

**KARNATAKA DISTRIBUTION PRIVATISATION
DRAFT AMENDMENTS TO KER ACT, 1999
MYT PRINCIPLES AND FRAME WORK: AMENDED SECTION 27 OF KER ACT, 1999**

Section 27: Licensee's revenues and tariffs: Principles and MYT framework.

- 1) Any person authorized to undertake any licensed activity under this Act shall conduct its licensed business and establish its Tariffs and charges consistent with the applicable MYT framework. Tariff Formula and the conditions contained in its licence. The transition Arrangement under this Act shall be established by the State Government by contract with licensees and shall be accurately reflected in the conditions of their licenses and the Standard MYT framework and Tariff Formulae shall be established by the Commission and accurately reflected in their licences; provided that in respect of a licensee for which a Transition Arrangement has been notified by the State Government, the State Government may prescribe the MYT Framework and Tariff formula for the first Tariff period following the expiry of the Transition period.
- 2) Subject to Section 27-B, the MYT framework (including the Tariff Formula) for a particular licensee shall be established on the basis of the following principles:-
 - a) *General Financial Principles:-*

A MYT framework and Tariff Formula under it for a particular licensee shall:

 - i) ensure that Tariffs are set at a level that is adequate to allow licensees to finance their operations, to promote adequate investment to enable the licensee to discharge its duties and obligations and manage its risks efficiently and to provide a reasonable prospect of cost recovery by the licensee operating efficiently, subject to any subsidies payable under Section 12;
 - ii) contain reasonable incentives for achievable commercial operation, operating efficiency and efficient investment by the licensee and to allow for reasonable rewards for efficient performance; and
 - iii) apply methods of decision-making that are stable, predictable, transparent and well reasoned from evidence submitted to the Commission in an open process.

b) Treatment of Costs and Pass-through

A MYT framework and a Tariff Formula under it applicable to a particular licensee shall:

- i) provide for recovery of different items of costs reflecting fairly the different degrees of effective control and influence of the licensee over the cost and/or quantity procured, so that the licensee is able to recover a just and reasonable proportion of those costs over which its ability to manage the associated risks is limited.
- ii) Provide for automatic, cost pass-through to consumers of input costs and changes to those input costs, in terms of changes in price, quantity or both, that are beyond the control of the licensee on a periodicity specified in its licence, provided that in relation to power purchase costs of a licensee, power procurement has been made in accordance with the procedures established by the Commission by regulations in accordance with principles prescribed by the State Government. Where there is a delay in implementing such automatic cost pass-through, the licensee shall be compensated by being able to charge interest on the working capital employed by it in financing the carrying of such input cost in its Tariff as an automatic pass-through for any period of delay that exceeds three months.
- iii) Utilize, whenever feasible, pre-determined and relevant external indices, standards, targets, benchmarks or methodologies for evaluating the costs of the licensee over which it has significant control and for setting the Tariff Formula applicable to that licensee;
- iv) Establish incentive mechanisms that provide licensees with reasonable rewards and/or penalties based on their measurable performance against standards and /or targets consistent with principles prescribed by the State Government without creating a multiplicity of incentive schemes or perverse incentive that are inconsistent with the principles contained in this section.
- v) Recognize that a licensee's degree of effective control over an input cost or a variation in input cost and the fair allocation of input costs between the consumers and licensees may change over time;
- vi) Ensure that transparent, effective and pre-determined criteria and mechanisms for effective verification of both controllable costs and non-controllable costs shall be utilised.

c) Risk Allocation

There shall be fair and efficient allocation of risk relating to the controllable and non-controllable risks of licensees between the State Government, the licensee, consumers and other stakeholders which shall be guided by the following general principles

- i) A risk shall be allocated to the entities or persons best able to control, mitigate or share the risk (consistent with the provisions of Section 27-B);
- ii) In determining the appropriate expected rate of return or reward for a licensee, the Commission shall ensure that the risks being borne by the licensee are duly taken into account.

