



Open Access PPA Change-in-Law Risk in India 2026: Charges, Banking, Drafting

By Sudarshan Karweer · 03 September 2026 · growthifye.com

A 2026 practitioner guide to change-in-law risk in Indian open access PPAs: charges, banking, RPO, pass-throughs and landed-cost protection.

India's open access market in 2026 is no longer just about finding the lowest discovered tariff. For commercial and industrial buyers, developers and lenders, the harder question is whether the contracted saving survives policy movement over a 10- to 25-year tenor. In practice, many open access deals that looked attractive at signing have underperformed because the parties underestimated change-in-law exposure across cross-subsidy surcharge, additional surcharge, wheeling, transmission losses, banking rules, scheduling penalties, RPO treatment and state-level open-access procedures.

This article focuses on that risk-allocation problem. It is intentionally different from broad comparisons of third-party versus group captive or general landed-cost primers. The central issue here is contractual durability: how should parties draft and price open access PPAs in India in 2026 when the regulatory stack can shift multiple times during the life of the asset?

Why change-in-law is now the core open access issue

The economics of an open access PPA depend on much more than the base energy tariff. In most states, landed cost is driven by a layered stack that can include:

- Generator tariff under the PPA
- ISTS or state transmission charges, where applicable
- State transmission charges and losses
- Wheeling charges and losses
- Cross-subsidy surcharge, unless exempt
- Additional surcharge, subject to state rules and exemptions
- SLDC fees, scheduling and system operation charges
- Banking charges and banking loss adjustments where banking is allowed
- Deviations, balancing energy and DSM-linked exposure in some structures
- Electricity duty or other local levies, if applicable
- Cost of captive compliance management in group captive structures

A tariff difference of INR 0.20 to 0.30/kWh often matters less than a regulatory shift of INR 0.80 to 2.50/kWh in charges or a banking-rule change that destroys the value of surplus afternoon solar. That is why lenders now spend more time reviewing change-in-law mechanics, deemed generation, curtailment treatment and payment waterfall language than they did even two years ago.

For a typical C&I buyer in 2026, grid tariff may sit around INR 7.0 to 10.5/kWh depending on state, voltage level, load profile and duty. A solar or hybrid open access landed cost may start in the INR 4.2 to 7.0/kWh range. But that saving is only real if future regulatory changes are allocated clearly enough that neither party is forced into dispute each time a commission revises charges or banking treatment.



What counts as change in law in an Indian open access PPA

Many Indian PPAs still use generic definitions copied from utility-scale formats. That is not sufficient for open access. In 2026, the definition should be specific, state-aware and charge-aware.

At minimum, parties should test whether change in law includes:

- New law, rule, regulation, order, notification, circular or amendment by central or state authorities
- Orders of CERC, SERC, APTEL or courts affecting OA economics or procedures
- Changes in open access regulations, connectivity procedure, scheduling code or deviation settlement framework
- Revision to cross-subsidy surcharge or additional surcharge methodology
- Revision to transmission or wheeling charges and losses
- Changes in banking eligibility, banking period, settlement basis, banking charges or drawal restrictions
- New ToD treatment, peak-hour restrictions or renewable injection restrictions
- Changes to captive rules or interpretation affecting group captive status
- RPO-related compliance or accounting changes impacting buyer obligations
- Curtailment protocols or backing-down instructions attributable to system conditions or regulatory orders
- New taxes, duties, cess or local levies directly tied to electricity supply under the transaction

A narrow clause that only covers “enactment of new law” but not “change in interpretation” is risky, especially in captive cases. Several disputes arise not from a brand-new statute, but from changed implementation by DISCOMs, SLDCs or state regulators.

The five cost lines that most often move after signing

The real drafting test is whether the PPA tells the parties what happens when a specific charge changes. The following five items deserve line-by-line treatment.

