

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,  
BENGALURU**

**Dated : 9<sup>th</sup> January, 2018**

**Present:**

Shri M.K. Shankaralinge Gowda	..	Chairman
Shri H.D. Arun Kumar	..	Member
Shri D.B. Manival Raju	..	Member

**OP No. 90/2016**

**BETWEEN:**

Bangalore Electricity Supply Company Limited, K R Circle, Bengaluru – 560 001.	..	<b>PETITIONER</b>
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**AND:**

NIL	..	<b>RESPONDENT</b>
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**OP No.100/2016**

**BETWEEN:**

Hubli Electricity Supply Company Limited, P.B. Road, Navanagar, Hubballi – 580 025.	..	<b>PETITIONER</b>
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**AND:**

NIL	..	<b>RESPONDENT</b>
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OP Nos.90/2016, 100/2016, 104/2016, 47/2017 and 130/2017

**OP No.104/2016**

**BETWEEN:**

Mangalore Electricity Supply Company Limited,  
MESCOM Bhavana,  
Kavoor Cross Road,  
Bejai,  
Mangaluru – 575 004.

..

**PETITIONER**

**AND:**

NIL

..

**RESPONDENT**

**OP No.47/2017**

**BETWEEN:**

Gulbarga Electricity Supply Company Limited,  
Station Road,  
Kalaburagi – 585 101.

..

**PETITIONER**

**AND:**

NIL

..

**RESPONDENT**

**OP No.130/2017**

**BETWEEN:**

Chamundershwari Electricity Supply Corporation Limited,  
No.29, Kaveri Grameena Bank Road,  
Hinkal, Vijayanagar, 2<sup>nd</sup> Stage,  
Mysuru – 570 019.

..

**PETITIONER**

**AND:**

NIL

..

**RESPONDENT**

***[Petitioners are represented by Shri Shahbaaz Husain, Advocate.]***

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**COMMON ORDER**

- 1) The Petitioners, who are the Distribution Licensees in the State, have filed these Petitions with common prayers (except the Petitioner in OP No.100/2016) to allow in respect of RE generators, the following reliefs:
  - i) The banking facility shall be allowed for a period of three months from the date of generation;
  - ii) If the banked energy is not utilised within a period of three months from the date of banked energy with the concerned power utilities/Licensee, it will be procured at 85% of the generic tariff;
  - iii) Withdrawal of banked energy should be allowed to the extent of energy supplied during peak and Time of Day (ToD) hours; and,
  - iv) Additional surcharge to open access consumers who draw from the Utility even after opting for Open Access.
  
- 2) The Petitioner (HESCOM) in OP No.100/2016 has made identical prayers as in items i) and iv) above, with the other two prayers reading as follows:
  - i) If the banked energy is not utilised within a period of three months from the date of energy banked with the concerned power utilities/Licensee, it will automatically lapse and no charges shall be paid in lieu of such power; and,

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- ii) Withdrawal of banked energy should not be allowed during peak and Time of Day (ToD) hours.
- 3) Subsequently, the Petitioner (BESCOM) in OP No.90/2016 filed a Memo, requesting for permission to make certain amendments to the averments, made in its Petition, so as to make some of the averments referable only to captive generators and not generators in general.
- 4) It would be useful to refer to the existing provisions relating to banking, as contained in the Commission's Order dated 04.07.2014, to understand the present claims of the Petitioner.
- (a) The Commission's views on the annual banking facility are in paragraph III] b) of the Order and read as follows:

*"III] b) Annual Banking Facility:*

*The Commission is also of the view that the existing annual banking facility needs to be continued for RE Projects under Non-REC route as a promotional measure. For REC projects, the Commission decides to continue the existing monthly banking facility as per the Commission's Order dated 09.10.2013."*

- (b) Accordingly, the Commission has passed Orders as follows on this issue at Paragraph (3) of its Order:

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*“(3) The annual banking facility is continued for non-REC wind, mini hydel and solar energy projects and henceforth the banked energy unutilised at the end of the wind year, water year or financial year as the case may be, shall be deemed to have been purchased by the Distribution Licensee of the area where the generator is located and shall be paid for at 85% of the generic tariff determined by the Commission in its latest Orders in case of wind, mini-hydel and solar projects .....*”

- 5) As the issues raised and reliefs sought are almost identical, all the above Petitions are taken up together for disposal. The submissions made by the Petitioners in support of their prayers are similar in nature and may be summed up as follows:
- a) The wind generators generate 70% of the annual generation during the months of May to September, which is banked into the grid and used during the months of January to March. As a result of such injection during the period when the energy is surplus, the Petitioners are forced to back down the State generators to whom, however, capacity charges are to be paid, thereby increasing the power purchase cost of the Petitioners, resulting in unjust financial burden to the Petitioners;

