

# Forgetting the Basics: An Analysis of Rulings on Renewable Energy Banking May 2025

An initiative by Prayas (Energy Group)

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#### **Executive Summary**

In the last 15 years, the facility of banking of renewable energy and different aspects related to it have been at the centre of multiple litigations. This is mainly due to, (a) opposition by Distribution Licensees ('Discoms') who have argued that provision of banking facilities results in huge financial losses, and (b) Open Access ('OA') or Captive Power Producers ('CPP') who have generally sought to maintain the status quo regarding different aspects of banking despite cost reduction and other pertinent developments in the space of renewables in the past two decades. This article analyses 22 major rulings on banking, highlights common insights from them, and looks at the current regulatory landscape on banking. These rulings have also been summarized and compiled into an interactive dashboard, making them accessible to all stakeholders. Finally, we suggest a broad framework for concessions based on the analysis of these rulings.

#### 1. Introduction

Electricity generation from renewable sources of energy is highly dependent on weather conditions. It has seasonal and diurnal characteristics depending on the energy source, making it difficult to align with a consumer's load pattern unlike conventional generators. To overcome this limitation and to promote the use of renewable energy for self-consumption, energy banking facility mechanism was envisaged in India. In 1986, Tamil Nadu State Electricity Board (TNSEB) introduced 'Banking' of renewable energy for OA and CPP in the state of Tamil Nadu. Essentially, banking allows a renewable energy generator ('REG') to supply its surplus energy (over the instantaneous consumption) to the grid with the option of withdrawing an equivalent



amount of energy from the distribution licensee ('Discoms') during periods of low generation for a charge<sup>1</sup>. Simply put, it is an '*exchange of electricity for electricity*'.<sup>2</sup>

Apart from Tamil Nadu, other states<sup>3</sup> such as Maharashtra and Karnataka also started adopting it in the early 2000s. However, in the last 15 years, this concession has been at the centre of multiple litigations. This is due to, (a) opposition by Discoms whose main argument has been that provision of banking facilities results in huge financial losses for them, and (b) demand by OA or CPP who largely wanted continuation of the promotional measure without any changes.

The article begins with a short introduction and methodology section. It then examines the stance by Discoms and REGs on banking, and then moves on to the common findings from these rulings. Next, it discusses the Green Energy Open Access Rules (2022) and subsequent related developments. Lastly, it discusses a framework for concessions based on the analysis of these rulings and concludes with final insights.

#### 2. Methodology

The insights in the subsequent paragraphs are based on an analysis of 22 rulings issued by APTEL and two High Courts across the country. A reverse chronological approach was adopted to identify and analyse relevant rulings, using a landmark 2021 Appellate Tribunal for Electricity ('APTEL') ruling<sup>4</sup> on banking as the starting point. The process involved reviewing the other rulings cited in this 2021 APTEL ruling and then progressively working backwards to earlier rulings. In parallel, follow-up developments and references to these older rulings were also tracked to identify more recent rulings. While every effort has been made to compile and examine all pertinent cases, it is possible that some rulings may have been inadvertently overlooked.

The purpose behind the exercise was to understand how judicial forums have ruled on different issues around banking of renewable energy and what larger lessons can be drawn from them. Out of all the 22 rulings analysed, 18 were passed by APTEL, 3 by the Karnataka High Court and



<sup>&</sup>lt;sup>1</sup> The key terms associated with Banking of renewable energy are:

Banking Charges: They are to be paid by the REG to the Discoms for availing the facility of banking. TNSEB being first movers introduced banking charge at 2% in 1986 and increased it to 5% in 2001. It is not clear whether the charge, at the time of its introduction, was on energy wheeled or energy banked or on some other criteria. See: <u>https://www.tnerc.tn.gov.in/PressRelease/files/PR-120320211500Eng.pdf</u> Banking Period: It is the period in which the settlement of energy between the REG and the Discoms must happen. It can range from monthly basis to a yearly basis.

