="list-style-type: none"> Past infrastructure project execution Resource raising For existing plants <ul style="list-style-type: none"> Reliability Performance in the past Tie ups with transmission companies preferred 	<ul style="list-style-type: none"> Should be an organization of repute No default on previous contracts 	<ul style="list-style-type: none"> To ensure supply contracts, in case of default Net worth Credit worthiness Bank/other financial guarantees
For traders	<ul style="list-style-type: none"> For long term contracts trader should show the capability/history to source 70-80% of contract amount Tie ups with generators and transmission companies are preferred Source of power has to be specified 	<ul style="list-style-type: none"> Trader of repute No default on past contracts Past litigation record No conflict of interest between other obligations and contract being bid 	<ul style="list-style-type: none"> Net worth Credit worthiness Bank/other financial guarantees
	To be suitably relaxed in initial stages for traders, as they would have no history of trading operations		Limits to vary by duration of contract and amount of load contracted

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FOR MEDIUM/LONG TERM CONTRACTS, AT RFP STAGE, BIDS SHOULD BE SCREENED BASED ON NON PRICE EVALUATION PRIOR TO PRICE COMPARISONS

<u>Element for evaluation</u>	<u>Details</u>
Supplier's guarantee	<ul style="list-style-type: none"> Financial guarantee covering supply default
Delivery point	<ul style="list-style-type: none"> Different bidders could be capable of delivering power at different points in grid Most reliable/least bottlenecked point most preferable
Delivery dates/period	<ul style="list-style-type: none"> Relevant for time of day contracts, or for parts of long term contract Best fit to demand should get preference
Buyer's guarantee	<ul style="list-style-type: none"> Bidder asking for least financial guarantee from buyer would be preferred
Force majeure /risk sharing	<ul style="list-style-type: none"> Risk sharing mechanism in case of forced outages/unforeseen circumstances

All these aspects need to be sufficiently detailed in the standard bid documents and processes, to enable bids to be efficiently and transparently evaluated/ rejected on technical merits

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FOR SHORT TERM CONTRACTS, THREE ASPECTS SHOULD BE MODIFIED TO SPEED UP THE PROCESS

 Discussed further

Aspect	Details
Bid pricing	<ul style="list-style-type: none"> • Single part tariff <ul style="list-style-type: none"> – No escalation/inflation – No fuel variation • Bids compete purely on single price (i.e., all bids that fulfill all technical criteria beforehand)
Empanelment of bidders	<ul style="list-style-type: none"> • Bidders empanelled once • Panel kept updated on regular basis • For each short term requirement, panel members asked to bid – eliminates the need for bidder qualification step in procurement process
Short lead times	<ul style="list-style-type: none"> • Bid process may be started (public notification stage) upto a few weeks before the actual requirement of the contract • Thus mostly traders and existing generators would likely bid for these

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EMANELMENT OF BIDDERS - DETAILS

Rationale	<ul style="list-style-type: none"> • Short term bids need to be executed rapidly since time is of the essence • Need to avoid unnecessary repetition/ duplication of records
Process/details of empanelment	<ul style="list-style-type: none"> • For short term bid, buyer should skip bidder qualification • Buyer should ask the existing panel of bidders to bid • Buyer should regularly update the list of empanelled bidders
Updation of bidders panel	<p>Buyer should update the list of empanelled bidders to reflect changes over time. These would include –</p> <ul style="list-style-type: none"> • New entrants – should be allowed to submit details at 3-4 occasions in an year. Once a bidder is empanelled, he stays on the panel until he withdraws, or is disqualified • Regular checks - Empanelled bidders should submit details of credit worthiness and make other financial/ legal disclosures annually. Any discrepancy / shortfall could lead to revoking of pre-qualified status • Disqualification from panel - Bidders will attract disqualification if <ul style="list-style-type: none"> – They default (or dishonor) on any contract – They have not participated in the last 3-4 bids up for competition

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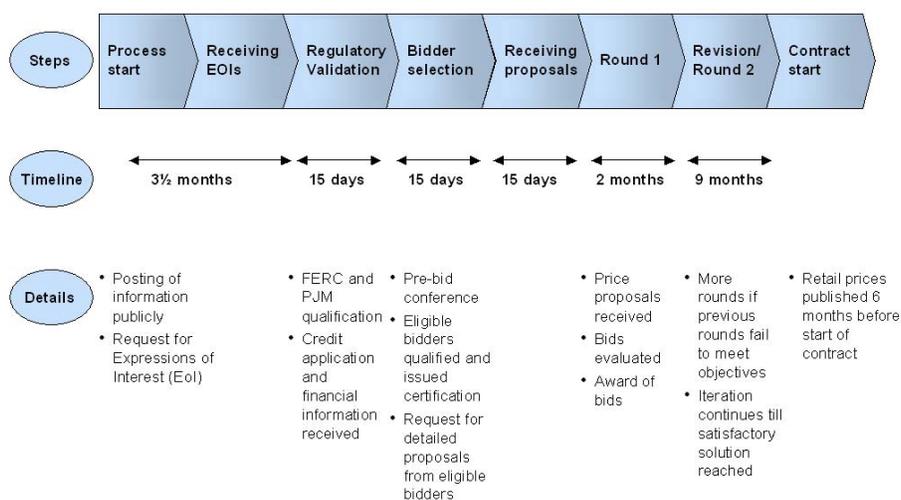
INTERNATIONAL PRECEDENTS OFFER SEVERAL USEFUL TIPS FOR FORMULATING THE COMPETITIVE GUIDELINES

Aspect	International examples	Reference document Issue date/number
Bidding for part of the contract	<ul style="list-style-type: none"> RFP for Central Maine Power Company allows bidders to bid in multiples of 20% of total contract amount 	<ul style="list-style-type: none"> November 18, 2003; issued by Maine PUC
Bidding for partial duration	<ul style="list-style-type: none"> EPSA guidelines mention use of annuity based calculations while comparing bids for unequal (part) duration and choosing a lower overall bid portfolio 	<ul style="list-style-type: none"> EPSA guidebook for design implementation and monitoring of competitive power supply solicitations
Use of Independent observer	<ul style="list-style-type: none"> Independent observer was used for overseeing the process of RFP's for Portland General Electric Company 	<ul style="list-style-type: none"> January 20, 2004; Interim report of independent observer
Bidding for percentage of load	<ul style="list-style-type: none"> Rather than a fixed load (in MW/ MWh) the bid may be asked for the percentage of the utility's load, so as to offload some risk to the suppliers 	<ul style="list-style-type: none"> EPSA guidebook for design implementation and monitoring of competitive power supply solicitations
Use of discounting/ NPV calculations for evaluation	<ul style="list-style-type: none"> Public service commission of Maryland approved use of single discounted average term price (DATP) for evaluation of bids in the phase II settlement proceedings 	<ul style="list-style-type: none"> Order no. 78710 Case no. 8908; Phase II September 2003
Pre-qualification of bidders to form a panel	<ul style="list-style-type: none"> Rules of the Florida Public Service Commission on general purchasing procedures allow the prequalification of bidders to form a panel 	<ul style="list-style-type: none"> Ch.25-25 Sup no.194
Financial guarantees from bidders	<ul style="list-style-type: none"> RFP for Central Maine Power Company required bidders to provide financial guarantees upto US\$ 1.21 million/month and 1.50 million/month while bidding for service to 2 classes of consumers 	<ul style="list-style-type: none"> November 18, 2003; issued by Maine PUC

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INTERNATIONAL BIDDING PROCESS - EXAMPLE

US long term PPA bid process



Source: Allegheny power RFPs and RFQs

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SYSTEMS REQUIRED TO ENSURE SPEED, TRANSPARENCY AND FAIRNESS

■ Discussed further

Speed	Standardization of contracts	<ul style="list-style-type: none"> • Standard contract documents to cover as many scenarios as possible • All deviations counted as material deviations – requiring regulatory approval
Transparency	Information dissemination	<ul style="list-style-type: none"> • All details of bid process and method given to all bidders • All factors that will be considered and their relative weights notified in advance
Fairness	Communications	<ul style="list-style-type: none"> • All communications to be made in written form • All records retained for a certain duration after the end of bidding • Optional separate rounds for RFP and RFQs
	Independent observer	<ul style="list-style-type: none"> • Not required in usual biddings – as long as standard processes are being followed • Needed if an affiliate of the buyer is also bidding for the contract • This would be more of an oversight role without any involvement in decision making

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STANDARDIZED BIDDING DOCUMENTS NEEDED FOR EXPEDITING PROCESS

- Providing standard documents as templates is important to
 - Expedite process
 - Prevent the whole process from getting bogged down in litigation
 - Reduce burden on regulator and all shareholders
- Standardization is easy for short term contracts. It gets increasingly complex as the duration of contracts increases
- For new plants standard documents need to capture all possible aspects of
 - Finance structuring
 - Risk sharing
- Need to provide flexibility for future requirements

Need for detailed documents as standard templates; but with sufficient flexibility to ensure responsiveness to new needs

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IMPORTANT ISSUES FOR DEBATE – NOT EXHAUSTIVE

- Can any buyer aggregate power requirements
 - Across distribution companies? } In order to avail benefits of scale
 - Across states? } (e.g., flattened load curve,
 - Across regions? } economic size of the plant) and reduce transaction costs
- Even though the Electricity act itself does not prohibit such aggregation, would this lead to a dispute between state and central bodies ?
- How do these guidelines change with the development of a power pool?
- Should there be a common energy index to link the variable costs of plants? If yes, how should it be developed/monitored/updated?
- Should the buyer inform rejected bidders about reasons for rejection?
- Should the buyer seek power at one specific delivery point per bid and compare costs accordingly?
- For long-term procurement requiring set up of new capacities, should the buyer specify location, fuel, technology (e.g., for BOT basis)?
- Evaluation of non-price factors
- What is the process for dispute resolution?
- Is the duration definition (long-term > 10 years, medium-term between 2 and 10 years, and short-term less than 2 years) rigid or evolving over time?
- Should these guidelines cover competitive bidding by a trader as well?

