

iii. Solar projects registered under REC Mechanism and the Solar projects not registered under REC Mechanism but benefit of the renewable attribute is not given to distribution licensee.

The energy accounting shall be carried out on 15 minutes time block basis. In the event of any surplus Solar energy not consumed as per energy accounting based on 15-minute time block, such excess electricity shall be compensated by the concerned Distribution Licensee at the rate Rs.1.50 per unit or the rate, if any, specified by the Commission for whole life of the Solar power projects.

8. Meanwhile, the Order of this Commission dated, 14.05.2018 revising the Wheeling Charges for Renewable Power Projects, which was effective from 01.04.2018, was challenged by various Renewable energy Generators before the Hon'ble High Court of Karnataka in various Writ petitions. The Hon'ble High Court of Karnataka vide its order dated 13.03.2019 has quashed the order dated 14.05.2018 and has observed as follows:

" 37. The Hon'ble Apex Court in Gujarath Urja Vikas Nigam Limited, supra, has held that under regulations 80 to 82, the inherent powers of the State Commission which is akin to Section 151 of CPC, the power of the State Commission to regulate the conduct of the Commission i.e., to regulate its own procedure, the power cannot travel so as to alter the terms and conditions of the agreement entered into between the parties to grant substantive relief to the company by extending the control period of tariff order. In terms of Regulation 80, the inherent powers of the State Commission are saved to make such orders as may be necessary: - (i) to secure the ends of justice; and (ii) to prevent abuse of process of the Commission. The inherent powers under Section 151 CPC are procedural in nature and cannot affect the substantive right of the parties. Hence inherent powers preserved under regulation 80 cannot affect a substantive right of the parties. This dictum with all force applies to the proceedings at hand.

It is the contention of the Commission and the State that the Commission has been conferred with the power to determine the tariff from time to time and it cannot be said that the Commission is functus officio once it has

determined the price. The phrase 'time to time' emphasized would only mean that the KERC can determine wheeling and banking charges prospectively. Sections 62 and 64 conferred the power on the Commission to determine the tariff and once settled contracts have been entered into, based on the tariff orders, sans any request made by the either of the parties to the PPA, the KERC has not been conferred with the power to determine tariff from time to time.

38. Thus, the power of KERC to revisit the tariff at the request of the regulated entities though is traceable to Section 21 of the General Clauses Act, 1897 in terms of the judgment of the Hon'ble Apex Court in the case of **Shree Sidhabali Steel Vs. State of Uttar Pradesh**¹⁰ as well as **Tarini Infrastructure Limited and Others**, supra, considering the wider impact of withdrawing the exemption / concession by the KERC suo moto as observed by the Hon'ble Apex Court in **PTC India Limited**, supra and **Gujarat Urja Vikas Nigam Limited**, supra, inasmuch as exercising the inherent powers in terms of Regulation No. 11 of OA Regulations, Regulation under Section 181 would have been appropriate which has a general application to the entire trading activity."

The above Order issued by the Hon'ble High Court is challenged by ESCOMs before the division bench of the Hon'ble High Court in WA No. 1061/2019. The Commission has also filed a separate writ appeal before the Hon'ble High Court of Karnataka in WA No: 1176/19 and the matter is pending before the Court.

9. Regarding the banking facility, the GoK vide letter dated 28.02.2020 has requested the Commission to take appropriate action to remove banking facilities to RE generators, stating that there is no provision regarding banking charges in the Electricity Act, 2003. However, to encourage RE sources, banking facility had been extended to Mini-hydel, wind and solar power projects and such encouragement extended to independent power generators is impacting the finances of ESCOMs. Further, GoK has stated that the present provision under banking, allowing use of energy generated during off-peak periods at peak periods, forces ESCOMs to buy costly power and payment for the banked energy at 85% of the Generic tariff as determined by the Commission will further have impact on finances of

ESCOMs. Hence, Government has requested the Commission to remove the banking facility and amend the Wheeling and Banking Agreement, accordingly. It is learnt that the GoK at present as a policy is not allowing banking facility to RE generators.