Quantum of banking: It means the percentage of energy that can be banked by the REG with the Discom. Uttar Pradesh SERC (Captive and Renewable Energy Generating Plants) Regulations, 2019 allowed REGs to bank upto 100% of the energy they generate with the Discom if there is an agreement between the parties and the same is technically feasible.

Unutilized banked energy: Sometimes, post the period of banking, the REG may inject more energy than it may have withdrawn from the Discoms. In such a scenario, the Discoms are liable to compensate the REG.

<sup>&</sup>lt;sup>2</sup> <u>https://environmentality.cprindia.org/blog/a-case-for-strengthening-the-framework-on-banking-of-renewable-energy</u>

<sup>&</sup>lt;sup>3</sup> Maharashtra State Electricity Distribution Company Ltd vs MERC & Ors [Appeal No 59 of 2013] (Pg 35), https://energy.prayaspune.org/our-work/research-report/estimating-impact-of-renewable-energywheeling-and-banking-arrangement-on-karnataka-escoms (Pg 3)

<sup>&</sup>lt;sup>4</sup> Tamil Nadu Spinning Mills Association vs TNERC & Ors [Appeal No 191 of 2018]

1 by the Madras High Court. However, appeals against some of the decisions are pending as on date. Hence, the subsequent paragraphs have been written based on the information available and compiled as of 30th April, 2025. The rulings considered for the article have also been compiled and made available as part of a **dashboard**. It provides brief summaries of all the rulings analysed and allows filtering of rulings based on different aspects related to banking, states in which cases originated from, and the status of pending appeals.

# Dashboard Link

## 3. Stance by Discoms and REGs on Banking

As previously mentioned, the following Discoms have consistently through their filings sought modification of different elements of banking on various grounds<sup>5</sup> which are mentioned below.

Sr. No.	State Discoms	Discontinue	Raise Banking	Shorten Banking
	(Year)	Banking Facility	Charges	Period
1.	Tamil Nadu	Yes	From 5% to 15% on	From one year to
	(2011, 2021)		net energy banked	one month
2.	Karnataka	-	From 2% to 10% on	From one year to
	(2018, 2019)		energy injected	three months
3.	Maharashtra	Yes	-	-
	(2014)			

Table 1. Submission by few State Discoms against different aspects<sup>6</sup> related of Banking

Source: Prayas (Energy Group) compilation from APTEL judgments and KERC order

The primary argument by these Discoms has been that they incur huge financial losses due to the provision of this facility. They claimed that they are obligated to take power from REGs<sup>7</sup> which forces them to curtail or back down conventional generators, many of which supply electricity at lower costs. Despite not utilizing the full output of these conventional generators, the Discom remains liable to pay fixed charges under existing power purchase agreements (PPAs), thereby increasing the overall cost of power procurement which is eventually passed on to the consumers. Furthermore, when wind generators<sup>8</sup> withdraw banked energy during periods of low wind generation (typically in non-monsoon or peak demand months), they must procure additional



<sup>&</sup>lt;sup>5</sup> These arguments have been compiled from various cases. See: (a) Fortune Five Hydel Projects Pvt Ltd vs KERC & Ors [Appeal No 42 of 2018] (Pg 30, 120, 137, 152), (b) Tamil Nadu Spinning Mills Association vs TNERC & Ors [Appeal No 191 of 2018] (Pg 7, 33), (c) Maharashtra State Electricity Distribution Company Ltd vs MERC & Ors [Appeal No 59 of 2013] (Pg 14), (d) Renew Power Ltd & Ors vs BESCOM & Ors [WP No 23158/2018] (Pg 66-67)

<sup>&</sup>lt;sup>6</sup> Discontinue Banking Facility: Tamil Nadu ERC Consultative Paper for Procurement of wind power and related issues (Pg 10) [https://www.tnerc.tn.gov.in/PressRelease/files/PR-120320211500Eng.pdf], Maharashtra State Electricity Distribution Company Ltd vs MERC & Ors [Appeal No 59 of 2013] (Pg 13) Raise Banking Charges: Tamil Nadu State Electricity Board vs TNERC & Ors [Appeal No 98 of 2010] (Pg 20), Karnataka ERC Wheeling and Banking Charges for Renewable Power Projects (Pg 15) [https://kerc.karnataka.gov.in/uploads/47191660293883.pdf]