d) Unforeseen Extraordinary Event

If an unforeseen extraordinary event specified in the licensee's licence occurs that has a material adverse impact on controllable or uncontrollable costs of a licensee, the Commission shall permit the licensee to make the necessary changes in its Tariffs to enable it to recover the costs of the said material adverse impact over a reasonable period in accordance with licensee's licence regulations issued by the Commission.

e) Quality of Service Standards

Suitable quality of service standards shall be established together with appropriate incentive and penalty mechanism that attracts investment and provides reasonable protection to consumers, in accordance with principles prescribed by the State Government.

f) Electrical Energy Loss Reduction Targets

- i) Suitable incentive mechanisms shall be established and administered to encourage licensees to move towards efficient operations and to minimize Electrical Energy Losses. Such mechanisms shall be based on a transparent, pre-determined and effective measurement of Electrical Energy Losses compared against reasonable Electrical Energy Losses reduction targets taking into account quality of service standards.
- ii) Electrical Energy Loss reduction targets must be such as to permit reasonably accurate measurement at the end of a Tariff Period of Electrical Energy Loss reductions achieved over the entire Tariff Period.

- iii) The initial accepted value of Electrical Energy Losses and any targets and incentives for Electrical Energy Loss Reduction for the first Tariff Period under Standard MYT Framework in respect of a licensee for which a Transition Period is notified by the State Government shall be determined by the Commission in accordance with procedures specified by the State Government.

g) Tariffs to be Based on Cost of Supply

Tariffs shall reflect the cost of supply of electricity to each consumer category/class such that:

- i) The cost of supply is adjusted for reasonable, anticipated efficiency gains and losses (if any) based on achievable performance benchmarks, standards or targets and formulae established using objective, observed and measured data and relevant comparisons at the beginning of each Tariff period in the Tariff Formula; and
- ii) The phasing out of cross-subsidies between consumer categories/class in accordance with well defined, measurable, transparent targets established by the Commission is taken into account in setting a Tariff Formula.

h) Government Plans

Tariffs and Tariff Formula shall be set in a manner that facilitates the national and state power plans formulated by the Central or State Government as the case may be, to be taken into account.

- 3) The annual filing of Expected Aggregate Revenue requirements shall be discontinued if it is inappropriate under any MYT framework and/or any Tariff Formula.
- 4) Any Tariff implemented by a licensee under this Act –
 - a) shall not show undue preference between consumers in a particular consumer category/class (recognizing that some consumers will be subsidised)
 - b) shall endeavor to ensure that, as far as possible, similarly placed consumers in similar areas pay a similar Tariff, while recognizing that difference may develop over time that reflect the relative costs and efficiencies of different

licensees;

- c) may differentiate according to the cost of supply to a consumer; the consumer's load factor, power factor and total consumption of electrical energy during any specified period; the time at which supply is required; the geographical position of any consumer or area;
 - d) shall, to the extent possible, endeavour to create signals that promote economic efficiency in the supply and consumption of electricity and efficient use of the licensee's facilities; and
 - e) shall satisfy all other relevant provisions of the relevant MYT framework, the Tariff Formula and the conditions of the licence.
- 5) A Tariff Formula established in respect of a licensee for each Tariff period shall be deemed to be incorporated in the licence of the licensee.
- 6) Subject to the prevailing Tariff Formula and MYT framework, no Tariff Formula Change shall be implemented during the applicable Tariff Period, provided that any annual Tariff revision as per the MYT Framework and the periodic implementation of Tariff Adjustments shall not amount to a Tariff Formula Change.
- 7) In this Act
- a) 'Amendment Act' means the Karnataka Electricity Reforms (Amendment) Act, 2003
 - b) 'Bulk Supply Tariff' means the charges for and terms of wholesale supply of electricity to a licensee under any wholesale trading arrangements
 - c) 'consumer' means end-users of electrical energy
 - d) 'Consumer category/class' refers to consumers that have similar characteristics or circumstances such that they can be placed in the same category or class;
 - e) 'Expected Aggregate Revenue' means the total revenue which a licensee is expected to recover from charges for the level of forecast supply in any period in respect of goods or services supplied to consumers pursuant to a

licensed activity;

f) 'Electrical Energy Losses' means

- i. physical loss of electrical energy in the transmission, transformation and distribution of electrical energy between generation sources and delivery points arising from the design, maintenance and operation of transmission and distribution facilities; and
- ii. loss of revenue and/or increased cost, caused by theft or unauthorized use of electricity, inaccurate billing and/or lack of payment or collection

and like terms shall be construed accordingly.