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- b) The withdrawal of banked energy, during the fourth quarter of the financial year, adds to the energy crisis during that period, because of the existing banking system and results in the Petitioners purchasing high cost power. As per the data of the 1<sup>st</sup> Petitioner, the weighted average cost of power purchase, during the high wind injection months of May to September, is Rs.3.84 per unit and that during the summer months of January to March it is Rs.4.19 per unit;
- c) The average cost of supply of the Petitioners has increased, owing to HT consumers leaving the grid to purchase energy through Open Access (OA). The gap between the average cost of supply and the average realisation rate is bridged through tariff increase, but any increase in HT tariff would only make HT consumers to leave the grid as indicated by the data of the increase in sales under OA furnished by the Petitioners in OP Nos.90, 100 & 104 of 2016.
- d) When the OA consumers purchase power from the Petitioners, even after opting for OA, the stand-by arrangements provided for such consumers by the Petitioners become stranded once they go back to OA supplier resulting in further losses to the Petitioners.
- e) There is no level playing field to ensure healthy competition, as the consumers are allowed OA on one hand and the Distribution

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Companies are forced to purchase the high cost renewable energy under Renewable Purchase Obligation (RPO) on the other hand.

- 6) The Commission, after admitting the Petitions and having considered that it is necessary to have public consultation in the matter, directed the Petitioners, except the Petitioner in 130/2017, to publish the abridged Petitions in the newspapers inviting suggestions and objections from the stakeholders. Accordingly, the Petitioners have published the abridged Petitions in the newspapers namely, 'Vijaya Karnataka', 'Samyukta Karnataka' and 'Deccan Herald' on 13.05.2017, seeking suggestions and objections from the stakeholders / interested persons. The abridged Petition was also made available on the Commission's website. In response, several stakeholders/ interested persons, as listed in ANNEXURE -1, filed the written submissions. We may note here that, the Petition in OP No.130/2017 was filed much later than the other Petitions, in which, public consultation had commenced and as the prayers and grounds in the said Petition were similar to that of the other Petitions, it was not felt necessary to have a separate public consultation in respect of such Petition. The submissions made by the stakeholders may be summed up as follows:

- a) The banking is extended to wind, mini-hydel and solar, as generation is completely dependent on weather parameters which are beyond the control of the generators. Wind generation cannot be backed

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down or shut down when there is demand deficit and therefore surplus energy generated is banked. The banking of power is not a commercial benefit but an essential support for infirm power generating the RE based generators. As held in the Honble Appellate Tribunal for Electricity's (APTEL) Order dated 21.09.2011 in Appeal Nos. 53,94 and 95/2010, the banking facility is essential for the wind generators. Therefore, the annual banking facility should be continued. As per the definition of banking, the energy banked is the residual energy remaining at the end of wind year and not the gross energy generated. The residual energy is purchased by the ESCOMs at 85% of the Generic Tariff.

- b) When 70% of Wind generation is during May to September of a year, the proposed banking of three months, by the Electricity Supply Companies (ESCOMs), would be for namesake as, in none of the cases, the wind generated in peak period can be utilized in such banking period. Discontinuing the annual banking would adversely affect the revenue stream of the wind generators under the OA.
- c) As per the standard practice and also under the Forecasting and Scheduling Regulations, the schedule of generation and consumption is provided to the State Load Despatch Centre (SLDC), well in advance and the ESCOMs are sufficiently notified, in advance



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of the schedule, to manage their power demand and supply position. Under the scheduling and forecasting regime, wind energy is reasonably predictable and the scenario envisaged by the ESCOMs arises in rare cases, when the wind generators are forced to shut down. Thus, the allegations of surplus energy availability during the high wind season is baseless, as the ESCOMs can plan and schedule their off-take from the conventional generators and drawal of peak energy during the peak months. On an annualized basis, the ESCOMs do not incur any additional cost, as the aggregate capacity charges remain the same and the energy charges depend on the energy scheduled.

- d) The peak demand deficit and energy deficit in Karnataka may continue for a few more years and any additional RE generation would support the State and therefore, it needs to be encouraged. As per the LGBR of CEA, the Karnataka State has been facing peak energy deficit during the months of April to November and, therefore, the energy banked helps the ESCOMs to meet the supply-demand gap during these months. Thus, the ESCOMs' claim that there are huge energy crises in the fourth quarter of the financial year, is not true as per the LGBR report, which indicates nominal peak deficit during the last quarter. As per the data of the OA transaction for the

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period FY14 to FY17, the ESCOMs need energy from the wind generators to bridge the supply-demand gap.