10. It is worthwhile to note that, the Commission vide Order dated 09.01.2018 in OP Nos. 90,100,104 of 2016 and 47,130 of 2017, had reduced the banking period from one year to six-months and further ordered that the energy banked by the Non-REC route based RE projects, during the peak Time of Day (ToD) hours (as specified by the Commission in its Tarff Orders), alone can be drawn during the peak ToD hours, and not otherwise. The above order was challenged by the generators before the Hon'ble Appellate Tribunal for Electricity (ATE). The ATE passed an Order 29.03.2019, setting aside the Order of the Commission and remitted back the case to the Commission, directing to pass appropriate orders, keeping in view the observations made in the said order of the ATE. Subsequently, the generators filed an interim appeal before the Hon'ble ATE against the ATE order dated 29.03.2019 and ATE passed an Order on 13.05.2019 in IA No: 962 of 2018 in appeal No. 42 of 2018 & Ors., directing the Commission not to proceed with the hearing in terms of remand order till the next date of hearing. The Hon'ble ATE vide its Order dated, 5th August, 2019, has deleted the Paragraph in the Order portion remanding the matter to the Commission for fresh consideration, stating that, the modification to the Terms & Conditions of Banking arrangement in the concluded contracts is bad in law and such modifications could be applied to future contracts, as decided in the Order dated, 09.01.2018. The Order passed by Hon'ble ATE is challenged before the Hon'ble Supreme Court of India by BESCO in DFR – 26531/2019 and the matter is pending before the Court.
11. Thus, from the above observations of the Hon'ble High Court of Karnataka and the Hon'ble ATE, it can be inferred that any revision of wheeling charges and modification of banking facility could be imposed prospectively to those renewable generators who enter into WBA in the future.

12. Considering the above facts, the Commission proposes the following:

i. Wheeling charges:

- a. The Commission proposes to levy 50% of the Normal Transmission charges and/or wheeling charges payable in cash, as determined by the Commission in its Tariff Orders issued from time to time, for all the RE sources transmitting/wheeling electricity using the network of the transmission licensee and/or of the distribution licensee, as the case maybe.
- b. In addition to the above, applicable losses, as approved by the Commission from time to time, shall be deducted from the net energy injected to arrive at the quantum of wheeled energy.

[Note: The Wheeling charges and losses is dynamic and varies from year to year.]

ii. Banking Facility:

The Commission proposes to discontinue the banking facility extended to Solar, Min-Hydel and Wind Power projects, henceforth, for both REC and Non-REC route-based projects. Any energy banked and remaining unutilized at the end of each month shall be deemed to have been supplied to the concerned ESCOM, where the RE generator is situated, free of cost.

iii. Applicability:

- a. The above proposal is applicable to all those renewable energy generators who enter into WBA from the date of issue of the order in the matter by the Commission and excludes those projects which have got commissioned on or before 31.03.2018 and have not completed 10-years' period from the date of Commercial operation Date[CoD].
- b. The applicability of the above proposal to the existing WBAs which have not completed the initial term of the WBA, is subject to the outcome of the decisions in the cases mentioned, supra.

- c. The above proposal shall also be applicable to those projects that have completed the initial term of the WBA and desires to renew the same, in terms of the provisions of the WBA executed
- d. The control period for wheeling charges shall be from the date of the Order upto 31.03.2022. The Commission may review the above wheeling charges for the subsequent control period.
- e. The removal of banking facility shall be effective from the date of issue of the order in the matter by the Commission or any Government Order issued in the matter, whichever is earlier.

Interested persons may submit their written comments/suggestions/views to the Secretary, Karnataka Electricity Regulatory Commission, 16 C-1, Millers Tank Bed Area, Vasanthanagar, Bengaluru-560 052, in writing so as to reach him on or before 23.09.2020.

Dated 24.08.2020

Approved by the Commission



Secretary