g) 'MYT frame work' means the performance-based, multi-year Tariff setting, price and/or revenue control principles, methodology, formulae and other arrangements, including provisions for Tariff Adjustments based on a pre-specified Tariff Formula and the regulatory process referred to in Section 27-A, incorporated or deemed to be incorporated in the licence of a licensee, whether established as a Transition Arrangement or the Standard MYT frame work, as established and modified from time to time in terms of this Part VIII

h) 'Retail Supply' shall mean sale of electricity by a licensee holding a distribution and retail supply licence to consumers, and like terms shall be construed accordingly.

i) 'Distribution and Retail Supply Licensee' means a licensee granted a licence to undertake distribution and retail supply in accordance with the terms of its licence;

j) 'Standard MYT Framework' means the MYT framework that takes effect in cases where a Transition Arrangement for a particular licence is established, on the expiry of the Transition Period applicable to that licensee, and in cases where no Transition Arrangement is established for a particular licensee, on such date as the Commission shall notify in accordance with the conditions of the applicable licences;

k) 'Tariff' means a schedule of standard prices or charges published by a licensee applicable for a Tariff Period for specified services to consumers or in the case of distribution services, to retail suppliers;

- l) 'Tariff adjustments' means the permitted changes in the tariffs of a licensee in accordance with the applicable Tariff Formula established under a MYT framework which will not amount to a Tariff Formula change including (i) permitted cost pass-through in accordance with the provisions of Section 27(2)-(b), (ii) a periodic mechanism for true-up of a Tariff based on pre-defined parameters to account for errors in estimations and forecasts and for differences in the elements of costs and revenues actually incurred or realized, from the projected costs and revenues anticipated under the Tariff, and the applicable Tariff Formula, and (iii) adjustments of costs, prices and charges based on pre-defined indices.
- m) 'Tariff Formula Change' means any change or modification in a Tariff Formula which does not qualify as a Tariff Adjustment, including any modification of the Tariff in accordance with Section 27-A (2) –(d);
- n) 'Tariff Formula' means the formula notified by the State Government as being applicable to the Transition period of a licensee or a formula comprised within a MYT framework under Standard MYT framework as may be notified by the State Government for the first Tariff Period in respect of a licensee for which a Transition Arrangement has been notified, or by Commission in respect of other licensees and other Tariff periods;
- o) 'Tariff Period' means the period of a number of years prescribed by the State Government in a Transition Arrangement or contained in the licence of a licensee for the application of a Tariff Formula or such other period as the State Government or the Commission, as the case may be, shall agree with the relevant licensee.
- p) 'Transition Arrangement' means the first MYT framework and other arrangements established for a particular licensee by the State Government under Section 27-B of this Act.
- q) 'Transition Period' means a Tariff Period not exceeding (5 years) starting on the date agreed with the licensee and to be notified by the State Government during which a Transition Arrangement is to be implemented for such licensee.
- 8) The MYT framework (including Tariff Formula) established in accordance with the provisions of the this Act shall be deemed to be part of the licence of the relevant licensee; provided that notwithstanding contained in any other law for the time being in force, a change to the Tariff Formula pursuant to a Tariff Formula Change shall be deemed to be an amendment to such licence.
- 9) Notwithstanding anything to the contrary contained in any other law for the time being in force or the terms and

conditions of an existing licence of a distribution and retail supply licensee in respect of which a Transition Arrangement is notified by the State Government, the existing licence of such distribution and retail supply licence shall be deemed to be valid for a period of twenty five years from date of this Amendment Act comes into force and such licensee shall not be deemed to have unreasonably withheld consent to any amendment to its licence (including such terms as are deemed to be incorporated into its licence pursuant to this Act) if such amendment is contrary to the terms of a Transition Arrangement that may have been specified for such licensee or a MYT Framework and Tariff Formula prescribed by the State Government or the Commission pursuant to this Act for a Tariff period.