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Sub: Statutory advice to Central Government on Tariff Policy as recommended by the Task Force on Power Sector Investments and Reforms**1. Introduction**

- 1.1 Ministry of Power, Government of India, vide its letter No. 23/50/2003-R&R (Vol. IX) dated 5th April, 2004 has drawn the attention of the Central Electricity Regulatory Commission, inter alia, to the tariff policy as recommended by the Task Force on Power Sector Investments and Reforms constituted under the Chairmanship of Shri N.K. Singh, Member, Planning Commission, as included in the report of the task force submitted to Government in February, 2004. Ministry of Power has invoked the provision under Section 79 (2) (i) of the Electricity Act, 2003 and has sought the statutory advice of the Central Commission on this Tariff Policy.
- 1.2 CERC's statutory advice is contained in the following paragraphs.
- 1.3 In extending this statutory advice, CERC is aware that the Electricity Act, 2003 aims at taking measures conducive to development of electricity industry, promoting competition, protecting interest of consumers and supply of electricity to all areas, rationalising electricity tariff, ensuring transparent policies regarding subsidies, etc. CERC is also aware that the Constitution of India places "Electricity" in the Concurrent List (Entry 38, List III of Schedule VII), and recognises the Centre and the States as equal partners in the promotion of electricity industry.
- 1.4 It is in this spirit of partnership that the Act mandates that the Central Government shall prepare the Tariff Policy in consultation with the State Governments.

2. Legal Provision regarding Tariff Policy:

- 2.1 Section 3 of the Electricity Act, 2003 mandates that the Central Government shall prepare a tariff policy. The procedure for preparation of the policy as well as the parameters thereof are clearly defined at Section 3(1) of the Act and is reproduced below:
3. (1) The Central Government shall, from time to time, prepare the National Electricity Policy and tariff policy, in consultation with the State Governments and the Authority for development of the power system based on optimal utilisation of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy.
- 2.2 The Act does not lay down any specific time limit by which the Tariff Policy shall be prepared, and states that the Central Government shall prepare such policy "from time to time".
- 2.3 It is clear from the above provision of law that the Central Government is obliged to prepare the Tariff Policy in consultation with the State Governments and the Authority.

- 2.4 The law does not mandate any other consultation by the Central Government, and to that extent, such other consultations may be considered extraneous and not material.
- 2.5 The Task Force headed by Member, Planning Commission consisted of representatives of several ministries of Government of India. Chairman, CEA was also a member of the Task Force. However, the Task Force did not include any representative from any State Government. Accordingly, the State Governments did not have the opportunity to participate in the evolution and formulation of the Tariff Policy recommended by the Task Force.
- 2.6 The above provision of the Act also clearly lays down the ambit and the boundary of the Tariff Policy, by mandating that such policy shall be *for development of the power system based on optimal utilisation of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy*. The Tariff Policy has to be within the four corners of the law, and should conform to the parameters prescribed.
- 2.7 The Act mandates that the Central Electricity Regulatory Commission (CERC) shall advise the Government on the Tariff Policy, by laying down as follows:
- 79(2) The Central Commission shall advise the Central Government on all or any of the following matters, namely:
- (i) *formulation of National Electricity Policy and tariff policy;*
- 2.8 In terms of the Act, CERC is the only authority recognised by law, which is vested with the statutory responsibility to advise the Central Government on the Tariff Policy. The authority of the CERC in the matter of advising the Central Government on Tariff Policy extends much beyond mere consultation, and its statutory advice is expected to be accepted by the Central Government.
- 2.9 It is pertinent to mention here that this is not a new provision formulated for the first time in the Electricity Act, 2003. Section 13 (e) of the Electricity Regulatory Commissions Act, 1998 contained a similar provision which mandated that the Central Electricity Regulatory Commission shall “aid and advice the Central Government in the formulation of Tariff Policy”.

3. Parameters of Tariff Policy:

- 3.1 CERC would like to advise Government that the Tariff Policy should conform to the parameters laid down in Section 3(1) of the Act. The Policy should aim at the development of power system based on optimum utilization of alternative resources, and should be a document that enables the country to have a balanced mix of available resources for such development. The Policy document should be a brief and concise Vision Paper. It should focus on creating a vibrant power sector for ensuring reliable and quality power to the consumers at competitive rates. It should stress the need for promoting economy, efficiency, and competition, for determination of tariff through a transparent procedure, for competitive bidding for IPPs, for a tariff mechanism to provide the optimum balance between consumer interest and investment in the power sector, for prescribing time frame for separation of CTU and load dispatch functions to enable non discriminatory open access, for transparency in subsidy related issues, for multi-year tariff, for incentivising efficiency gains and better performance, for transparent determination of prudence of investment for tariff purposes, for flexibility between the concepts of return on equity and return on investment, for movement away from cost-plus regime, etc. It should uphold the independence and authority of the Regulatory Commissions for specifying the Terms and Conditions of Tariff, and for discharging such other functions as are mandated under the Act.

- 3.2 The Policy Document should not be an instrument for micro-management of the power sector, and should recognize and respect the jurisdiction of the State Governments and of the Regulatory framework, in the true spirit of the Act.
- 3.3 In June 2002, Ministry of Power had circulated an earlier Draft of the Tariff Policy, after discussion with Central Utilities, State Electricity Boards and the CEA. The reasons why this draft has been discarded by Ministry of Power are not known. The Commission would advise that this draft may be used as the base document, and may be modified as necessary.

4. **Exclusive jurisdiction of Regulator to specify Terms and Conditions of Tariff:**

- 4.1 Regulatory Commissions in the Centre as well as in most of the States were established under the erstwhile Electricity Regulatory Commissions Act 1998, which inter alia mandated that appropriate Commission “shall determine by regulations the Terms and Conditions for fixation of Tariff” (Section 28 & 29).
- 4.2 Prior to the establishment of the Regulatory Commissions, tariff fixation was in the domain of the Central and State Governments. Government used to determine the Terms and Conditions of Tariff for Generating Companies in terms of Section 43A(2) of the Electricity (Supply) Act 1948, which is reproduced below:

The tariff for the sale of electricity by a Generating Company to the Board shall be determined in accordance with the norms regarding operation and the Plant Load Factor as may be laid down by the authority and in accordance with the rates of depreciation and reasonable return and such other factors as may be determined, from time to time, by the Central Government, by notification in the Official Gazette. Provided that the terms, conditions and tariff for such sale shall, in respect of a Generating Company, wholly or partly owned by the Central Government, be such as may be determined by the Central Government and in respect of a Generating Company wholly or partly owned by one or more state Governments be such as may be determined, from time to time, by the government or governments concerned.

Under this provision, the Central Government used to determine the financial norms like depreciation, reasonable return, debt equity ratio etc, while the Central Electricity Authority used to determine Operational Norms and Plant Load Factor for the purpose of tariff computation.

- 4.3 A Notification was issued by Ministry of Power on March 22, 1999 by which Section 43A(2) was omitted in respect of generating companies owned or controlled by the Central Government and generating companies having a composite scheme for generation and sale in more than one state. Accordingly, the powers to fix financial terms and conditions (earlier with Government) and to fix operational terms and conditions (earlier with CEA) mentioned at para 4.2 above were passed on to the Regulator.
- 4.4 In respect of Licensees, tariff was determined in accordance with Schedule VI of the Act of 1948. The ERC Act of 1998 diluted Schedule VI by mandating that the Commissions could depart from these provisions for reasons to be recorded in writing (Section 30). The Electricity Act of 2003 does away with Schedule VI altogether.
- 4.5 Various judicial pronouncements have upheld that the Commission concerned is the sole authority to determine tariff and for framing regulations for terms and conditions of tariff.
- 4.6 From the above historical analysis, it will be clear that it has been the endeavor of Parliament, the Judiciary as well as the Executive to distance Government from

Regulatory activity, to uphold the independence of the Regulatory framework, and to repose confidence in its impartiality and transparency in the discharge of its statutory responsibility. In fact, the Electricity Act, 2003 recognizes the further maturing of the Regulatory system by vesting it with greater responsibility in matters related to licensing, open access, gradual removal of cross subsidy, market development, promotion of competition, economy, and efficiency, etc. There is no provision anywhere in the Electricity Act, 2003 which restores back to Government the authority to specify terms and conditions of tariff which was available to it under Section 43A(2) and Schedule VI of the erstwhile Electricity (Supply) Act 1948.