Shorten Banking Period: Tamil Nadu State Electricity Board vs TNERC & Ors [Appeal No 98 of 2010] (Pg 20), Fortune Five Hydel Projects Pvt Ltd vs KERC & Ors [Appeal No 42 of 2018] (Pg 22)

<sup>&</sup>lt;sup>7</sup> Discoms cannot deny the injection of power by REGs for the purpose of banking, due to "must-run" status of REGs, and the execution of Wheeling and Banking agreements (WBAs) between them.

<sup>&</sup>lt;sup>8</sup> Although there have not been specific rulings on this issue, a similar problem arises with solar generators. They bank energy during the solar hours and withdraw it in the evening. This creates a

electricity from the market at higher rates to meet the demand. This also imposes a significant financial burden on them.

Legally, they have argued that the Electricity Act, 2003 ('Electricity Act') doesn't prescribe energy banking and REGs cannot demand the same. From a policy perspective, they argued that the initial concessions granted to REGs were never meant to last forever and they can change or alter the concessional scheme over time. This, they have argued, is important considering that REGs have significantly grown in the past two decades and have been "earning super profits".

On the other hand, REGs have repeatedly<sup>9</sup> sought continuation of banking facilities without any modifications despite several developments<sup>10</sup> in the space of renewable energy in the past two decades.

### 4. Important Findings

These arguments by Discoms, however, have been largely rejected by the APTEL/High Courts. In their decisions, they have time and again ruled that the demands made by the Discoms for tinkering with the existing banking facility (either to withdraw it entirely or to increase the charges or to reduce the period) to the detriment of the REGs is *'radically extreme'*<sup>11</sup> and contrary to *'the spirit'*<sup>12</sup> of the Electricity Act. There are a few common themes which cut across the multiple rulings:

• Any change in the facility of banking must be based on some '*data/statistics/study*'<sup>13</sup> rather than unfounded statements by the Discoms. While the claim of financial losses by Discoms is understandable, however, it cannot be accepted at face value as '*the financial losses were yet to be established*'.<sup>14</sup>

<sup>10</sup> https://energy.prayaspune.org/renewable-energy-data-portal/capacity,



financial burden for the Discoms. Since evening hours coincide with peak demand, Discoms are already operating at or near full capacity during this time. To fulfil the banked energy withdrawals by solar generators, they are often forced to procure additional power from the market at higher costs. While for wind generators this issue is more seasonal, in the case of solar generators, it can persist throughout the year.

<sup>&</sup>lt;sup>9</sup> Brindavan Hydropower Private Ltd vs Union of India & Ors [WP No 11235 of 2024] (Pg 128), Beta Wind Farms P Ltd vs TNERC & Ors [Appeal No 197 of 2012] (Pg 20-22), Tamil Nadu Spinning Mills Association vs TNERC & Ors [Appeal No 191 of 2018] (Pg 8), Fortune Five Hydel Projects Pvt Ltd vs KERC & Ors [Appeal No 42 of 2018] (Pg 35), Mangalam Cement Ltd vs Jaipur Vidyut Vitran Nigam [Appeal No 230 of 2018] (Pg 4)

https://energy.prayaspune.org/renewable-energy-data-portal/re-re-tender-tracker

<sup>&</sup>lt;sup>11</sup> See Tamil Nadu State Electricity Board vs TNERC & Ors [Appeal No 98 of 2010] (Pg 25-26), Tamil Nadu Spinning Mills Association vs TNERC & Ors [Appeal No 191 of 2018] (Pg 63, 73). These rulings were quoted with approval in Hindustan Textiles 'B' Unit vs TANGEDCO & Ors [WP No 16104 of 2021] (Pg 36-37)