MYT Process: New Section 27-A

“ 27-A Regulatory Process for Licensee’s Tariffs.

- 1) A licensee shall be obliged to comply with the process and the periodic and non-periodic filing requirements as stipulated pursuant to this Section-27 – A (unless the relevant Transition Arrangement otherwise provides).
- 2) The Standard MYT framework filing requirements are as follows:-
 - a) Except in relation to the first Tariff Period following the expiry of the Transition Period, every licensee shall file before the Commission at such time as the Commission may by regulation prescribe being not earlier than (12) months prior to the commencement of the ensuing Tariff period, its proposals for the Tariff Formula for the ensuing Tariff Period supported by cost data consistent with Section 27, its licence and any regulation/order issued by the Commission relating to the information required to be filed by all licensees to enable the Commission to carry out a review of the Tariff Formula at the end of the Tariff period during which the Tariff Formula applied in accordance with the applicable Standard MYT framework and its licence, directed towards establishing the Tariff Formula and modifying the relevant Tariff pursuant to subsections 2(d) and 2(g) (if appropriate) for the ensuing Tariff period.
 - b) A licensee's application shall be dealt with by the Commission in accordance with the procedures established by the Commission in accordance with rules issued by the State Government for this purpose.
 - c) The Commission shall prior to making a determination of a Tariff Formula change require the licensee to publish its proposals for Tariff Formula Change inviting comments and objection to such proposal and the Commission shall make its determination after consideration of the comments and objections received, and after giving due opportunity in the licensee to make a representation against the Commission's proposals.

- d) The Commission shall simultaneously cause to be carried out an efficiency study of the potential for efficiency gain or cost saving by the licensee taking into account the standards imposed on it during the ensuing tariff period by an independent consultant, the reasonable cost of which shall be borne by the licensee.
- e) The Commission shall notify a Tariff Formula for the ensuing Tariff Period to the licensee at least 3 months prior to the commencement of the ensuing Tariff Period, including the input cost pass-through rules and formulae, the permitted Tariff Adjustments indices and the periodic filing requirements, failing which the proposals of the licensee filed with the Commission under subsection (2)(a) shall be deemed to have been accepted by the Commission.
- f) An appeal from the decision of the Commission with respect to a Tariff Formula Change and any change to Tariffs ordered by the Commission pursuant to subsection (1) (g) may be made by the relevant licensee for determination by the Appellate Tribunal not later than (4) weeks of the notification made by the Commission under subsection (2) (e).
- g) The Commission may, at the time of notifying the decision as to the Tariff Formula under subsection (2) (e) determine whether the Tariff proposed by the licensee is required to be modified and if so, may require the licensee to modify the Tariff or any part thereof.
- h) During each Tariff Period, the licensee shall no later than (2) months after the expiry of each calendar year following the commencement of the Tariff Period (except in relation to the last calendar year of the Tariff Period) provide information to the Commission, regarding Electrical Energy Loss reductions achieved by it in the preceding calendar year.
- 3) Periodic Tariff Adjustment and filing relating to them shall be made as follows:
- a) A Licence
- i) may make Tariff Adjustments necessary to reflect any specified increase in licensee's input costs.
- ii) shall make Tariff Adjustments necessary to reflect any specified decrease in licensee's input costs
- during a Tariff period relating to Standard MYT framework based on the applicable Tariff Formula; provided that a licensee shall be permitted to make no more than (4) Tariff Adjustments in a calendar year during the Tariff Period.