5. CERC's Tariff Regulation: 2001-2004:

- 5.1 In exercise of the power vested in it by law, CERC notified the Terms and Conditions of Tariff for the period 1st April 2001 to 31st March 2004, after a detailed and transparent consultation process lasting more than one year. In exercise of the powers vested in it by law, CERC also announced the numbers/norms for the financial elements of fixed charges (interest on loan, depreciation, operation & maintenance, return on equity, debt equity ratio, interest on working capital and income tax), and operational norms for variable charges (station heat rate, secondary fuel oil consumption, auxiliary energy consumption, target availability, etc.) CERC's regulation on the Terms and Conditions of Tariff for the above period was notified in the Gazette of India (Extraordinary) dated March 26, 2001 and was duly laid on the Table of the Parliament.

6. CERC's Tariff Regulation for the period beginning April 1, 2004:

- 6.1 Section 61 of the Electricity Act, 2003 mandates that "the appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of Tariff". In exercise of this responsibility, CERC circulated a discussion paper in June 2003, soliciting comments from all stakeholders. Based on the comments of the stakeholders, CERC held detailed hearing on the subject on November 10, 11 and 12, 2003. A draft of the regulation for terms and conditions of tariff was issued on January 1, 2004 for seeking further comments. A final round of hearing with all stakeholders was held on March 9 & 10, 2004. Through this detailed and transparent process covering nearly one year, on March 29, 2004, CERC has issued its final regulation on the terms and conditions of tariff applicable for the five-year period 1.4.2004 to 31.3.2009. This is available on the website of CERC www.cercind.org.
- 6.2 Concurrently CERC has issued Regulations for Transmission License, Trading License, Open Access in Inter-State Transmission etc, for operationalising the relevant provisions of the Act.

7. Tariff Policy formulated by Task Force:

- 7.1 The Central Commission has examined the proposed tariff policy in great detail. CERC would like to make the following observations in this regard.
- (i) Section 3 of the Act mandates that the tariff policy shall be prepared in consultation with State Governments and the CEA. Chairman CEA was a Member of the Task Force and was fully involved at all stages leading the drafting and formulation of the Policy. However, there was not single representative of any State Government in the Task Force; the States therefore, appear to have been deprived of the opportunity of participating in the evolution

of the Policy, and for giving their suggestions. The underlying spirit of the consultation process mandated in Section 3 is to ensure that the Policy is developed in conjunction with the State Governments rather than madly to seek the comments of the State Governments on a document, which already gives out the mind of the Central Government. For ensuring greater credibility and acceptability, it is necessary that the States be involved in the process from the beginning.

- (ii) The Tariff Policy goes far beyond the parameters mandated under Section 3 (i) of the Act for “development of the power system based on optimal utilization of resources.” The contours of such a policy has been outlined in our comments at Para 3 above. The present document is not a Vision Paper for the power sector, but appears to be unduly preoccupied with all discretion of State Governments and the regulatory structure.
- (iii) The Electricity Act assigns specific responsibilities to the Central Government, the State Governments and the regulatory mechanism, based on the principle of transparency, trust and respect for each other’s jurisdiction. However, the Tariff Policy appears to be an attempt to restore to the Central Government, the authority given under Section 43A (2) and Schedule 6 of the erstwhile Electricity Supply Act 1948, although the intention of the Government, the law makers and the judiciary is exactly the opposite. The Policy document prescribes numbers/norms covering the terms and conditions of tariff including project cost, return on equity, debt equity ratio, depreciation etc., although these are clearly in the domain of the regulators. It also prescribes norms for micro level issues like treatment of Interest During Construction (IDC), Development Surcharge, Hedging for Foreign Exchange Variation, Payment Security Options, Normative Vs Actual Operating Parameters etc, which again are clearly regulatory issues. This is violative of the provisions of law, since powers vested upon the regulators by the Parliament and upheld through judicial pronouncements cannot be taken away through a Policy instrument. The policy document also seeks to hand over some of the functions of the Regulatory Commissions to the CEA, which is contrary to the provisions of the law. The regulatory mechanism has been created by Government and approved by Parliament. It should be the endeavor of Government to strengthen this mechanism, instead of curtailing all discretion available to them.
- (iv) The document contains several provisions which are contradictory, inconsistent, lacking in clarity and difficult to implement. The paragraph relating to access and usage rights, the proposed zonal stamp methodology and implementation of National Transmission Pricing are examples.
- (v) The rationale for announcing the centralized tariff policy document appears to be to introduce consistency and uniformity in regulatory approach across the country. Such a proposition does not appear to take into consideration the dynamics of the power sector and the differing ground realities. Given the diversity in economic development, power sector reforms, as well as of technology, vintage, fuel, size, etc., it will be extremely difficult to enforce uniformity through one centralized document. It is in recognition of this diversity that law prescribes not only the Central Regulator but also Regulators in every State who would have flexibility to deal with States specific issues. The Electricity Act, 2003 already provides for the required level of uniformity by prescribing that the SERCs will be guided by the principles and methodologies specified by the Central Commission. [Section 61 (a)]. The Act also provides for

an institutional mechanism in the form of a Forum of Regulators [Section 166(2)] through which the objective of harmonization and uniformity can be achieved more effectively.

- 7.2 The Central Commission would like to point out some specific instances of inconsistency/incongruity in the Policy document, as at the Annexure to this note.
- 7.3 The Commission would like to point out that the Tariff Policy is not an individual provision formulated for the first time in the Electricity Act, 2003. The erstwhile Electricity Regulatory Commissions Act, 1998 contained similar provision under Section 13 (e), which mandated that the Central Electricity Regulatory Commission shall “aid and advise the Central Government in the formulation of Tariff Policy”. Based on this provision, Ministry of Power had circulated in June 2002, an earlier draft of the Tariff Policy which was prepared after intensive discussion with Central Utilities, States and the CEA. The Commission would advise that this draft may be used as the base document since it is much more concise and sets out the Policy issues without intruding in the jurisdiction of the State Governments and the regulatory mechanism.

8. Conclusion

- 8.1 The observations of the foregoing paragraphs would make it clear that the Tariff Policy goes far beyond the mandate of Section 3 of the Act. The Central Commission would advise the central Government would prepare the Tariff Policy within the scope and ambit of the Act and after following the prescribed consultation procedure. We have indicated the broad contours of the Tariff Policy at Para 3 of this document.
- 8.2 This advise under Section 79 (2) of the Act is being tendered on the basis of the Tariff Policy document of the Task Force page 270-306 of the Report of the Task Force, Volume I) referred to the Commission by Ministry of Power. Ministry of Power may please forward to us the draft Tariff Policy, for statutory advice of the Central Commission before it is finalised for statutory advice of the Central Commission.
- 8.3 The Commission would expect the Central Government to accept the statutory advice given in this document.

**THIS SHOULD BE READ IN CONJUNCTION WITH CERC'S STATUTORY ADVICE
ON TARIFF POLICY AS FORMULATED BY THE TASK FORCE**

Paragraph in Tariff Policy document	CERC's Advice	Action
1.3 & 1.4	The rationale for having a 37 page Tariff Policy covering micro aspects of tariff setting, appears to be the need to have consistency in approach among the States and the Regulators. This is a rather tenuous argument, since there are enough provisions in the Act to ensure this. Section 61 of the Act stipulates that the State Commissions shall be guided by the principles and methodologies specified by the Central Commission. Also, Section 166 (2) institutionalizes the Forum of Regulators consisting of Chairman, CERC and Chairmen of other ERCs for requisite harmonization of regulatory action. Given the diversity in economic development, power sector reforms as well as technology, vintage, fuel, size, etc., it is neither desirable nor practicable to enforce absolute uniformity through one Centralized document.	At the end of para 1.3, add: "To this end, Section 61 of the Act, inter-alia, stipulates that the State Commissions shall be guided by the principles and the methodologies specified by the Central Commission while determining the terms and conditions of tariff. Section 166(2) stipulates the Forum of Regulators as a statutory body consisting of Chairpersons of all Regulatory Commissions. These would enable the Commissions to achieve the required level of harmony and consistency." Para 1.4 may be deleted.
2.3	Section 61 (a) to 61 (i) of the Act lays down 9 principles by which the appropriate Commissions shall be guided. The formulation at para 2.3 cites only the Tariff Policy, to the exclusion of others, which is not the intention of law. The correct position has to be indicated.	Replace "inter alia, by the Tariff Policy" by "by 9 principles one of which is the Tariff Policy".
4.0 (e)	Same advice as in the case of para 1.3 and 1.4 above	May be deleted.
4.0	Section 79 (2) of the Act stipulates that the Central Commission shall advise the Central Government on many of the "Overall Objectives", which have been cited at paragraph 4.0. This position is to be clarified	Add the following paragraph 4.1: - "4.1 Section 79(2) of the Act stipulates that the Central Commission shall advise the Central Government on all or any of the following matters: (i) Formulation of National Electricity Policy and