- e) Amending the provisions of the Wheeling and Banking Agreement (WB&A) already executed would prejudice the interests of the existing wind generators and the OA consumers, as the provisions stipulated by the Commission would be applicable for a period of 10 years from the Commercial Operation Date (COD) for the projects commissioned before 31.03.2018 and would affect the financial viability of projects already commissioned. This would also adversely impact the investments for capacity addition in the State. Reducing the banking facility to three months would cause revenue losses to the wind generators especially during the wind season and would be against the Electricity Act,2003, the Tariff Policy and the Regulations issued by the Commission.
  
- f) The ESCOMs' power purchase from exchange is at Rs.3.55 per unit to meet the drawal under DSM, which is far less than the average power procurement cost. Further, the banked energy adds revenue to the ESCOMs, as the average realization rate is at Rs.5.94/ per unit. In addition, 2% banking charges are also levied, indicating that banking facility actually benefits ESCOMs. Thus the potential financial losses that the ESCOMs are claiming will not be solely on account of

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the OA and banking. The short-term prices of power exchange during the period January, 2016 to March, 2016, which varied from Rs.2.30 per unit to Rs.2.66 per unit, indicate that, the Petitioners' contention that they are purchasing costly power during January to March, is not correct.

- g) The HT consumers of the ESCOMs are leaving the grid to purchase cheaper power under the OA, which cannot be stopped by the ESCOMs' proposals. The HT consumers opting for green energy is a kind of promotion and, therefore, it cannot be a ground for supporting the arguments of the Petitioners for changing the existing banking facility and to levy additional surcharge. The HT consumers are leaving the grid due to inefficient and unreliable supply. Instead of improving their efficiency, the ESCOMs are trying to stifle competition. Further, as indicated by the data of the OA consumption of the BESCO and the MESCOM for the years FY15 to FY17, the OA consumers are small in number and have minimal impact on ESCOMs' power purchase cost. Thus, the ESCOMs' contention that, because of OA consumers, they have to bear some cost that increases the HT tariff, is not correct.
- h) Levying additional surcharge is not justified, as the Petitioners are already charging the demand charges on the HT OA consumers and are also recovering charges for the backup supply at temporary

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tariff. Further, such levy of additional surcharge would make the RE sale under the OA unviable and would be against the Tariff Policy, which provides that the OA charges should not be so onerous that it eliminates competition. Also, such a levy would be against the Electricity Act, 2003 and the National Electricity Policy, which provide for promotion of RE.

- i) The RE generators under the OA are not eligible for REC in Karnataka. Thus, changing the existing banking facility, levying additional surcharge and restricting the withdrawal of banked energy during peak and TOD hours, would destroy the RE under the OA.
- j) The Petitioners have not provided sufficient facts and figures to support their statements and grounds and, therefore, the Petitions should be dismissed, in the interest of the RE growth.
- k) Any modification to the current banking facility should not be applied for captive consumption and differentiation should be made between the OA consumers purchasing power from exchange/generators within the State and those opting for banking under the captive consumption.
- l) The KERC Regulations provide for additional surcharge on a case to case basis and, therefore, without amending the Regulations, generic additional surcharge cannot be determined. Further, as per

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Section 42(4) of the Electricity Act, 2003, the additional surcharge can be levied on those consumers who purchase electricity from a person other than the Distribution Licensee of the area and hence, the additional surcharge cannot be levied on the captive OA. When the State Commission allows a consumer or a class of consumers to receive supply under the OA, such consumer is liable to pay an additional surcharge on the charges of wheeling as specified by the Commission. As the right to OA for captive generation comes under Section 9(2) of the Electricity Act, 2003 and not under Section 42 of the Act, the additional surcharge under Section 42 of the Act is not leviable on the captive plants.

- m) As the Petitioners have referred only to wind generators for their financial difficulties and have not referred to solar power plants, the proposed restrictions in banking cannot be applied to solar generators.
- n) The Petitioners have tried to mix the concept of banking with the financial loss due to the OA, which are unrelated. The financial losses, if any, are not solely due to the OA and the banking extended to wind generators, but also include electricity transacted through conventional sources under OA. None of the ESCOMs have submitted the details of financial impact to substantiate their claims of additional surcharge. As per the prevailing Regulations, it is

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required to demonstrate that the existing power purchase commitment of ESCOMs are getting stranded, resulting in unavoidable fixed cost obligation, which is not demonstrated by the Petitioners.

- o) The RPO is legally mandated and the allegations of the Petitioner-ESCOMs that, they are forced to buy expensive wind energy to meet their RPO, is without merit and against the law. Further, the Petitioners' argument that, on the one hand, they are forced to buy expensive wind power and on the other hand, wind generators are taking away the HT consumers, as wind power is cheaper, is contradictory.
  