- b) The licensee shall make suitable filings with the Commission to place on record its periodic Tariff Adjustments pursuant to sub-section 3(a) based on the prevailing Tariff Formula. The Commission is not required to conduct a public consultation or to approve a Tariff Adjustment filing.
- 4) A distribution and retail supply licensee to which a Transition Arrangement is applicable, shall no later than (2) months after the expiry of each calendar year of the Transition period, provide information to the Commission, in the format prescribed by the Commission, regarding Electrical Energy Loss reductions achieved by it in the preceding calendar year.
- 5) (a) A licensee may file an application with the Commission seeking suitable Tariff changes to compensate it for the material adverse impact, in excess of a materiality threshold specified by the Commission, resulting from an unforeseen extraordinary events in accordance with procedures specified by the Commission. If the Commission determines, in accordance with the procedures specified by it, that a material adverse impact has been suffered by the licensee arising due to an unforeseen extraordinary event it shall approve the necessary change in Tariff of that licensee to ensure that:
- i) the time period over which the incremental costs should be recovered is not more than (5) years; and
 - ii) the Tariff increase or change required ensures that the licensee is financially not in a better or worse position by the end of the (5) year period referred to in paragraph (i) than it would have been if such even had not occurred;
- provided that if a recovery period extends into the next Tariff Period, the Tariff increase shall be treated as a ring-fenced revenue stream in the Tariff Formula review process that cannot be shared with the consumers or taken back from the licensee by virtue of a Tariff Formula Change or a subsequent modification of the Tariff or in any other way.
- 6) Subject to any Transition Arrangement, the Commission may initiate a change in Tariff in terms of the following:
- a) where unforeseen extraordinary are expected to have an unexpected positive material impact on the licensee beyond a threshold specified in the licensee's licence, which it would be just and reasonable to pass to consumers,

the Commission may undertake a study to determine whether an unexpected positive material impact has occurred. If such unexpected positive material impact has occurred, the Commission may suo-moto initiate a change in Tariff that leaves the licensee in no worse position than it would have been in had the event not occurred, with the burden of proof falling on the Commission.

- b) any licensee investigated for an unexpected material positive impact under subsection (6)(a), must co-operate with the Commission and provide relevant information requested within a reasonable period specified by the Commission.
- 7) If the Commission considers that the reconciliation or change in Tariff proposed by a licensee pursuant to subsections (5) is not permissible it shall, after consultation with the licensee, within 60 days of receipt of the licensee's filing that meets the requirements of the relevant subsections notify the licensee that:-
- a) The reconciliation or the change in Tariff sought is not permissible, or
 - b) In the case where the Commission is convinced that the reconciliation or the change in Tariff is justified but the proposal is wrong, it shall provide to the licensee an alternative reconciliation (and the consequential change in Tariff) or a change in Tariff that enables the licensee to enjoy the benefits accorded to it under sub-sections (4) or (5) as the case may be, which shall be implemented by the licensee.
- 8) Each licensee shall publish a daily newspaper having circulation in the area of supply and make available to the public on request, the Tariff for supply of electricity within the area of supply and such Tariff shall take effect only after seven days from the date of such publication.

II. Amendments to the KER Act: Powers of the State Government and Transition Arrangements

1. “Section 27-B Transition Arrangements for privatizing utilities”.