Paragraph in Tariff Policy document	CERC's Advice	Action
		Tariff Policy; (ii) Promotion of competition, efficiency and economy in activities of the electricity industry; (iii) Promotion of investment in electricity industry; and (iv) Any other matter referred to the Central Commission by that Government. The Central Government will abide by these provisions of law".
5.1.4 & 5.1.5	A project which is assigned to an identified developer either in the public sector or the private sector cannot be said to be a competitively bid project. Such projects can come only through the MOU route, which the extant policy of Government of India does not encourage. Hence such projects cannot be included in the guidelines proposed to be developed under Section 63 of the Act.	May be deleted.
5.1.6	Please see our advice against paragraph 5.3	May be deleted
5.3	It is the unambiguous settled legal position that the sole authority for determination of financial as well as technical terms, conditions and norms of Tariff is the Regulator, and not the Government. Various legal pronouncements have upheld this position. Inclusion of financial norms/numbers in the Tariff Policy is an attempt to restore to the Central Government the authority given under Section 43 A(2) and Schedule VI of the erstwhile Electricity supply Act, 1948 although the position in law is exactly the opposite. In this connection, the detailed factual analysis as indicated at para 4 of our statutory advice, at pages 5-7 preceding, may be referred to.	Paragraph 5.3.1, 5.3.2 and 5.3.4 may be deleted. However, in case the Tariff Policy wishes to mention about debt equity ratio, return on equity, and depreciation, the following formulation is advised: "Section 61 of the Act stipulates that it is the responsibility of the appropriate Commission to specify the terms and conditions of tariff, while Section 62 lays down that the appropriate Commission shall determine the tariff. Judicial pronouncements have upheld that the appropriate Commission is the sole authority for these purposes. While discharging these obligations, the appropriate Commission may give due consideration to the following:

Paragraph in Tariff Policy document	CERC's Advice	Action
	<p>There is no rationale for aligning depreciation to the Companies Act. Depreciation under the Companies Act is for accounting purposes, while depreciation as determined by the Regulator is for tariff purposes and is a passthrough in tariff. NTPC had earlier sought legal advice of Additional Solicitor General of India in the matter. The opinion of Additional solicitor General dated 1st July 2002 makes it clear that the Central Commission is empowered to frame regulations to determine terms and conditions of tariff, including depreciation, and further that the regulation framed by the Central Commission will prevail over any other provision in any other law for that purpose, including the Companies Act. Apart from this clear position of law, alignment of depreciation for tariff purposes with the Companies Act will immediately lead to front loading of tariff. Moreover, the provision for advance against depreciation is a special dispensation allowed by CERC; there is no provision for advance against depreciation in the Companies Act.</p> <p>In its regulation on terms and conditions of tariff applicable for the period from 1.4.2004 to 31.3.2009, CERC has already announced debt equity ratio of 70:30, return on equity for generation and transmission at 14% post tax, and depreciation over the useful life of the asset with a provision for advance against depreciation for 10 years.</p>	<p>As already decided by the Commission, a two part tariff structure should be adopted for all long term contracts to facilitate Merit Order dispatch. The Availability Based Tariffs (ABT) framework needs be extended to the State Generators, subject to minimum threshold on size and stipulations on technology used.</p> <p>For capital cost based projects, the capital structure will have to be divided between debt and equity in an appropriate manner. In doing so, the appropriate Commission may keep in view, the requirement for investment and capacity addition in the electricity sector, as well as the consumer interest. In case of capital cost based projects, it is necessary for the appropriate Commissions to prescribe adequate return on equity. While doing so, the appropriate Commission may take into action the risks involved in the sector, alternate investment opportunities in other sectors, the need to attract private investment both foreign and domestic, the availability of foreign and Indian equity, availability of funds in the capital market and debt market etc. Depreciation is a provision in the books of accounts to reflect the wear and tear of the equipment over a period of time. This is also considered as an element of cost in the tariff. While prescribing the depreciation rates for tariff purposes, the appropriate Commission should be guided by the twin objectives of promotion of investment and protection of consumer interest. The Central Commission has already provided advance against depreciation for the purpose of meeting debt service obligations, which needs to be continued.</p>
5.3.5, 5.3.7,	These are areas of micro management. There are clear	May be deleted.

Paragraph in Tariff Policy document	CERC's Advice	Action
5.3.8 and 5.3.9	orders of the Central Commission on all these issues, and there are no disputes on these orders. The Commission has (I) ordered that savings on account of debt restructuring should be passed on for the consumer, (ii) prescribed "Normative Parameters" for operating norm instead of lower of the two, (iii) decided that IDC savings should be shared between generator and consumer for hydro projects since there is no TEC for other projects, and (iv) treated FERV as pass-through in tariff	
5.4	Section 61 of the Act empowers the appropriate Commission to specify terms and conditions of tariff including operating norms. Under section 73 (n) of the Act, the CEA has been entrusted with the responsibility of advising the appropriate Commission on technical matters. In view of this clear stated position of law, it is the responsibility of the CEA to advise the appropriate Commission and for the Commission to take appropriate decision in the matter in conjugation with the transparent process of public hearing. The periodicity of obtaining such advice and the technical matters on which such advice should be obtained are entirely left to the Commission, and is not for Government to prescribe. The Act does not empower the CEA to "publish" or "notify" such norms, since it is the duty of the regulator to do so after considering all arguments.	The existing paragraph should be deleted, and this position of law may be stated as follows: "Under Section 61 of the Act, 2003 the Appropriate Commission has been empowered to specify terms and conditions of tariff, including operational norms. Under Section 73 (n) of the Electricity Act, 2003, the CEA has been entrusted with the responsibility of advising the Appropriate Commission on all technical matters relating to generation, transmission and distribution of electricity. While specifying the operating norms, the appropriate Commission may give due consideration to inputs from the CEA in conjugation with the transparent process of public hearing."
5.7.1	In The Terms and Conditions of tariff for the period 2001-2004, CERC had included Development Surcharge as an item to be a passthrough in tariff, to incentivise generation and transmission utilities in their efforts for capacity	May be deleted. There is no cause of action at present, since CERC has dispensed with Development Surcharge for the new tariff period 2004-2009.

Paragraph in Tariff Policy document	CERC's Advice	Action
	<p>addition. Some SEBs have preferred appeals against CERC's order and the matter is subjudice. On the basis of public hearings and arguments preferred by both sides on this issue, CERC in the process of announcing the Terms and Conditions for the period 2004-2009 has dispensed with the provision of development surcharge, for reasons documented in CERC's order dated 29.3.2004. Under these circumstances, the omnibus mandate of paragraph 5.7.1 is not required.</p>	
6.1	<p>The bifurcation of transmission system rights into access rights and usage rights and the methodology suggested for its implementation is very complicated, sometimes contradictory and even unworkable. Such issues are best left to the CERC to decide through a transparent procedure of consultation with all stakeholders, instead of having a straight jacket formulation in the Tariff Policy. Detailed consultation with the States, CTU, RLDC and other stakeholders are necessary.</p>	<p>The entire chapter entitled "Definition of Access and Usage rights" may be deleted.</p>
6.2	<p>The chapter contains several contradictions. 6.2.2 talks of a National Tariff Framework, while 6.2.3 says that tariff should be sensitive to distance. As per 6.1.6, Network Charges are to be computed "ex post facto", whereas elsewhere it is stipulated that postage stamp rates are to be computed "ex ante".</p> <p>The zonal postage stamp method developed by CEA has been suggested for implementation to avoid "pan caking". However, CEA's method appears to be extremely complicated and would continue to lead to "pancaking".</p>	<p>The chapter should be suitably modified. Regarding Zonal postage stamp, it should be clearly stated that CERC may consider the feasibility of the proposed method and other alternatives, in consultation with all stakeholders, and issue appropriate orders.</p>

Paragraph in Tariff Policy document	CERC's Advice	Action
	CERC endorses the stipulation of the Tariff Policy that “the tariff mechanism implemented should be sensitive to distance, direction and quantum of power flow”, as a philosophy. Detailing of this philosophy should be left to the regulatory mechanism, instead of specifying that it has to be only through the prescribed Zonal Postage Stamp Framework. Detailed consultation with the States, CTU, RLDC and other stakeholders are required.	
6.3	<p>This chapter also contains contradictions. At 6.3.1, it has been stated that transmission losses should be related to the “incremental burden”, whereas 6.3.3 talks of “average losses”.</p> <p>At 6.3.4 it has been stipulated that system losses may be included as Key Performance Indicator (KPI). In Indian conditions, system losses depend on several criteria like Advance System Planning, Development of Generation and Load vis-à-vis Transmission Augmentation, Load Flow Profiles, Reactive Power Charges, Voltages and generation/transmission outages, etc. Transmission losses therefore cannot be a KPI for a transmission utility.</p>	May be suitably modified.
6.3.5	The authority of the regulator to determine operational and technical norms and that of the CEA to advise the regulator on these issues have been dealt with in our comments on para 5.4. It is not the responsibility of the CEA to “publish” such technical data.	The sentence “The benchmarks to be applied..... Appropriate Commission” may be deleted, and replaced by “The Appropriate Commission may consider the advice of the CEA regarding such benchmarks”.
6.4.1	Section 61 of the Act states that the appropriate Commission shall be guided by multi year tariff principles	Add the following at the end of para 6.4.1:

Paragraph in Tariff Policy document	CERC's Advice	Action
	along with other guiding principles. The appropriate Commission has the jurisdiction to consider various alternatives before having a decision. This may be clearly stated.	“Following principles are recommended for consideration of Appropriate Commission for implementation of MYT framework. Appropriate Commission may take a decision after discussing the scheme with all concerned.”
6.5.1, 6.5.3 and 6.5.4	Please refer to our advice on Para 5.3 (p 14).	Please refer to our advice regarding 5.3 (P 14). Same action
6.5.5, 6.5.6, 6.5.7 & 6.5.8	These are micro management issues, which are clearly in the realm of the regulator. CERC has issued necessary orders on all these items, and there is no dispute. CERC is regulating tariff on “normative parameters”, hence profit/loss is not an issue in tariff-setting. CERC has ordered that benefits on account of debt restructuring should be passed on to the consumer. Savings in IDC have been allowed to be shared between generator and consumer in case of hydro projects since there is no TEC for other projects. FERV has been allowed as pass through in tariff.	May be deleted.
7.2.1	The authority to decide the framework for revenue allowance and costs is vested in the appropriate Commission. This needs to be emphasized.	Delete “the following aspects would need to be considered in approving tariffs” and replace by “the Appropriate Commission may consider the following while deciding the framework for revenue allowance and costs”.
7.2.1(b), 7.3 (1) to 7.3 (4)	It is the unambiguous settled legal position that the sole authority for determination of financial as well as technical terms, conditions and norms of Tariff is the Regulator, and not the Government. Various legal pronouncements have upheld this position. Inclusion of financial norms/numbers in the Tariff Policy is an attempt to restore to the Central Government the authority given under Section 43 A(2) and Schedule VI of the erstwhile Electricity supply Act, 1948	These paragraphs may be deleted. However, in case the Tariff Policy wishes to mention about debt equity ratio, return on equity, and depreciation, the following formulation is advised: “Section 61 of the Act stipulates that it is the responsibility of the appropriate Commission to specify the terms and conditions of tariff, while Section 62 lays down that the appropriate Commission shall determine the tariff. Judicial pronouncements

Paragraph in Tariff Policy document	CERC's Advice	Action
	<p>although the position in law is exactly the opposite. In this connection, the detailed factual analysis as indicated at para 4 of our statutory advice, at pages 5-7 preceding, may be referred to.</p> <p>There is no rationale for aligning depreciation to the Companies Act. Depreciation under the Companies Act is for accounting purposes, while depreciation as determined by the Regulator is for tariff purposes and is a passthrough in tariff. NTPC had earlier sought legal advice of Additional Solicitor General of India in the matter. The opinion of Additional solicitor General dated 1st July 2002, makes it clear that the Central Commission is empowered to frame regulations to determine terms and conditions of tariff, including depreciation, and further that the regulation framed by the Central Commission will prevail over any other provision in any other law for that purpose, including the Companies Act. Apart from this clear position of law, alignment of depreciation for tariff purposes with the Companies Act will immediately lead to increase in consumer tariff. For distribution companies, the State Commissions have the power to prescribe the depreciation rates. Moreover, the provision for advance against depreciation is a special dispensation allowed by CERC and adopted by the state ERCs; there is no provision for advance against depreciation in the Companies Act.</p> <p>In its regulation on terms and conditions of tariff applicable</p>	<p>have upheld that the appropriate Commission is the sole authority for these purposes. While discharging these obligations, the appropriate Commission may give due consideration to the following:</p> <p>Incidental investments will have to be divided between debt and equity in an appropriate manner. In doing so, the appropriate Commission may keep in view, the requirement for investment and capacity addition in the electricity sector, as well as the consumer interest. It is necessary for the appropriate Commissions to prescribe adequate return on equity. While doing so, the appropriate Commission may take into action the risks involved in the sector, alternate investment opportunities in other sectors, the need to attract private investment both foreign and domestic, the availability of foreign and domestic equity, availability of funds in the capital market and debt market etc. Considering that there is a higher element of risk in distribution as compared to generation and transmission, the Appropriate Commission may consider a higher rate of return for distribution. Depreciation is a provision in the books of accounts to reflect the wear and tear of the equipment over a period of time. This is also considered as an element of cost in the tariff. While prescribing the depreciation rates for tariff purposes, the appropriate Commission should be guided by the twin objectives of promotion of investment and protection of consumer interest. The Central Commission has already provided advance against depreciation for the purpose of meeting debt service obligations, which has been extended to, distribution companies by the state ERCs.</p>

Paragraph in Tariff Policy document	CERC's Advice	Action
	for the period from 1.4.2004 to 31.3.2009, CERC as already announced debt equity ratio of 70:30, return on equity for generation and transmission at 14% post tax, and depreciation over the useful life of the asset with a provision for advance against depreciation for 10 years.	
7.4.1.2	Section 61 of the Act stipulates that it is the duty of the Regulatory Commission to progressively reduce and eliminate cross subsidies. Given the diversity in economic development, power sector reforms as well as of technology, vintage, fuel, size etc., it would be neither desirable nor practicable to lay down that cross subsidies may be pegged at 50% of the average cost of service. Clearly, this would vary from State to State, and the concerned Regulator has to decide the issue after considering the views of all stakeholders including the State Government.	The sentence “while progressively reducing 50% of the average cost of service” may be deleted.
7.4.2	At para 7.4.1, three alternative methods for computing cost of service have been discussed namely, (i) Average costs; (ii) Embedded cost of service for customer category; and (iii) Long run incremental costs. It has been recognized that each of these methods has its merits and shortcomings. Therefore, it is not understood on what basis the Tariff Policy states that LRIC should be the only method for computing cross subsidy surcharge. In fact the Forum of Indian Regulators has discussed this issue at length and have favored “average cost method” for such computation.	Para 7.4.2.1 may be deleted. The following formulation is advised: “When the open access is allowed, the Appropriate Commissions are empowered to fix surcharge under Section 38, 39, 40 and 42 of the Act. The Appropriate Commission should consider any of the three methods mentioned in para 7.1.4 for computing cross-subsidy surcharge provided by the subsidizing categories”.

Paragraph in Tariff Policy document	CERC's Advice	Action
	This issue should be left to the Forum of Indian Regulators to decide after deliberating on the pros and cons of each method, so that harmonization across the States may be achieved.	
7.0 to 7.5 Distribution	The issue of evolving a consensual approach towards regulatory matters has been discussed several times in FOIR. On the basis of these discussions, FOIR has prepared the Guidelines for Terms and Conditions of Distribution Tariff, which are being adopted by the State ERCs to harmonize regulatory action. A copy of the Guidelines has been forwarded by FOIR to Secretary, Ministry of Power vide Memo No. 15 th GM Mtg/FOIR/2004 dated 7 th April 2004.	Paragraphs 7.0 to 7.5 may be aligned to these Guidelines, since the Guidelines represent the consensus among all SERCs in the matter of distribution tariff.
Tariff Policy, Page 270 - 306 of the Report of the Task Force (Vol. I)	<p>On the basis of the foregoing, CERC would like to observe as follows:</p> <ol style="list-style-type: none"> (1) Section 3 of the Act requires the Central Government to prepare the Tariff Policy in consultation with the State Governments and the CEA. While Chairman, CEA was a Member of the Task Force, there was no representative of the State Governments. Hence, inputs from the State Governments are missing in the document, which is not the intention of the Act. (2) The Policy has not been prepared within the parameters set out in Section 3.1 of the Act namely, “for development of the power system based on optimal utilisation of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy”. Instead of being a 	<p>CERC would advise that the Tariff Policy may be framed within the scope and ambit of Section 3 of the Act. This should be done in consultation with the State Governments and the authority, and with the statutory advice of the Central Commission. The Act does not mandate any other consultation/advice, and any such other consultations are extraneous.</p> <p>The Electricity Act, 2003, does not prescribe any time frame for preparation of Tariff Policy. Section 3 lays down that the Central Government shall prepare the Policy “from time to time” [Section 3(1)], and not necessarily within one year of the Act. Hence, there is no need to rush through with the present document.</p> <p>The earlier draft Tariff Policy which was circulated by Ministry</p>