- 7) Apart from giving opportunity to the stakeholders to file their written submissions, the Commission also held a public hearing in the matter on 12.07.2017, duly issuing Notices in the newspapers, namely, The Hindu, Indian Express, Samyukta Karnataka and Vijaya Karnataka on 30.06.2017. The list of persons who made submissions during the public hearing is in ANNEXURE-2. The gist of additional submissions made during the public hearing may be summarised as follows:
  - a) As investments in the existing projects have been made by wind developers on legitimate expectations based on the 2013 and 2014

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Orders, based on the Promissory Estoppel principle referred to in the judgement of the Hon'ble APTEL in Appeal No. 279 of 2013, they should be exempted from the revised banking facility.

- b) The Hon'ble Supreme Court in Civil Appeal No. 5875 of 2012, has held that, the Commission, which has the power to review the concluded PPAs, should exercise such power in extraordinary conditions, and there is no such condition which calls for review of the annual banking facility. The Hon'ble APTEL's Order, in Appeal 29 of 2011, also reiterates this principle.
- c) The grounds raised by the ESCOMs are similar to those raised earlier, which were rejected by the Commission, after considering the views of all the stake holders, which passed Orders continuing the annual banking facility during the year 2014. The Petitioners are agitating over the same issue, again and again, without conclusively demonstrating that they are incurring financial losses on account of annual banking.
- d) The statement of the Petitioners that, 70% of the energy generated by wind sources during the months of May to September is banked, is not correct. As per the data of 280 MW of wind projects under the OA, only 30% of 70% of energy generated is banked and about 61%

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of the banked energy is utilized during the months of January and March. In FY17, only 2.1% of energy requirement of Karnataka is from wind generation under the OA and banked energy is only 0.74%. Further, during the period from May to September, the wind energy generation under the OA is 3.35% and during the period from January to March, the energy is only 1.43%. Further, in FY17, the BESCO's wind OA transactions were 0.57% and, therefore, the impact on tariff would not be significant.

- e) During FY17, there was a shortfall in hydro generation by 5200 MU, necessitating purchase of 4373 MU under short term. Thus, the averment of the Petitioners that, drawal of wind energy during the peak months necessitated short term purchase, is not justified, as the quantum of banked energy was only 504 Million Units.
- f) Karnataka would be energy surplus during FY18 to FY20 and to absorb wind energy, the CGS drawal could be reduced.
- g) The Petitioners are not clear on the proposed three-months' banking, as the energy banked during the three-month period has to be utilized during the following month itself, then there would be virtually no banking and the banking charges cannot be claimed.



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- h) Banking should be allowed to the wind generators till backup storage facilities, like battery storage, becomes economical. Further, due to the high annual hydro availability of 15000 MU in Karnataka, banking should be encouraged till banked energy reaches 3000 MU, as hydro sources can absorb wind up to that extent.
  
- 8) In response to the issues raised by the stakeholders during public hearing, the Petitioners have filed replies contending that:
  - a) They have filed an application earlier, amending the main petition, seeking to limit the (proposed) banking facility of three months only to captive generators.
  
  - b) The objection that the banking facility cannot be changed in respect of the existing power plants because of the Promissory Estoppel principle, has no legal basis. That neither the Commission nor the Government had guaranteed that the duration of the banking facility would not be changed. That further, the objectors themselves have acknowledged that the Commission has powers to effect amendments to the existing Regulations and Provisions, as long as they are in conformity with the Electricity Act, 2003.

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- c) The contention that, the monetary impact of the existing banking facility on the Petitioners is minimal, is far from reality. That the captive generation and the banking facility, though relatively small when compared with the entire demand of the State, the financial impact of the annual banking facility is not miniscule, which is ultimately borne by the consumers as an additional cost and the users of the banking facility should bear such cost and not the general public.
  
- d) The load curves submitted for FY17 reveal that the maximum demand is recorded in the month of March and during the last quarter. That, they further indicate that the demand is lower in the second quarter, when the maximum amount of the wind energy is injected. That, thus, during the last quarter, the wind energy being bare minimum and the hydel power being scarce, the power purchase cost for the Petitioners would be higher. That, when the demand is low during the second and third quarters, maximum wind energy is banked, forcing the Petitioners to shut down their contracted generation capacity, which results in paying the capacity charges to the generators, thus entailing losses.
  
- e) The data of quarterly power purchase cost for the BESCO, for FY16, establishes that the power purchase cost is higher in the last quarter.

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That, when a captive generator withdraws the banked energy in the month of March, the Petitioners are forced to buy the high cost power to meet the requirement of such generators, without being compensated for such additional charges incurred.

f) Therefore:

(i) the banking facility should be allowed for a period of three months from the date of generation; and,

(ii) if the banked energy is not utilized within the period of three months from the date of energy banked with the concerned power utilities/licensee, it will be procured at 85% of the generic tariff.