<sup>&</sup>lt;sup>12</sup> Tamil Nadu Spinning Mills Association vs TNERC & Ors [Appeal No 191 of 2018] (Pg 63)

<sup>&</sup>lt;sup>13</sup> Tamil Nadu Spinning Mills Association vs TNERC & Ors [Appeal No 191 of 2018] (Pg 72-73), Fortune Five Hydel Projects Pvt Ltd vs KERC & Ors [Appeal No 42 of 2018] (Pg 164), Maharashtra State Electricity Distribution Company Ltd vs MERC & Ors [Appeal No 59 of 2013] (Pg 35-36)

<sup>&</sup>lt;sup>14</sup> Tamil Nadu Spinning Mills Association vs TNERC & Ors [Appeal No 191 of 2018] (Pg 68), Maharashtra State Electricity Distribution Company Ltd vs MERC & Ors [Appeal No 59 of 2013] (Pg 37-38)

- Discoms have failed to provide sufficient reasons to have different arrangements for banking based on the date of commissioning of a REG.<sup>15</sup>
- Promotion of renewable energy in line with the national law and policy<sup>16</sup>, and India's international obligations such as the intended Nationally Determined Commitment<sup>17</sup> have not been fully achieved and hence, the concession of banking should be continued.<sup>18</sup>
- A concession which has largely remained unchanged is sought to be disturbed by the Discoms without proper justification. This is not only against policy continuity but also violates the legitimate expectation of the REGs.<sup>19</sup>

Apart from these common themes, a few examples would help us better understand what kind of litigations surrounding banking have been brought before the judicial forums and what have been their aftermaths.

#### Beta Wind Farm (P) Limited vs Tamil Nadu State Electricity Regulatory Commission (TNERC)

& Ors<sup>20</sup>: A comprehensive wind tariff order passed by the TNERC in July 2012 was challenged before the APTEL by REGs. They were aggrieved with many aspects of the tariff order, one of which was the abnormal increase in banking charges. In the proceedings before the TNERC, TANGEDCO had requested for discontinuation of the facility of banking or in the alternative, it had asked TNERC that banking charges be increased from 5% to 20%. TNERC, in its order, agreed with the suggestion of TANGEDCO for increasing banking charges. However, instead of raising it in percentage terms in line with the existing practice, it adopted a new methodology altogether and kept the same 94 paise per unit.

The REGs in its appeal before the APTEL had argued that without analysing the facts and figures, TNERC had accepted the claims by TANGEDCO. They grounded this argument on two aspects, (a) no prior notice was given to them about the new methodology for computing banking charges and, (b) the banking charges had effectively been increased from 28.46 paise per unit (which was equal to 5% of units banked under the old methodology) to 94 paise per unit which was highly abnormal.

APTEL, in its ruling in May 2013, agreed with both the contentions of the generators and set aside the findings of the TNERC. It remanded the case back for fresh consideration. APTEL not only directed TNERC to hear all the stakeholders before passing an order but also asked it to keep in mind the observations contained in its earlier decisions. In the remand proceedings<sup>21</sup>,



<sup>&</sup>lt;sup>15</sup> Tamil Nadu Spinning Mills Association vs TNERC & Ors [Appeal No 191 of 2018] (Pg 78), Renew Power Ltd & Ors vs BESCOM & Ors [WP No 23158/2018] (Pg 115-119), Hindustan Textiles 'B' Unit vs TANGEDCO & Ors [WP No 16104 of 2021] (Pg 6, 40)

<sup>&</sup>lt;sup>16</sup> Section 61(h) and 86(1)(e) of the Electricity Act, National Electricity Policy (2005) and National Action Plan on Climate Change

<sup>&</sup>lt;sup>17</sup> This was submitted to the UN Framework Convention on Climate Change in 2015, which have been updated in 2022.