Paragraph in Tariff Policy document	CERC's Advice	Action
	<p>vision paper addressing macro issues, the document appears to be unduly pre-occupied with eliminating all discretion of State Governments and the regulatory mechanism.</p> <p>(3) The justification for a Centralised document seems to be based on the premise that there is need for consistency and uniformity in regulatory approach across the country. However, the Act clearly provides for such harmonisation by providing that the ERCs shall be guided by the principles and methodologies specified by the Central Commission (Section 61 A) and also through the institutional mechanism of the Forum of Regulators [Section 166 (2)]. In view of this, there is no need for micro management through a centralised document.</p> <p>(4) The effect of the proposed Tariff Policy is to restore to the Central Government the powers under Section 43 A(2) and Schedule VI of the erstwhile Electricity Supply Act, 1948, although the intention of law is exactly the opposite.</p>	<p>of Power in June, 2002 to all stakeholders, should be used as the basic document, since it is more concise and sets out Policy issues without intruding on the jurisdiction of the State Governments and the Regulatory mechanism.</p>

(Vol. 1, February 2004)

Transmission Charges

The principles proposed for the transmission charges for the inter-State under the zonal postage stamp matrix framework are as follows:

Explanation:

The following principles are recommended for computation of the zonal stamps for transmission charges:

- The entire inter-State network of the CTU, inter-State Transmission licensees and intervening State networks would be divided ex-ante into transmission zones. The charges would be related to the number of zones crossed on account of a transaction. The number of zone stamps accrued would be related to the distance and direction of flows;
- Total charges for the year payable to CTU and inter-State transmission licensees on all India basis including charges for STU networks used in conjunction to the CTU network for inter-state transmission are to be added. The value of each stamp would be determined by dividing the revenue allowance for the year by the total number of stamps estimated for the ensuing year, including the stamps on account of short-term transactions anticipated during the year. This would be computed on ex-ante basis;
- Transmission stamp price for short-term transactions and scheduled opportunity trading transactions are to be same as the stamp price for long-term transactions; and
- The difference between the revenue collected during the year based on the zone stamps and the revenue allowance permitted at the beginning of the year would be adjusted in future revenue allowance computations.

The Task Force has reviewed the zonal stamp approach and is of the opinion that the proposed methodology should be implemented after necessary fine-tuning in consultation with stakeholders.

Recommendations:

- (i) In the past the pricing principles applied to the transmission systems have differentiated between the inter-regional, regional and state level flows (including intervening transmission networks), with separate tariffs applied for each component of network used. This has led to "pancaking" of the networks. This may need to be avoided to facilitate optimum network use and promote power trading.
- (ii) As has been mentioned, substantial inter-regional flows are already taking place. Further, with the augmentation of interconnections between regions the regional networks are

likely to be subsumed into a single national grid in the foreseeable future. Hence a national tariff framework for all inter-state transmission, including transmission of electricity across the territory of an intervening state that is incidental to such inter-state transmission of electricity, may be implemented. This is likely to address the issue of pancaking of networks and promote effective utilization of all assets across the country.

- (iii) The tariff mechanism implemented may be distance and direction sensitive and may be related to the actual burden, which the transactions cause on the network. The zonal postage stamp framework capturing these parameters may be implemented for inter-state flows. The stamps to be applied for each zone may need to be altered from time to time. However, for ease of implementation and certainty on tariffs it is advisable that the stamp values may not ordinarily be changed more than once a year.
- (iv) As far as possible consistency may be maintained in transmission pricing framework in inter-state and intra-state systems. Accordingly, after the implementation of the zonal postage stamp framework for the national transmission system, a similar approach may be developed and implemented for the state transmission system, duly considering factors like voltage, distance and direction of flow.
- (v) The CERC and the SERCs may progressively evolve a common framework whereby the loop flows across all assets in the interconnected grid, including the state networks may be priced as per a common transmission tariff. Further, metering may be established on priority basis
- (vi) Metering compatibility with the requirements of the proposed national transmission tariffs and with ABT requirements may be undertaken on priority basis. This would also facilitate implementation of Time of Day (ToD) tariffs.

How should transmission and wheeling charges be distinguished?

The Task Force has been presented with the issue on the distinction between the charges for transmission and wheeling and the implications of the same. Section 62 of the Electricity Act, 2003 distinguishes between transmission of electricity and wheeling of electricity. The definition of transmission lines and wheeling provided in section 2 of the Electricity Act, 2003 reads as follows:

"transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a sub-station, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works.

"wheeling" means the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under section 62.

From the reading of the above provisions, it appears that the charge for wheeling of electricity shall be applicable when Open Access is provided to the distribution network. As it is to be noted, there is no voltage definition that separates transmission and distribution as per the Electricity Act, 2003. Hence, it appears to be the intent of the Electricity Act, 2003 that all lines

(and associated facilities) that emerge from sub-stations and are essentially intended to be a part of the distribution system for serving consumers shall be a part of the distribution system and use of such systems by persons other than a distribution Licensee shall attract wheeling charges and not transmission charges. The Task Force finds it important to clarify this point since a common perception that appears to prevail is that transmission charges apply for inter-state networks while wheeling charges apply for intra-state networks. This is not in conformance with the interpretation of the Task Force based on the definition of transmission and wheeling in the Electricity Act, 2003.

In terms of pricing of the services the distinction is of little consequence since the overall principles outlined for network access and transmission use of system shall equally apply for wheeling of electricity. However, the wheeling of electricity could attract surcharges as defined in the Electricity Act, 2003. Terms and conditions for wheeling of energy may be applicable for use of the distribution system and associated transmission facilities for open access by non-licensees. As such this would not have any impact on network tariff computation.

The Task Force is of the opinion that the definition of transmission may need to be clarified to the extent highlighted below:

“transmission lines” means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a sub-station or a sub-station to a sub-station together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works.

Recommendations:

- (i) Charges for wheeling may be applied only for cases where the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under section 62 of the Electricity Act, 2003. Unless the distribution system is involved the charges may be covered under the definition of transmission charges.
- (ii) In terms of pricing principles no distinction may be made between wheeling and transmission.
- (iii) The definition of transmission may be clarified to include the conveyance of electricity from sub-station to sub-station. The power to remove difficulties under section 183 of the Electricity Act, 2003 may be utilized.

Market Development

1. Any deregulation scheme must be carefully structured to conform to the basic technological and economic conditions that characterize the supply and demand for electricity.

- *Joskow and Schmalensee (1983)*
2. Real-time balancing markets are essential for development of competitive power markets. Therefore, although we will give RTOs considerable discretion in how they operate real-

time balancing markets, we will not allow implementation of such markets to be discretionary.

- *FERC Order (2000)*

3. Electricity restructuring ... is likely to involve both costs and benefits. If the restructuring is done right... the benefits... can significantly outweigh the costs. But the jury is still out on whether policymakers have the will to implement the necessary reforms effectively.

- *Joskow (1997)*

Development of competitive power markets is essential to ensure that the benefits of open access and competition are truly realized. Consequent to the sector reforms in India for over a decade and culminating with the Electricity Act, 2003 being in place the power sector has witnessed significant transformation in its structure and operations. The benefits of a centrally planned and operated system are sought to be now obtained (and exceeded) through competitive mechanisms featuring multiple buyers and sellers. Structured development of power markets, including progressive extension of open access, trading mechanism and power exchanges are necessary to ensure that the benefits of the centralized operations can now be obtained through the market mechanisms. It can easily be demonstrated theoretically - and this has also been the experience of several jurisdictions - that unless the markets evolve rapidly and gain depth and liquidity, the costs of the changes could easily outweigh the benefits.

At the outset, the Task Force has articulated its high level views on how the markets could evolve. This was necessary to set out the context for the various sectoral recommendations. However, it may not be adequate to merely set the context and the Task Force finds it necessary to provide guidance on the development of the markets and its views on certain issues that would be encountered. The views and recommendations of the Task Force on key issues are set out below. Some of the issues have been dealt in part in the recommendations on the various segments of power sector, but are included here to comprehensively cover the issues relating to market design.

A. Should a common power market design be adopted?

Section 66 of the Electricity Act, 2003 mandates the Appropriate Commission to promote market development:

"The Appropriate Commission shall endeavor to promote the development of a market (including trading) in power in such manner as may be specified and shall be guided by the National Electricity Policy referred to in section 3 in this regard. "

Section 3 of the Electricity Act, 2003 mandates the central government to develop the National Electricity Policy and tariff policy in consultation with the state governments and the Authority. Under section 73 (a), 79 (2), CERC and Authority are required to advise GoI in formulation of National Electricity Policy: Section 79(4) and 86 (4) require the Appropriate Commissions to be guided by National Electricity Policy wherever applicable in discharge of its functions.

The National Electricity Policy and tariff policy would inevitably have a significant role in coordinated development of electricity markets. The prospect of balkanized markets is a risk in most restructuring initiatives and the Task Force is convinced that this has to be avoided at all costs. To usher harmonious operation of power markets, it is essential to develop a common power market design that would be adopted across the country. However, matters relating to market design and development of the market are extremely complex and hence the

recommendations of the Task Force have to be detailed out in the form of an implementable market design. This would require further consultation to be conducted before concrete measures can be initiated on these matters.