9) In response to the above submissions made by the Petitioners, several stakeholders / interested persons as listed in ANNEXURE-3 submitted their replies which may be summarised as follows:

(a) Any significant change affecting the already installed projects, including curtailment of the banking period, can be enforced only by way of amendment to the extent of KERC Regulations / Orders and such amendment can only be prospective and should be made

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applicable to future projects, which alone is permissible, as held by the Hon'ble Supreme Court's Orders, in the case of *State of Rajasthan and Ors. Vs Basant Agrotech (India) Ltd.*, [2013] 15 SCC 1], Allahabad High Court's Order in *Modi Food Products Ltd., Vs Commissioner of Sales Tax, U.P.*[AIR 1956 All 35] and the Hon'ble Mysore High Court's Order in *India Sugars & Refineries Vs. State of Mysore & Others* [AIR 1960 Mys 326].

- (b) The generators making investments on the basis of the existing Regulations / Orders of the Commission, including the facility of annual banking, have a legitimate expectation, which is supported by the Hon'ble Supreme Court's Order in *Punjab Communication Ltd., Vs. Union of India & others* [1999 4SCC 727] and Hon'ble APTEL's Order in *Gujarat Urja Vikas Nigam Limited Vs. GERC and Ors* [Appeal 279 of 2013]. The Petitioners having contracted with the generators, on their own volition, cannot now seek to unilaterally modify and curtail the banking period to three months, which will have financial ramifications for the wind industry.
- (c) When the annual banking facility is proposed to be continued for the independent power producers, such benefits should continue for all the similarly placed persons such as, captive generators, as otherwise

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it would be discriminatory and contrary to Article 14 of the Constitution.

- (d) The statement produced by the Petitioners indicates that, during the second quarter of FY17, the purchase from short term is as high as Rs.5.84/- per unit, whereas during the last quarter of the FY16 it is Rs.5.25/- per unit, which is lower by 10%. Thus, the contention that, the Petitioners are buying power at high cost to meet the requirements of the captive generators during the last quarter, is incorrect and if the captive generators had not injected power to the grid during the second quarter, there would have been an additional cash outflow for the ESCOMs in the 2<sup>nd</sup> quarter of FY16, to the extent of shortfall.
- (e) With the restrictions, the captive consumers will not be able to meet their own requirements during the entire wind year. The potential of wind energy being seasonal in nature, can be harnessed only through the provision of the annual banking facility, despite the timing difference between supply and demand.
- (f) The proposed changes in the banking system will financially burden the wind generators, as the energy generated during peak wind season has to be sold at a lower rate and they would have to buy the energy back from the grid at a higher rate during the low wind

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season and it would also affect the rural economy and have an impact on the employment.

- (g) With the notification of Regulations on forecasting and scheduling, the utilities can effectively manage their conventional sources and reserves, when the generation from renewable sources is low.
- (h) The contentions of the Petitioners that, because of the OA HT consumers tariff has to be increased, is not appropriate, as the audited annual performance review for FY15 and FY16 indicates increase in the interest and finance charges.
- (i) The contention for the Petitioners that, they are resorting to costly power purchase during these months, is not correct, considering the power exchange rates for the months of January to March, 2016 (which vary from Rs.2.30 per unit to Rs.2.66 per unit).
- (j) About 50% of the wind power is generated during June to September and the balance during the remaining months. The banked energy during FY17 is less than 0.5% of the total energy transacted in the State grid and is about 200-250 MU, i.e., 20% of the power transacted under the OA. In the 4<sup>th</sup> quarter, 7% of total wind power was generated and about 35% of banked energy was drawn. Further, for

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the 4<sup>th</sup> quarter of FY16, the price in the power market was low, compared to the price in the 1<sup>st</sup> to 3<sup>rd</sup> quarters, as per the CERC Report. As per the IEX Report for FY16 & FY17, the market clearing prices were low, compared to the other quarters for the Southern grid. The S-R prices will fall in line with the prices of NEW Grid with the commissioning of the inter-regional transmission lines in the near future.

- 10) We may note here that, the Petitioners have filed separate Petitions on the issue of levy / collection of additional surcharge and, therefore, it is not being dealt with in this Order.
  
- 11) Considering the submissions and the pleadings of the Petitioners and the stakeholders, the following issues would arise for our consideration:
  - (1) Whether the Petitioners have made out a case for modification of the current banking facility extended to the RE generators?
  
  - (2) Whether any modification of the current banking facility can be made applicable to the existing RE generators?

