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ELECTRICITY (AMENDMENT) BILL, 2022

SEPTEMBER EDITION

INSIDE

- Non-Discriminatory Open Access (Proposed amendment to Section) 14 & Section 42 of the Electricity Act, 2003)
- Management of existing Power Purchase Agreements (Proposed Section 60A to the Electricity Act, 2003)

And Many More....

INTRODUCTION

The Electricity Act, 2003 was enacted for introducing measures conducive to development of electricity industry, promoting competition therein, and promotion of efficient and environmentally benign policies.

Furthering the mandate of the Electricity Act, 2003, an amendment has been proposed in the Lok Sabha on August 8, 2022, by way of Electricity (Amendment) Bill, 2022 ("Amendment Bill"). The Amendment Bill seeks to introduce certain key changes in the Electricity Act, 2003 with an aim to increase competition in the electricity industry and strengthen the existing regulatory framework. The extent and scope of the proposed amendments are of wide amplitude and far-reaching impact.

KEY CHANGES

We herein below highlight some of the key changes proposed in the Amendment Bill:

Non-Discriminatory Open Access (Proposed amendment to Section) 14 & Section 42 of the Electricity Act, 2003)

Sections 14 and 42 of the Electricity Act, 2003 have been proposed to be amended to provide for non-discriminatory open access. The Bill permits multiple DISCOMS to operate in the same area of supply, and hence gives the consumer, choice to pick a DISCOM of its preference. This is made possible by

mandating the DISCOMS operating in a specific area, to provide non-discriminatory access to other DISCOMS to its transmission and distribution infrastructure. This is a welcome step in direction of energy equity.

Management of existing Power Purchase Agreements (Proposed Section 60A to the Electricity Act, 2003)

In view of the fact that the incumbent DISCOMS are mandated to share the their transmission and distribution infrastructure with other/ new DISCOMS, the Bill has provided that the costs of the Power Purchase Agreement ("PPA") existing at the time of the issue of license to new DISCOMS, the power and associated costs from the existing PPA, to be shared amongst all the DISCOMS, according to the arrangement, as maybe specified by the Appropriate Commission as per the provisions of the Electricity Act, 2003 and the rules made thereunder.

Cross-Subsidy Balancing Fund (Proposed amendment to Section 60A to the Electricity Act, 2003)

The Amendment Bill provides for the setting-up of a "**cross-subsidy balancing fund**". Cross-Subsidy means the provider of a particular service, charges a higher price from a particular section of its consumers, to subsidize the cost of the same service for another

section of consumers. The Amendment Bill provides that if the DISCOM is left with any surplus after applying the amount received for cross-subsidization, the same is required to be deposited with the Cross-Subsidy Balancing Fund, which Fund shall be administered by an entity designated by the Government. The said Fund may be utilized to make good, the deficits in cross subsidy in the same area or any other area of supply.

Graded Revision of Tariff (Proposed amendment to Section 62 of the Electricity Act, 2003)

For the purpose of promoting competition among the distribution licensees operating in the same area, the Amendment Bill proposes that the Appropriate Commission fixes the maximum ceiling of tariff and the minimum tariff for retail sale of electricity.

Change in the constitution of the Selection Committee of SERC (Proposed amendment to Section 65 of the Electricity Act, 2003)

Under Section 85 of the Electricity Act, 2003, the Chairperson of the Central Electricity Authority is a member of the selection committee constituted for appointment of the members of the

State Commission. However, the Amendment Bill seeks to replace the Chairperson of the Central Electricity Authority with a nominee of the Central government not below the rank of Additional Secretary to the Govt. of India.

OUR VIEWS

The intent and substance of the Amendment Bill is to usher competition in the supply of electricity to the end-consumers. However, there is a possibility of the privately-owned DISCOMS pushing the state-run DISCOMS out of business, especially the loss-making DISCOMS. This is going to be a challenging task.

Further, due to the inherent defects in the operation and functioning of the State run DISCOMS, it is also likely that, end-consumers would end-up shifting to private DISCOMS, making the State -run DISCOMS to bleed more and shall also lead to the loss of autonomy by the State Governments over such State-run DISCOMs. This, in turn, may lead to a huge political issue and result in a backlash for the Industry.

In totality, the Amendment Bill looks promising in terms of providing energy equity to the end-consumers through various initiatives including – discrimination free open access., *However,* periodic survey of the electricity industry, would be required to gauge and prevent any anti-competitive malpractices by private DISCOMS.

This newsletter is only for general informational purposes, and nothing in this edition of newsletter could possibly constitute legal advice (which can only be given after being formally engaged and familiarizing ourselves with all the relevant facts). However, should you have any queries, require any assistance, or clarifications with regard to *anything contained in this newsletter (or competition law in general)*, please feel free to contact Mr. Deepak Kumar Thakur / Mr. Puspak Chamariya/ Mr. Abhishek Rohatgi at the below mentioned coordinates. © Luthra & Luthra Law Offices India 2022. All rights reserved.

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