The definition of a common power market design (CMD) is also essential to ensure that the actions of the CERC and the SERCs on market development consequent to section 66 are harmonized as per an accepted blueprint. The Task Force recommends that the following definition of common power market design may be adopted:

“A common power market design comprises a core and common set of philosophies translated to standard rules, procedures and products designed to create a seamless transmission system across multiple wholesale and retail markets and different regulatory jurisdictions across the states. This design must facilitate implementation and must promote reliability, enhance efficiency and offer non-discriminatory access, whilst making access more transparent by offering common standards and validation.”

CMD in its broadest sense comprises common set of rules and procedures for governing wholesale energy markets that facilitates implementation in multiple markets across different states, ultimately leading to seamless wholesale power markets across the country. Not only would CMD help to remove these seams but it would also provide many other potential benefits.

The Task Force recommends that GoI, in consultation with the CERC/SERC, the Authority and the states, should conceive the overall power market design and its development over time considering all relevant principles and issues, including those set out in this report. This would provide the overall policy context in which the Appropriate Commission under section 66 would frame the necessary measures and regulations. This should commence within one year, as and when sufficient clarity emerges on the changes necessary and should become the basis for further detailing and formulation of appropriate regulations by the Appropriate Commission.

The Task Force has reviewed the possibility of conflict between the power market design that may emerge and the recommendations contained in this report. The Task Force is of the view that the measures recommended for development of the various segments of the electricity industry should not be held in abeyance and should proceed simultaneously as per the process and timelines laid out in the recommendations. The Task Force believes that the measures proposed are unlikely to be inconsistent with the common power market design that may be implemented after the necessary studies. On the other hand the power market design proposed would typically subsume the various sectoral objectives and policies that have been outlined by the Task Force. However, if necessary, the policy framework and the governing regulations can be appended once the overall market design is finalized.

Recommendations:

- (i) An overall power market design should be commenced by GoI in consultation with the CERC/SERC, CEA and the States Government within one year;
- (ii) All other policy measures should be implemented, as appropriate, simultaneously with the development of the common power market design and the common power market design will consider these policy objectives;

- (iii) The policies and applicable rules and regulations will be appended and/or refined, as the case may be, by the Appropriate Government and the Appropriate Commission once the common market design is finalised and notified.

B. What should be the definition of market?

It has been brought to the notice of the Task Force that while market development and promotion of competition is required under several provisions of the Electricity Act, 2003, there is no legislative definition of "market" defined in the Electricity Act, 2003. Determination of appropriate 'market' is an important step if abuse of dominant position is to be verified under section 60. With the new law, electricity industry in India can be expected to witness considerable increase in trading, private participation and investments in all segments of the industry. It is also envisaged that five regional grids would become more integrated and inter-regional trading volumes would grow once regional transmission constraints are overcome. It is pertinent to note that integrated transmission and coordination of network facilities across regions and states is implicit in the Electricity Act, 2003 in section 25 and 26 which envisages the creation of national load dispatch centre (NLDC):

"25. For the purposes of this Part, the central government may, make region-wise demarcation of the country and from time to time, make such modifications therein as it may consider necessary for the efficient, economical and integrated transmission and supply of electricity and in particular to facilitate voluntary interconnections and co-ordination of facilities for the inter-state, regional and interregional generation and transmission of electricity.

"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."

Clearly, the Electricity Act, 2003 envisages the progressive integration of regional markets into a national market of electricity.

The issue of determining "market" as per some defined criteria is further important as the need to prevent market concentration in generation has been brought to the notice of Task Force. In this context, PTC has suggested that new power plants of the central sector could be sold to attract investments and increase depth of generation market. Further, some states are yet to undergo restructuring and are facing a decision on whether to horizontally split generation. The Task Force believes that for most central generating stations and state generating stations, the relevant market is not the state market but the regional or the national market where sizeable trading potential lies.

In view of the above, the Task Force has considered two options:

Option 1: Adopt the definition of market from existing competition law.

The existing definition as per the Competition Act defines markets as per the product and geographical characteristics:

"(q) "relevant market" means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets; (r) "relevant geographic market" means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of

goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighboring areas; (s) “relevant product market” means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services/ their prices and intended use”.

The drawback with this definition is that it is amenable to commodities. Electricity is yet to be commoditised in a major way in India. While internationally, electricity trading is facilitated through organized Exchanges (akin to commodity exchanges) with 20-40 products (products here are both physical as well as financial. Electricity in different time periods within a day is considered to be different product because of its different cost and tariff characteristics), electricity tariffs in India, at present, are not significantly time-differentiated at the wholesale or retail level.

Option 2: Define the market as the regional market in which the state is located.

The Task Force has felt the need to adopt simple definition for the transition period till such time the market matures. In view of five regional grids (with same frequency), market can be defined, in a geographical sense, as the regional market. As noted in the section on transmission, the emphasis of the transmission system development is on evolution of an integrated national transmission network and national transmission prices. However, national transmission pricing is not the sole criteria for market definition. The national transmission network is still under evolution and even if frequency integration of the various regions is achieved, unless the power flows are adequately large, it would not be feasible to evolve national power markets in the true sense. Hence, from the perspective of evolving power markets that have adequate depth in terms of sufficiency of market participants, it would be appropriate for the present to adopt a region as a market. It needs to be noted that the frequency integration of the whole country is still some years away. The National Load Despatch Centre (NLDC) envisaged in section 26 of the Electricity Act, 2003 is yet to be set up. The ABT framework has been implemented at the regional level and this represents the imbalance settlement arrangements that necessarily need to be a feature of the power trading markets. Thus it is logical, that till the inter-regional electricity flows are of higher magnitude, the NLDC is established and imbalance settlement mechanisms are implemented on a nation-wise basis; a region should be treated as a power market.

Having considered the region as a market for the present, the Task Force is of the view that the GoI should actively pursue the augmentation of the transmission systems and promote enhanced power flows and exchanges between regions and also the establishment of the NLDC. At that time, structured national power markets should be evolved and should either operate in conjunction with regional markets, or the regional markets can be subsumed in the national markets. The Task Force recommends that GoI should review the matter as a part of evaluation of CMD in consultation with the CEA, the CTU and the CERC and take steps as necessary.

Recommendations:

- (i) In view of the prevailing structures and the trading arrangements, the Task Force is of the opinion that the areas (or facilities) that form a part of any regional grid should be considered as a single product market for the present;
- (ii) Regulatory review and action on market concentration and dominance should consider the regional market as a unit of evaluation for the present;

- (iii) GoI should evaluate various aspects related to evolution of national markets, including the establishment of the NLDC and the systems and processes that need to be put in place for national power markets. A comprehensive review should be undertaken by the GoI in consultation with the CEA, the CERC and the CTU on the matter as a part of the exercise of evolving the common power market design.

Providing for consumer choice: Implementation of open access

Open access to distribution networks is mandatory requirement under the Electricity Act, 2003 though flexibility has been provided to the SERC in implementing it in phases as per section 42.

"42(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 charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies and other operational constraints."

The Task Force recognizes that there are several financial, operational, commercial and regulatory issues in addition to infrastructure constraints that need to be addressed before choice can be contemplated for retail consumers. Open access to transmission networks at the state level has to precede access to distribution network. A comprehensive and common regulatory framework across states needs to be formulated for determining the structure and level for network charges. New balancing and settlement arrangements also need to be formulated and implemented at the state level. Several states are yet to undertake unbundling/restructuring to comply with the Electricity Act, 2003, segregate transmission function from the trading function and create regulatory commissions. Requisite metering and communication arrangements also need to be undertaken. Technical codes for interconnection and grid codes for scheduling and dispatch also need to be revised / updated.

The Task Force recognizes that the costs of providing choice to all consumers may become very high (this is because of increased metering requirements, system tracking requirements and additional costs due to increase in load registration, monitoring and market surveillance costs), so customers should be segmented by consumption or connected load or similar supply characteristics, with customer choice only extended to those customers or customer groups where it is supported by cost benefit analysis. The Task Force has noted that in almost all Latin American countries such as Argentina, Chile, Peru, Panama and Brazil where open access to transmission access was introduced 3-5 years ago, retail choice is still limited to large consumers only.