- 1) Notwithstanding anything to the contrary contained in this Act and with a view to facilitating the transfer of no less than a controlling interest on any distribution and retail supply licensee wholly owned by the State Government, as the State Government may identify, to a third party investor or investors, the State Government shall, design, establish and implement a Transition Arrangement with respect to that licensee in order to further the objectives of this Act in relation to attracting investors into the distribution and retail supply sectors of the electricity industry in the State, that will apply throughout the Transition Period. A Transition Arrangement shall include the following arrangements:-
 - a) a special, flexible, risk-sharing contractual arrangement between the State Government, the bulk supplier or suppliers of energy, any distribution and retail supply licensee and third party investors in that licensee (that may be established by negotiation or through a bidding process) under which the licensee is permitted to retain a specified amount of revenue during each year of the Transition Period and a variable amount of revenue from gross customer receipts resulting from an incentive scheme created by the State Government by way of a paise per rupee collection charge to encourage the licensee to collect revenues from customers above a specific minimum revenue collection requirement.
 - b) a mechanism for allocating scarce wholesale supplies of electricity between each of the distribution and retail supply licensees that may be embodied in an electricity industry code or agreement that is given contractual and/or regulatory force through licences, consistent with the arrangements referred to in subsection (1) (a), and for compensating a licensee for lack of wholesale supplies in accordance with that mechanism;
 - c) a mechanism that is designed to create incentives for efficient capital expenditure and more efficient operations by the licensee, consistent with the arrangements referred to in subsection (1) (a).
 - d) a mechanism under which the State Government pays the designated participants in the electricity industry (including the bulk supplier) the deficits in the amounts which are due and payable by the licensee for wholesale electricity supplied to it and connection to and use of the transmission facilities, consistent with the

arrangements referred to in subsection (1) (a).

- e) suitable mechanism for the State Government to pay the subsidies referred to in Section 12 relating to specified consumer category/class, consistent with the arrangements referred to in subsection (1)(a).
 - f) binding obligations that neither the State Government nor the Commission will act in a manner that is inconsistent with the arrangements referred to in this subsection.
- 2) Except where expressly provided for in this Act, a Transition Arrangement for a particular licensee notified by the State Government shall be complied with and implemented by the State Government, the relevant licensee, the Commission and other affected parties as a matter of contract between the State Government and the licensee strictly in accordance with its terms and shall not be amenable to any amendment/modification once any entity or person, other than the State Government, acquires controlling interest of the licensee concerned. Any distribution and retail supply licensee and any third party investor in such licensee shall be entitled to obtain specific performance of the arrangements referred to in this subsection(1) by the State Government and the Commission and/or full compensation in the event of their non-compliance with the arrangements referred to in this subsection.
- 3) Any Transition Arrangement notified by the State Government:-
- a) shall be applicable for the Transition Period applicable to the relevant licensee;
 - b) shall set out the procedures for determination of Tariffs, provided that such procedures shall achieve that the Tariffs charged by the licensees, shall move towards allowing the licensee to cover the average costs incurred to supply its consumers, whether determined pursuant to a price-cap or revenue-cap methodology, while meeting the standards for technical and commercial quality of service established by the State Government for the Transition Period in accordance with principles prescribed by the State Government, and earning reasonable returns;
 - c) may specify the procedures for the grant of subsidy by the State Government in relation to a consumer category/class to the relevant licensee to which the Transition Arrangement applies in accordance with the provisions of Section 12;

- d) shall determine the specific values for the different elements of the Tariff and any Tariff Formula comprised in the Transition Arrangement; and
 - e) shall establish targets for the gradual elimination of cross-subsidies such that at the end of the Transition Period the Tariff charged to each consumer category/class shall be designed to reflect at least a percentage of the licensee's cost of supplying electricity to that consumer category/class, as specified by the State Government provided that in no case shall the Tariff for a consumer category/class be less than 25%, or such other higher percentage as may be specified by the State Government of the average cost of supply of the licensee; and
 - f) may include a profit or revenue sharing mechanism to enable consumers to share unanticipated benefits from profits or revenues that are significantly higher than the level of profits or projected revenues agreed with the licensee to which it applies, provided that such profit or revenue sharing mechanism shall not be amended for the duration of the Transition Period.
- 4) The power vested in the State Government herein shall lapse with respect to a particular distribution and retail supply licensee or its successor company upon the earlier of a one-time exercise of this authority, or upon the expiry of (7) years from the date of this Amendment Act coming into effect.
 - 5) In so establishing the Transition Arrangement, the State Government is entitled in its discretion to consult with the Commission on all or any aspects thereof.
 - 6) The exercise of such power by the State Government shall not be in derogation of the power of the Commission for all subsequent Tariff Periods after the Transition Period.
 - 7) The terms and conditions of a Transition Arrangement notified in terms of Section 27-B shall be deemed to be incorporated into the licence of the licensee to which it applies automatically with effect from the date of the transfer of control in the licensee to the investor as notified by the State Government.
 - 8) During the period of validity thereof, the Commission, the licensee, other licensees in the power sector and others shall be bound by the terms and conditions of the Transition Arrangements and related rules and notifications issued by the State Government pursuant to this Act in connection with the Transition Arrangements.