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- (3) Whether the modification of the current banking facility, as prayed for by the Petitioners, should be limited only to the captive wind generators?
- (4) What Order?
- 12) We have considered the submissions of the Petitioners and the stakeholders and perused the material placed on record and our findings on the above issues are as follows:
- 13) **ISSUE No.(1):** *Whether the Petitioners have made out a case for modification of the current banking facility extended to the RE generators?*
- ISSUE No.(2):** *Whether any modification of the current banking facility can be made applicable to the existing RE generators?*
- ISSUE No.(3):** *Whether the modification of the current banking facility, as prayed for by the Petitioners, should be limited only to the captive wind generators?*

As the above issues are interconnected, we deal with them together below:

- (a) We note from the submissions made by the Petitioners as well as the wind power developers (even though they have disputed the figures submitted by the Petitioners) that, a major portion of the banked energy



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of the first three quarters of a financial year is being withdrawn during the last quarter, i.e., January to March months, during which period there is peak demand and the Petitioners have to meet the power demand of both its consumers and the OA consumers under the WB&A. If such demand exceeds their committed quantum, they will have to source it from the market. Admittedly, during these peak months, the purchase price of power is generally high and such price during the peak-time of the day would be even higher.

- (b) Considering this situation, the RE Rich States of Andhra Pradesh, Telangana, Gujarat and Maharashtra have imposed certain restrictions on the drawal of banked energy as indicated in the following table:

<b>State</b>	<b>Banking Period and Drawal Restrictions</b>
MAHARASHTRA MERC (Distribution OA) Regulations 2016 & MERC (Transmission OA) Regulations dated 30.03.2016	<p>a.Generation less Consumption in each TOD slot can be banked and is permitted during all the twelve months of the year.</p> <p>b.Energy injected during off- peak hours cannot be drawn during peak hours.</p> <p>c.Drawal of banked energy not allowed during the peak months of April, May, October and November.</p>
GUJARAT Order No. 2/2016 dated 30.08.2016	<p>a. Captive generators under non-REC are eligible for one month banking and the settlement is on the basis of peak and normal hours.</p> <p>b. Banking facility not available for 3<sup>rd</sup> party sale and settlement will be done in 15 minutes' time block.</p> <p>c. Captive CPPs under REC do not have banking</p>

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	facility and settlement is done in 15 minutes' time block.
ANDRA PRADESH APERC (interim balancing and settlement code) Regulation, 2006	<p>a. Banking allowed during all the 12 months from 1<sup>st</sup> April to 31<sup>st</sup> March of the succeeding year.</p> <p>b. Energy injected from the date of synchronization to the CoD is treated as banked energy.</p> <p>c. Drawal of banked energy not allowed from 1<sup>st</sup> April to 30<sup>th</sup> June and from 1<sup>st</sup> Feb to 31<sup>st</sup> Mar of the financial year.</p> <p>d. Drawal of banked energy during peak ToD hours not allowed throughout the year.</p>
TELANGANA The (interim balancing and settlement code for OA transaction ) Regulation 2006	<p>a. Banking allowed during all the 12 months from 1<sup>st</sup> April to 31<sup>st</sup> March of the succeeding year.</p> <p>b. Energy injected from the date of synchronization to the CoD is treated as banked energy for captive plants and for third party sale from the date of synchronization upto the OA approval date.</p> <p>c. Drawal of banked energy not allowed from 1<sup>st</sup> April to 30<sup>th</sup> June and from 1<sup>st</sup> Feb to 31<sup>st</sup> Mar of the financial year.</p> <p>d. Drawal of banked energy during peak hours not allowed throughout the year.</p>

- (c) We note that, the wind project developers have made contradictory Statements. They plead that the annual banking be continued, denying the claim of the Petitioners that the Power Purchase Cost during the last quarter of the financial year is high and, at the same time, they oppose the reduction of the banking facility to three months, on the ground that, during the last quarter, they have to purchase costlier power to meet the demand of their OA consumers. Similarly, while they claim that the hydro energy could be conserved and used during the peak months, they state that the ESCOMs have purchased short term power during FY17 to meet the shortfall from the hydro sources. The RE developers also contend that the adverse

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impact on the Petitioners on account of the current banking facility is minimal and negligible. We note that, any banking period allowed should balance the interest of both the RE generators and the Distribution Licensees. We are, therefore, of the considered opinion that, there is a case for modification of the current banking facility, as it does impact the operations of the Petitioners, both technically and financially.