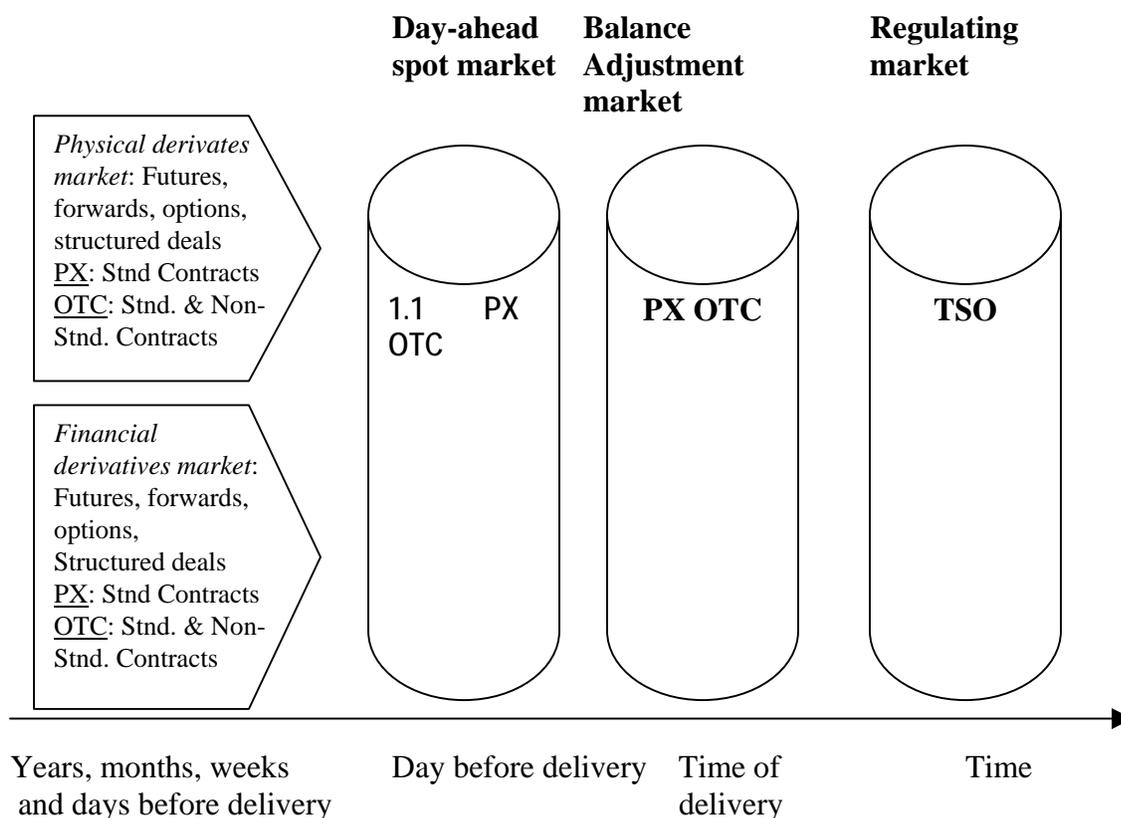
Consequent to the recent amendment to the Electricity Act, 2003, it is now necessary for states to introduce open access in phases within 5 years for all users with capacity of 1 MW or higher. The Task Force is of the opinion that this is the outer limit and should be expedited to the extent possible. To start with, open access could typically be provided to consumers with load of 5 MW and above, till the threshold of 1 MW is reached in five years. This will allow the utilities to phase out the implementation of open access and address implementation issues. The SERCs are also advised to conduct appropriate diagnostic studies, in consultation with CEA and other agencies, as necessary, to ascertain the costs and benefits of extending open access and choice to consumers. In addition, such studies should identify the operational, commercial and financial impacts on the incumbent licensees. Such studies should be released for public consultation. Based on such studies, the State Commission should decide on the threshold and phasing as necessary.

Recommendations:

- (i) While the stipulation of the Electricity Act, 2003 is to introduce open access for all consumers with load of 1 MW or above within five years, it is preferable that the implementation of open access is started earlier in a phased manner with a higher threshold earlier than the legal stipulation. This will facilitate the establishment of appropriate systems and processes for smaller number of consumers till open access is extended to all consumers with load of 1 MW and above. Appropriate Commissions should conduct diagnostic studies and cost-benefit studies to ascertain financial, commercial and operational impacts of extending open access to consumer groups;
- (ii) The State Commission should conduct appropriate regulations to expedite the implementation of open access. The regulations should clearly outline the approach proposed to be adopted by the Commission for computation of open access surcharges. Detailed recommendations in this regard have been made in the section of this report on distribution.

Should there be a Power Exchange?

Ensuring the size of the markets and sufficiency of players is a necessary but not sufficient condition to create efficient power trading market. The Task Force has reviewed several jurisdictions and is of the view that harnessing the efficiency of integrated operations is very critical for successful reforms in electricity markets. Electricity markets have to maintain the balance between centralized and decentralized market. If entire power was procured through bilateral contracts, cost structures for some licensee may get skewed. Due to the characteristics of electricity, which necessitates real time matching of demand and supply, pooling of power is critical for efficient operations. A bilateral market would be an unorganized market with tremendous business risks for market participants. With the single buyer model, no longer in legislative conformity with the Electricity Act, 2003, state level transmission licensee need to give up bulk procurement and supply function. Experiences in other countries show that efficiency of pooling and load aggregation can be provided by instituting energy exchanges, which create anonymity between traders or buyers and undertake risk management functions on behalf of market participants.



PX: power exchange

TSO: transmission system operator

OTC: over the counter

The Task Force believes that in due course of time, present institutional constraints notwithstanding, the sector needs to be transformed to allow for trading arrangements and energy exchanges to be established as required (a typical structure of which is provided in the exhibit above). Power Exchanges, as institutions, are able to pool risks and create liquidity (through physical and financial products), thereby limiting the adverse exposure to traders within reasonable limits. In addition, such institutions facilitate efficient clearing and settlements in cooperation with the system operator. The following table provides illustrations of operations of power exchanges internationally.

Power exchanges in Europe		Physical	Financial
Austria	Energy exchange Austria EXAA	Yes	
Finland, Denmark, Norway, Sweden	EI-Ex:Nord Pool	Yes	Yes
France	Powernext	Yes	
Germany	European energy exchange EEX	Yes	Yes
The Netherlands	Amsterdam Power exchange	Yes	
Italy	GME	Yes	
Poland	Gielda Energii	Yes	Yes
Slovenia	Borzen	Yes	
Spain	OMEL	Yes	

U.K.	UK power exchange	Yes	Yes
	Automated power exchange	Yes	Yes
	PowerEX	Yes	Yes
	International Petroleum exchange IPE	Yes	Yes

The Task Force is cognizant of the fact that contemplating the introduction of such an entity would require significant refinements in regulatory and commercial and operational arrangements and may require even legislative interventions. CERC in its order on trading regulations is said to be contemplating such an institutional arrangement. The Task Force recommends that GoI, in consultation with the CERC, explore the feasibility of power exchange at the regional level and prepare a detailed feasibility report as a part of the exercise to develop the power market design.

Recommendations:

- (i) The Task Force is of the opinion that power exchanges will facilitate the development of power markets. This should be reviewed as part of the development of power market design by the GoI and the CERC/SERC;
- (ii) Financial products will create desired liquidity for market participants. Both physical and financial products shall be evaluated for trading through such exchanges.

When should transmission and system operation functions be separated?

The Electricity Act, 2003 has provided for the unbundling requirements at two levels: regional and state. At the regional level, Regional Load Despatch Centres (RLDC) is to be established with the territorial jurisdiction as determined by the central government. At the state level, State Load Despatch Centres (SLDC) are to be established by the state government. Further, the RLDC and SLDC are to be government owned company or authority or corporation. During the transition period, the CTU and STUs have been entrusted the role of operating RLDC and SLDC respectively. However, no binding timeline has been defined in the Electricity Act, 2003 for separation of load despatch and transmission functions.

The unbundling of transmission and system operator is essentially required to address the possibility of the transmission utility exerting market power through the system operator. Common management of the two functions could potentially result in conflict of interest. However, even where such conflicts of interest were to arise, this may not necessarily warrant the separation of the two roles. Where non-discriminatory behaviour can be defined or codified and behaviour adequately monitored through regulation or by transparency of conduct and/or audit; discrimination can be policed or prohibited and non-discrimination enforced. On the other hand, there is high degree of interfacing between the system operations function and the transmission function for network planning and operations. At present, under the same organisation this co-ordination is achieved largely through informal processes. In the absence of well-defined co-ordination processes and their proper implementation, there could be severe bottlenecks in transmission planning, construction and operations.

The Task Force is of the opinion that while the option exists under the Electricity Act, 2003 for the Appropriate Government to organisationally separate the Transmission and System Operations functions, this can be deferred in the short-term. Even if this is to be done, it should

be preceded by codified procedures for exchanges between the entities. It is preferable that the power market design should emerge first before the separation of transmission and system operation is undertaken.

Recommendations:

- (i) Functional separation of system operations from the transmission function should be carried out as early as possible;
- (ii) Segregation of accounts and separation of basic business processes between the transmission and system operations should be carried out as early as possible. In effect the systems operations function should operate as a separate division within the transmission utility till these are organizationally separated;
- (iii) Organizational separation of transmission and system operation can be undertaken by the Appropriate Government after addressing the various issues involved. It is preferable that the common power market design should emerge first before the separation of transmission and system operation is undertaken. However, the separation should be preceded by the establishment of systems and processes for structured interaction between the independent system operator and the transmission company;
- (iv) Appropriate Government may review the matter within three years or earlier, if required, for establishment of common power markets.