- 9) The oversight of implementation of a Transition Arrangement on behalf of the State Government shall lie within the domain of the Commission but the authority to take all decisions with respect to the Transition Arrangements and the other arrangements referred to in subsections (1) and (2) shall vest exclusively within the State Government, subject to the Transition Arrangements and any agreements entered into by the State Government with the licensee in accordance with the Transition Arrangement, provided that the State Government may, from time to time during the Transition Period, delegate by a Notification in the Gazette delegate its authority to the Commission to make decision on a matter relating to the Transition Arrangement.
- 10) All other provisions of this Act, not inconsistent with the Transition Arrangement, shall continue to govern the Commission, the licensee, the transmission licensee and others.
- 11) Where a Transition Arrangement is designed and implemented for a particular licensee, the Commission shall not exercise its powers under Section 27 to design and implement a MYT framework and Tariff Formula for that licensee during the Transition period.
- 12) Transition Arrangements may be based on the proposals of the successful bidder accepted by the State Government in the bid documents or resulting from negotiations.
- 13)** Notwithstanding anything contained in this Act or a licence currently in force disputes between two licensees relating to Transition Arrangements shall be referred to the Commission to the extent agreed by the licensees in agreements entered into by them.

2. Amendment to the first and second Proviso to section 12(1).

"Section 12 General Powers of the State Government - (1) The State Government shall have the power to issue policy directions on matters concerning electricity in the State including the overall planning and co-ordination.

Provided that such policy directions shall be consistent with this Act and the objectives sought to be achieved by this Act and accordingly, subject to exercise of powers by the State Government pursuant to Sections 27, 27-A and 27-B, shall not adversely affect or interfere with the functions and powers of the Commission, including but not limited to the determination of the structure of Tariffs for supply of electricity to various classes of consumers.

Provided further that the State Government shall be entitled to require the grant of any subsidy to any consumer or consumers category/class, to which any permitted Tariff applies, which will be governed by the following:-

- a) the arrangements relating to payment of subsidy to any consumer or consumer category/class of a licensee to which a Transition Arrangement is applicable shall be determined by the State Government, pursuant to Section 27-B;
- b) where a policy direction relates to a period other than a Transition Period, the grant of such subsidy shall be governed by the the following terms and conditions:-
 - i. the policy direction will become and remain enforceable only upon the State Government contributing in advance, on a month to month basis, the amount to pay such subsidy to the relevant consumers or to compensate the relevant licensee affected by the grant of the subsidies by the State Government.
 - ii. A consumer shall become eligible to receive a subsidy only upon paying the non-subsidised share of his electricity bill. If the consumer fails to pay his share of the bill on a regular basis as determined by the Commission using a verification procedure established by the Commission pursuant to a regulation, the subsidy will be suspended.
 - iii. The delivery of a subsidy may be done through a credit on the consumer's bill, by payment to the relevant licensee or some other mechanism selected by the State Government.
 - iv. All elements of the subsidy-delivery mechanism such as the amount, the form of payment, and, subject to clause (i) above the time schedule for payment, shall be determined by the State Government and deemed to be included in the relevant licences.
 - v. The State Government is entitled to enter into agreements with the Central Government and other entities to guarantee the payment of subsidies;
 - vi. State Government may subsidise wholesale purchase of electricity by a licensee based on the bulk supply tariff approved by the Commission; and
 - vii. Where the State Government elects to compensate the relevant licensee, for the subsidy relating to a

consumer category/class and fails to pay the amount due in accordance with the foregoing terms and conditions to the licensee, the licensee shall be entitled to discontinue supply to consumers of such consumer category/ class in the event of non-payment of charges for electricity supplied according to applicable tariff.