<sup>&</sup>lt;sup>18</sup> Tamil Nadu Spinning Mills Association vs TNERC & Ors [Appeal No 191 of 2018] (Pg 62-64), Maharashtra State Electricity Distribution Company Ltd vs MERC & Ors [Appeal No 59 of 2013] (Pg 37),

Hindustan Textiles 'B' Unit vs TANGEDCO & Ors [WP No 16104 of 2021] (Pg 45-47)

<sup>&</sup>lt;sup>19</sup> Tamil Nadu Spinning Mills Association vs TNERC & Ors [Appeal No 191 of 2018] (Pg 64), Fortune Five Hydel Projects Pvt Ltd vs KERC & Ors [Appeal No 42 of 2018] (Pg 155-157)

<sup>&</sup>lt;sup>20</sup> Beta Wind Farms P Ltd vs TNERC & Ors [Appeal No 197 of 2012, Decided on 24<sup>th</sup> May 2013]

<sup>&</sup>lt;sup>21</sup> Beta Wind Farms P Ltd & Ors vs TANGEDCO & Anr [RA No 6 of 2013] (Pg 55)

TNERC brought back the earlier practice of levying banking charges in percentage terms and increased the rate from 5% to 10%.

While the TNERC referred to several factors (such as the growth of wind energy in the state, the operational challenges of managing surplus wind energy, and the financial impact on Discoms when banked energy is withdrawn) for increasing the charges, it failed to provide a transparent rationale for setting banking charges at 10%. Although it did acknowledge the complex and dynamic nature of determining banking charges, it did not outline a concrete methodology for how 10% was arrived at.

Fortune Five Hydel Projects Pvt Ltd vs Karnataka Electricity Regulatory Commission & Ors<sup>22</sup>:

The Discoms in the State of Karnataka had approached the Karnataka Electricity Regulatory Commission (KERC) with a plea to reduce the banking period from one year to three months. KERC partially agreed with the Discoms and reduced the period from one year to six months in 2018. This order was challenged by the REGs before the APTEL. In its ruling in March 2019, the APTEL, gave some important findings:

- a) KERC's observation 'that promotional measures for enhancing RE generation is no longer required, based on the present day landed cost of RE generation and technological development', was not supported by 'adequate analysis' and 'not justified in the eyes of law'.
- b) The KERC's direction of reducing 'the banking period and imposing restrictions during currency of validity period of WBAs' was held to be not 'sustainable in law'.
- c) The order by KERC reducing the period of banking 'violates the doctrine of legitimate expectation as the generators have made substantial investments and entered into commercial arrangements based on the assurance given to them' by Discoms.
- d) Similar petitions for reducing the banking period by Discoms were 'rejected' by KERC in 2013 and 2014. Additionally, 'since no additional data or analysis or ground' has been provided by the Discoms, 'the findings of the state commission ... do not appear justified'.

The matter did not end there. The Discoms filed an appeal<sup>23</sup> against this decision before the Supreme Court and it has been pending adjudication since 2019.

APTEL, on its part, has not been oblivious to these litigations. In 2014<sup>24</sup>, it approved a direction by Maharashtra State Electricity Regulatory Commission to a Discom in Maharashtra to conduct a detailed study on the financial impact of providing banking facilities and submit a report. In 2021, it went even further and suggested that the Central Electricity Authority (CEA) should undertake a study 'to tackle the ad hoc approach adopted by the SERCs'<sup>25</sup> (State Electricity Regulatory Commissions). In its decision, it suggested that CEA should balance the interest of Discoms and the renewable energy generators and recommend fair and equitable solutions<sup>26</sup>.