- (d) The wind developers have opposed the Petitioners' proposal to reduce the banking facility from the existing one year to three months, mainly relying on the Commission's Order dated 04.07.2014 contending that, investments have been made based on the annual banking facility, which was extended to all projects commissioned on or before 31.03.2018 for a period of ten years from the date of commissioning of the projects. The Petitioners, however, have submitted that, neither the Commission nor the Government had guaranteed that the duration of banking facility will not be changed after the commissioning of the projects and that the objectors themselves have acknowledged that the Commission has powers to effect amendments to the existing Regulations and provisions, as long as the same are in conformity with Electricity Act, 2003. Admittedly, the Commission has the powers to amend the existing banking facility for valid reasons. We note that, the annual banking facility was continued in the Order dated 04.07.2014 for the RE projects under the non-REC route, as a promotional measure. One of the main reasons for promoting the renewable sources of

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energy was their high cost of generation, compared to the cost of generation from conventional power plants, which discouraged the Distribution Licensees to purchase power from the RE sources. One such promotional measure is the RPO, fixed by the State Commissions keeping in view the availability of the RE sources and its impact on the retail tariff. The other promotional measures include, among others, the concessions in Wheeling and Banking charges and the banking facility. The RE sector has undergone substantial change, as compared to the year 2014. Advancement of technology and rapid capacity additions, economies of scale, resulting in substantial reduction in Capital Cost, coupled with competition, as well as, easy and low cost financing, have resulted huge fall in RE tariff. The price discovered through bids from the wind and solar projects developers in the country today is below Rs.3/- per unit, which is considerably lower than the cost of generation from the new conventional power plants. Thus, today the RE sources, especially, wind and solar, are in a position to compete with the conventional power plants in terms of tariff. We note that, thus, the Tariff Policy, 2016 rightly envisages that all the future procurements from the RE sources should be only through the bid route. The continuance of the promotional tariffs and other concessions, which are finally passed on to the consumers, is no longer justified. The wheeling charges of five percent and banking charges of two percent of the injected energy, presently prevailing in the State, is one of the lowest compared to the charges prevailing in the neighbouring RE rich States and

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such charges do not compensate even the current technical losses (of about 13%) in the State's distribution system. Continuing the present annual banking facility, in addition to the concessional wheeling charges and banking charges, would not be in public interest.

- (e) It is worthwhile, here, to note the following observations (briefly stated) made by the Hon'ble APTEL, in its Order dated 30.05.2014 in Appeal No.29 of 2014 (*Gokak Power Energy Limited and KERC & Ors*), in which the Commission's Order allowing the captive generators availing the REC mechanism, banking facilities on a monthly basis, instead of annual basis, was challenged:

There is no stipulation either in the Regulation of the Central or State Commission for allowing banking facility for a particular period. Hence, there cannot be any grievance if the banking being allowed only on monthly basis.

- (i) There cannot be any vested right claiming for banking facility for one year and not for one month.

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- (ii) The contention of the Appellant that the annual banking has been the long prevalent practice in the State of Karnataka and hence the same has to be continued is misplaced.
- (f) Thus, the banking facility is not being a right vested either under Section 86(1)(e) of the Electricity Act, 2003 or the Regulations framed by this Commission, the RE developers cannot claim that the present banking facility should be continued without any modification. Reasonable restrictions can be imposed on the banking facility, as is being done in other RE Rich States. Therefore, we do not find any merit in the contention raised that, no modification can be made in the banking facility already available to the existing projects on the principle of 'Promissory Estoppel'. The Judgments, cited in support of this contention, are not relevant to the facts and circumstances of the present cases.
- (g) We now proceed to examine and decide on the modifications that could be made to various aspects of the banking facility.

(i) *Period of banking facility:*

We note that, the maximum power generation from the wind and mini-hydel projects would take place during the quarter of July to September

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and at the end of September and the entire banked energy may not be consumed and that, therefore, it would not be reasonable from the generators' point of view to restrict the banking to three months, as prayed for by the Petitioners. However, if such banked energy is allowed to be drawn during the peak months of January to March, it would not be in the interest of the ESCOMs or the consumers of the State. Thus, the Commission is of the considered view that, a banking period of six months would be reasonable for both the ESCOMs and the RE generators. Further, keeping in view the pattern of power generation from the wind and mini-hydel projects, we feel it proper to reckon the above six months on a calendar year basis (i.e., January to June and July to December) for the purpose of providing the banking facility, as it would be in the interest of both the RE generators and the ESCOMs. However, keeping in view the pattern of power generation from the solar plants for the purpose of providing the six months banking facility for the solar plants, we feel it proper to consider financial year (i.e., six months' period from April to September and October to March).

(ii) *T.O.D. based banking:*

We note that, most of the States mentioned earlier have ToD based banking facility. We also note that drawal, during the peak ToD hours by

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the consumers under the OA, of the energy that is banked during the non-peak hours, imposes a financial burden on the Petitioners and, thereby, on the consumers. Thus, it is fair that the RE generators are not allowed, during the peak ToD hours, to draw the energy injected during the off-peak hours.