3. Without prejudice to subsection(1) and the provisos thereto, the State Government may define and implement schemes and programs intended to promote extension of coverage and supply to new areas not in a licensee's area established pursuant to rule 3, including provisions of subsidy funds required for that purpose. Such schemes and programs shall clearly define conditions for participation by existing licensees in extension of such services. The Commission shall be responsible for the oversight of the implementation of such schemes and programs.

III. Amendments to the KER Act: Licensee's Obligations.

1. Amendment to Section 19(9)

Subsection (9) of Section 19 shall be replaced with the following subsection:

(9) Unless otherwise indicated in the conditions of a licence or any Transition Arrangements under section 27-B, the grant of a licence under this section to a licensee shall not in any way hinder or restrict the grant of a licence to another person within the same area of supply for a like purpose and the licensee shall not claim any exclusivity in that area of supply.

2. Amendment to Section 21

Subsection (1) of Section 21 shall be replaced with the following sub section:

(1) (a) It shall be the duty of the holder of a transmission license in respect of a particular area to develop, provide and maintain an efficient co-ordinate and economical system of electricity transmission in the area

(b) It shall be duty of the holder of a distribution and retail supply license in respect of a particular area specified in its licence to develop, provide and maintain an efficient and co-ordinated and economical system for distribution

of electricity in the area established pursuant to subsection (5) in accordance with the standards established by the State Government (for the Transition period applicable to the licensee) or by the Commission (under a Standard MYT framework) pursuant to the principles prescribed by the State Government.

2. The following shall be inserted as subsection (5) to Section 21:

“(5) A distribution and retail supply licensee shall be obliged to connect consumers located in an area established and notified by the State Government (in respect of a distribution and retail supply licensee to whom the Transition Arrangement applies) or by the Commission (in respect of other distribution and retail supply licensees), in accordance with the procedures to be prescribed by the State Government within the area of service specified in the licensee’s license. Such an area, once notified, may be varied by the State Government or the Commission with the consent of the licensee or on the application of the licensee in accordance with such procedures and such variations shall be deemed to be a licence amendment, notwithstanding any provision to the contrary in any law, including this law.”

4. Amendment to Section 56(1) of the KER Act

Subsection (1) of Section 56 shall be replaced by the following:

(1) The Commission may make regulations, subject to the provisions of this Act, by notification in the official Gazette for the proper performance of its function under the Act.

5. Amendment to Section 57(2)

(1) The following clauses shall be inserted in subsections (2):

(d)

i) The manner of establishing the area in which the distribution and retail supply licensee will have the obligation to supply its consumers in accordance with principles prescribed by the State Government, and facilitating expansion of distribution networks to the unserved areas in an economical and efficient manner;

ii) Procedure and principles for establishing technical and commercial quality of service standards to be achieved

by distribution and retail supply licensees within the area of their supply established in accordance with the principles prescribed by the State Government pursuant to Rule (d) (i);

iii) Procedures to be adopted by the distribution and retail supply licensees for economical and efficient power procurement consistent with the bulk supply trading arrangements established by the State Government; and

iv) Procedures for dealing with an application of licensee for Tariff Formula change;

Provided that in respect of matters specified in rule (d) (i) to (d) (iii) of this subsection (2)

1) The State Government shall make the rules with the objective of promoting private sector investment into distribution and retail supply with a view to overall objective of securing economic and reliable supply of electrical energy to consumers;

2) The State Government shall issue such rules within (2) months of the Amendment Act coming into force;

3) Such rules shall be deemed to be incorporated in the licence of each distribution and retail supply licensee; and

4) The rules shall be consistent with the principles set out in Section 27(2)

5) Rule (d) shall be renumbered as rule (e)