However, KERC took a note of these rulings and directed that a detailed study be carried out by a third party to assess the impact on the finances of Karnataka Power Transmission Corporation



<sup>&</sup>lt;sup>22</sup> Fortune Five Hydel Projects Pvt Ltd vs KERC & Ors [Appeal No 42 of 2018, Decided on 29<sup>th</sup> March 2019] (Pg 145, 155, 163-164)

<sup>&</sup>lt;sup>23</sup> BESCOM vs Fortune Five Hydel Projects Pvt Ltd [Civil Appeal No 9619 of 2019]

<sup>&</sup>lt;sup>24</sup> Maharashtra State Electricity Distribution Company Ltd vs MERC & Ors [Appeal No 59 of 2013] (Pg 38)

<sup>&</sup>lt;sup>25</sup> Tamil Nadu Spinning Mills Association vs TNERC & Ors [Appeal No 191 of 2018] (Pg 77-79)

<sup>&</sup>lt;sup>26</sup> To the best of our knowledge, no such study has been made available in the public domain to date, if at all it has been conducted.

Ltd/Discoms in Karnataka due to concessional banking charges. In compliance with these directions, Prayas (Energy Group) (PEG) was appointed to conduct this study by the Power Company of Karnataka Limited (PCKL).

PEG, in its <u>July 2022 study</u><sup>27</sup> made the following recommendations:

- a) "Immediately shift to monthly slot-wise banking from the existing annual banking.
- *b)* ... we recommended increasing banking charge to 10-12% of wheeled energy (as against the existing 2% charge) or 0.3-0.4 Rs/kWh of wheeled energy to adequately compensate ESCOMs for their losses.
- c) As RE based OA/CPP transactions will continue to grow in coming years, it is necessary to move to 15-min accounting to correctly account for the quantum of banking. We recommend moving to this framework within two years.
- d) Along with moving to 15-min accounting, the banking charge should be levied as a Rs/kWh charge per unit of banked energy so that there is a clear economic signal to the cost of banking which would directly incentivise consumers to align their consumption and generation patterns to the extent possible.
- e) Discontinue all wheeling and transmission concessions on charges as well as losses beyond existing applicability".

KERC uploaded the final report by PEG on its website and held a public hearing on 08<sup>th</sup> September 2022. Several stakeholders including generators, OA consumers and State Utilities (PCKL, SLDC, KPTCL and BESCOM) made oral and written submissions during the hearing.

However, despite recording the findings and recommendations of the study in its order<sup>28</sup> dated 07<sup>th</sup> August 2023, the KERC observed that 'moving from annual banking to slot wise would be a drastic change' and contrary to previous decisions of APTEL. Additionally, KERC also decided to continue banking charges at 2% of energy injected instead of 10-12% of wheeled energy as had been suggested by PEG. KERC made it clear that these findings would be applicable to "...projects that have applied for WBA between the period of 1<sup>st</sup> April 2018 up to the date applicability of GEOA Regulations...." despite the PEG study recommending that the suggested changes "be made applicable to all new projects and projects for which WBA were due for renewal..."

### 5. The Green Open Access Rules (2022) & Its Challenge before Karnataka High Court ('KHC')

Parallel to the actions of KERC, the Central Government introduced the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules (GEOA)<sup>29</sup> in June 2022. The rationale behind the same was the growth of renewable energy and the need for standardized processes. Rule 8 of GEOA contains the provisions on banking.

It provides that banking should be permitted on '*at least*' a monthly basis on payment of charges and quantum of banked energy '*shall be at least*' 30% of the total monthly



<sup>&</sup>lt;sup>27</sup><u>https://energy.prayaspune.org/our-work/research-report/estimating-impact-of-renewable-energy-</u> wheeling-and-banking-arrangement-on-karnataka-escoms (Pg 31)

<sup>&</sup>lt;sup>28</sup> https://kerc.karnataka.gov.in/uploads/media\_to\_upload1691646221.pdf

<sup>&</sup>lt;sup>29</sup> https://greenopenaccess.in/assets/files/Green%20Energy%20Open%20Access\_rules.pdf

consumption of electricity from the Discom. This proviso to the rule was amended<sup>30</sup> in 2023 and it now states that credit for banked energy will not be carried forward to future cycles and any un-utilised surplus would be considered lapsed. However, the REG would be eligible to get renewable energy certificates for the lapsed energy. Additionally, in August 2024<sup>31</sup>, the Ministry of Power (MoP) on the request of stakeholders had clarified that only the energy procured directly from the Discom would be considered for the purpose of calculating the permissible quantum of banked energy. MoP added that electricity obtained through OA arrangements either from a third-party supplier or via captive generation would be excluded from this calculation.