(iii) *Applicability of the modifications:*

The prayer of the Petitioners to limit the proposed banking facility to three months only to captive generators, has been opposed on the ground that, it would be discriminatory and unconstitutional. We note that, when admittedly, the existing banking facility imposes financial burden on the Petitioners and, thus, on the consumers, any modification to the existing banking facility would have to be made applicable to all those RE generators supplying power under the OA, who are responsible for such a situation, irrespective of their share in the total OA transactions. We are, therefore, not inclined to accept the Petitioners' prayer to limit the modifications to the captive generators, as such a prayer is not legally tenable. The Commission, in respect of the non-REC route projects has, so far, adopted a common treatment to wind, solar and Mini-hydel projects, except for those captive generators who are under the REC route. We, therefore, deem it just and proper to continue the common approach.

h) Thus, we answer Issue Nos.(1), (2) and (3), as above.



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14) **ISSUE No.(4):** *What Order?*

For the forgoing reasons, we pass the following:

**ORDER**

- (1) In partial modification of the Commission's Order dated 4<sup>th</sup> July, 2014, the banking period for the Non-REC route based RE Projects, opting for wheeling, is reduced from the existing one year to six months. The said six months shall be reckoned from January to June and July to December, in respect of Wind and Mini-Hydel Power Projects and from April to September and October to March, in respect of the Solar Power Projects. This new norm of the banking facility to Wind and Mini-Hydel Power Projects shall be applicable from 1<sup>st</sup> July, 2018, onwards and any energy, banked under the existing banking facility from April to June, 2018, shall be carried forward to the July to December, 2018 period, and the new norm of banking facility to the Solar Power Projects shall be applicable from 1<sup>st</sup> April, 2018;
- (2) 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;
- (3) Any un-utilised banked energy, remaining at the end of six months, shall be deemed to have been purchased by the ESCOM (Distribution Licensee) of the area where the project is located and shall be paid at 85% (Eighty Five percent) of the applicable generic RE tariff, as determined by the Commission from time to time;

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- (4) The revision of the banking period and restriction on drawal of the banked energy, as indicated above, shall be applicable to all RE projects under Non-REC route wheeling energy under an existing Wheeling and Banking Agreement, from the date of the new norms of the banking facility coming into force; and,
- (5) The existing Wheeling and Banking Agreement format shall be amended accordingly.

The original of this Order be kept in OP No.90/2016 and copies, thereof, in OP Nos.100/2016, 104/2016, 47/2017 and 130/2017.

Sd/-  
(M.K. SHANKARALINGE GOWDA)  
CHAIRMAN

Sd/-  
(H.D. ARUN KUMAR)  
MEMBER

Sd/-  
(D.B. MANIVAL RAJU)  
MEMBER

**ANNEXURE – 1****List of Stakeholders who made written submissions in response to Public Hearing Notification:**

1. IL and FS Wind Power Sevices Ltd., Mumbai.
2. Indian Wind Power Association (Northern Region Council), New Delhi.
3. Fortune Five Hydel Projects Pvt. Ltd., Bengaluru.
4. ITC Limited, Bengaluru.
5. Hindustan Aeronautical limited. (HAL), Bengaluru.
6. HERO Future Energies [Clean Wind Power (MANVI) Pvt. Ltd.], Bengaluru.
7. Shree Cements Ltd., Rajasthan.
8. Renew Power Ventures Ltd., Gurgaon.
9. Wind Independent Power Producers Associations, Gurgaon.
10. InWEA, New Delhi.
11. DGEPL, Bengaluru.
12. Indian Wind Power Association, Karnataka State Council, Bengaluru.

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**ANNEXURE-2**

**List of Stakeholders who made oral submissions during the Public Hearing:**

1. Shri Krishnajith M.V., InWEA.
2. Shri Hemanth Sahai, Counsel for Hero Future Energies, IL&FS, Greenko, Energon and Renew power.
3. Shri Rahul Srivastava, IWPA (Northern Region Council).
4. Shri Shankar Nesargi, DGEPL.
5. Shri G.V Rao, HAL.
6. Shri K.C.V. Renuka, Pearlite Liners.

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**ANNEXURE – 3**

**List of Stakeholders who made written submissions on the replies filed by the Petitioners to the Objections raised during Public Hearing:**

1. Mac Charles (India) Ltd., Bengaluru.
2. InWEA, New Delhi.
3. HERO Future Energies [Clean Wind Power (MANVI) Pvt. Ltd.], Bengaluru.
4. Renew Power Ventures Ltd., Gurgaon.
5. ITC Limited, Bengaluru.

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