Post its notification, all SERCs initiated consultation processes on draft regulations for GEOA. One analysis<sup>32</sup> (as on 31<sup>st</sup> March 2025) shows that all SERCs have notified GEOA Regulations, except for TNERC, where the regulations are at the draft stage, and the SERC of Kerala, where draft regulations have not been released.

However, the approach taken by the SERCs has not been uniform. While a majority of the ERCs have kept banking charges at 8% of energy banked, the ERC of Chattisgarh has kept it at 2% in kind of energy banked while the ERC of Gujarat kept it at 1.25 Rs/unit. Another variation is with energy accounting. Only the ERCs of Andhra Pradesh, Delhi and Gujarat have provided it on a 15-minute time block basis.

Sr. No.	SERC	Banking Charge	Banking Period	Quantum of Banking
1.	Andhra Pradesh	In-kind 8% of energy banked at the consumer end	Monthly	Up to maximum of 30% of their total monthly consumption of electricity from the green energy source in a banking cycle
2.	Chattisgarh	2% in-kind of banked energy	Yearly	Banking of 100% of energy injection, after netting the generation with in-house auxiliary requirement, shall be permitted for all captive and open access consumption.
3.	Gujarat	1.5 Rs/unit up to 30th Sept 2025 (thereafter as decided by SERC)	Monthly	At least 30% of total monthly consumption of electricity from the Distribution Licensee by GEOA consumers
4.	Karnataka	8% in kind energy banked or as determined by the	Monthly	Not specified

Table 2. Notified regulations by few SERCs on various aspects related of Banking



<sup>&</sup>lt;sup>30</sup> <u>https://greenopenaccess.in/assets/files/Green%20Energy%20Open%20Access.pdf</u>

<sup>&</sup>lt;sup>31</sup> https://www.mercomindia.com/green-energy-from-minimum-banking-stipulation

<sup>&</sup>lt;sup>32</sup> Upcoming Article in 'Energy Transition Preparedness Initiative' (ETPI): Kokate, Shivani and Josey, Ann (2025). "Green Energy Open Access Regulations in India: A State-wise Analysis".

		commission from time to time		
5.	Maharashtra	8% in kind energy banked	Monthly	Not specified
6.	Rajasthan	At the rate of 8% of banked energy would be payable in kind and shall be adjusted against the banked energy before withdrawal.	Yearly	Subject to a maximum ceiling of 25% of the energy injected by RE Captive Generating Station during the month or 30% of the total monthly consumption of electricity from the Discom by the consumer, whichever is higher, at consumption end shall be allowed only for captive consumption within the State.

Source: Upcoming Article in 'Energy Transition Preparedness Initiative' (ETPI): Kokate, Shivani and Josey, Ann (2025). "Green Energy Open Access Regulations in India: A State-wise Analysis".

While regulations regarding banking were being debated and notified at different SERCs, few hydro power generating companies, who had entered into agreements for wheeling and banking with the transmission companies and Discoms in Karnataka, approached<sup>33</sup> the KHC in 2023. They challenged the GEOA Rules (2022), the KERC GEOA Regulations (2022) and various orders passed by KERC exercising power under the KERC GEOA regulations. The hydro generators primarily made the following arguments:

- (a) The Electricity Act excludes the Central Government from playing any role in the regulation of open access and by framing the rules, it has taken over the statutory function of the SERCs. In fact, the SERCs have been given exclusive power to regulate open access. This can be seen by reading Section 42(2) with Section 181 (2) (p) to (s) together.
- (b) The regulations by KERC were not framed in exercise of its independent powers and rather at the specific direction of the Central Government. This is violative of the Electricity Act and hence, the regulations should be struck down.

The KHC agreed with the arguments of the generator and struck down the GEOA Rules and KERC GEOA Regulations. It directed KERC to frame new regulations on green energy open access '*if it desires to do so*' and added that it would only be guided by the National Electricity, and Tariff Policy.

Subsequently, the Central Government (through the MoP) have filed an appeal<sup>34</sup> before a twojudge bench of the KHC. The appeal has been admitted, and it has been listed for further hearing on 23<sup>rd</sup> June 2025. In the meanwhile, KERC has implemented the directions by the KHC. After undertaking necessary consultations, they have notified<sup>35</sup> the KERC (Terms and Conditions for Open Access) Regulations, 2025. A comparison between the old and the new regulations reveal a few changes. For example, banking charges are now fixed at 8% of the banked energy



<sup>&</sup>lt;sup>33</sup> Brindavan Hydropower Private Ltd vs Union of India & Ors [WP No 11235 of 2024]

<sup>&</sup>lt;sup>34</sup> Govt of India vs Ghodawat Energy Private Ltd [WA No 154 of 2025]

<sup>&</sup>lt;sup>35</sup> <u>https://kerc.karnataka.gov.in/uploads/media\_to\_upload1743049297.pdf</u>

in-kind, with KERC retaining the power to revise this from time to time, unlike earlier, where the charges were to be determined by KERC through a separate order.

#### 6. Framework for Concessions

Apart from the observations in the preceding paragraphs, an analysis of these rulings also provides a larger framework for SERCs while dealing with concessions. This can be thought of in the following way:

- i. Concessions such as banking, if needed, should be introduced by SERCs for a defined period based on market demand, and ideally through regulations.
- ii. Thereafter, any subsequent modification to concessions must be backed by data-driven studies. Ideally, they should be internally conducted by the SERCs and consider state-specific challenges<sup>36</sup> and opportunities.
- iii. The study, after its completion, should be circulated amongst all stakeholders allowing them to present their perspectives before the SERCs either in a public hearing or through written responses or both.
- iv. Based on the inputs from all stakeholders, SERCs should take a well-informed and holistic decision on whether to continue the concession or modify it. If necessary, SERCs should also amend the existing regulations to reflect the changed scenario.
- v. The initial arrangements between the stakeholders regarding these concessions should have provisions that allow for adaptation to new realities.
- vi. Lastly, retrospective actions by the SERCs should be avoided to ensure policy continuity. If such an action is deemed necessary, it must be justified by extraordinary and unforeseen circumstances.

# 7. Conclusion

The mechanism of 'banking' was originally introduced when energy storage options were either not available or were not economically viable. At that time, such a mechanism was necessary to promote adoption of RE by CPP and OA consumers. As the cost of energy combined with storage (co-located or standalone) continues to decline, it is time to recognize banking as a form of energy storage and apply appropriate conditions on banking (and different related aspects), and quickly phase out its treatment as a concession. Further, with expanding ambit of power market and alternatives of power trading and energy storage, CPP and OA consumers need to be held more responsible in planning their RE/ electricity source or mix of RE/ electricity sources and that aligns with their consumption pattern. This will also include encouraging them to adopt energy storage. If Discoms do indeed end up providing the services of banking, it should be fairly priced in such a manner that no cost of it is being borne by the non-OA consumers of Discoms. This will limit the role of Discoms in providing any service to them and also avoid any financial implications on them due to banking of renewable energy.



<sup>&</sup>lt;sup>36</sup> Along the lines of the study undertaken by PEG as mentioned in Section 4

The authors would like to thank Rohit Patwardhan for his valuable comments and suggestions on this article and Swapnil Patil for the representation of the data in Tableau. We welcome all comments on the article, and information about any relevant rulings on Banking of Renewable Energy. Please direct them to <u>energy@prayaspune.org</u>.

This article is part of an ongoing series called Power Perspectives which provides brief commentaries and analyses of important developments in the Indian power sector, in various states and at the national level.

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