1. Cross-subsidy surcharge and additional surcharge

In third-party open access, CSS remains one of the largest landed-cost variables. Depending on the state and consumer category, CSS can materially erode savings. Additional surcharge can further affect economics, though applicability varies by state, source and captive status.

Typical 2026 commercial reality:

- In third-party structures, a change in CSS of even INR 0.50 to 1.50/kWh can swing annual savings significantly.
- In group captive structures, exemption assumptions are often built into the business case, but only if captive compliance remains intact.

The PPA should not leave this to implication. It should state clearly:

- Whether CSS and AS are to buyer account or seller account
- Whether discovered tariff was bid assuming a specific exemption status
- What happens if captive exemption is lost for reasons attributable to one party
- Whether there is a cap or sharing formula for adverse changes

Without this, the first major surcharge revision can convert a commercially settled deal into a renegotiation.



2. Banking rule changes

Banking has already become more restrictive in several markets through monthly settlement, reduced banking windows, higher charges and lower compensation for unutilised banked units. For solar-heavy portfolios, banking reform can affect value more than transmission charges.

Example impact in 2026:

- A consumer relying on annual or liberal carry-forward assumptions may lose INR 0.40 to 1.20/kWh in realised value if settlement shifts to strict monthly netting with low-end compensation for surplus.
- Peak-hour withdrawal restrictions can reduce effective offset for evening load, especially for consumers with weak daytime coincidence.

PPA language should address:

- Whether the seller guarantees a shape or only supplies as-available energy
- Who bears the financial impact of banking-rule changes
- Whether the buyer can reprofile offtake, add hybridisation or reallocate contracted capacity upon a regulatory change
- Whether material banking changes trigger tariff reopening, a relief event or termination right

This is where [Demand & ToD analysis](/coreservices/greenenergyppa/demandandtodanalysis) and Landed-cost management become commercially important. A buyer with a midday-heavy load can survive banking reform better than one dependent on evening adjustment.

3. Wheeling, transmission and loss factors

These appear mechanical, but a small increase in charges combined with revised losses can materially change effective cost per delivered unit. In open access, parties should distinguish:

- Injection-side charges

n- Inter-state versus intra-state network usage

- Losses applied on scheduled units versus delivered units
- Whether revised loss percentages automatically flow through

For hybrid and cross-border structures, this can become complex. A 1% to 3% change in effective loss treatment on a 20 MW portfolio can alter annual delivered energy enough to affect debt ratios if not modeled correctly.

4. Captive rule interpretation in group captive deals

A group captive PPA can look cheaper than third-party supply because surcharge exemptions are assumed. But the economic edge survives only if the structure continuously satisfies ownership and consumption requirements and withstands enforcement scrutiny.

The risk points include:

- Equity dilution at SPV level
- Annual consumption falling below thresholds for one or more captive users
- Misalignment between beneficial ownership and legal structure
- Changes in interpretation by state authorities or courts



In these cases, “change in law” and “buyer default” can overlap. If captive status is lost because one shareholder-consumer underconsumes, should all resulting CSS and AS be socialised across users? Or charged only to the defaulting user? Good PPAs and shareholder agreements address this in advance.

5. RPO and environmental attribute treatment

Many C&I buyers are less focused on statutory RPO than utilities, but by 2026 sustainability reporting, supply-chain decarbonisation requirements and internal renewable accounting are increasingly relevant. If regulation changes the treatment of renewable attributes, certificates or reporting eligibility, the PPA should specify whether the buyer still receives the intended environmental claim and whether any value adjustment follows.

This is especially relevant when contracts use substitute power, balancing arrangements or portfolio-level structures where the legal source and the accounting claim may differ.

How to draft bankable change-in-law clauses in 2026

A practical open access PPA should move beyond a single generic clause and adopt a structured risk matrix. The following drafting principles are increasingly bankable.

Use a schedule of charge categories

Instead of one omnibus pass-through sentence, list each major charge and assign responsibility:

- Energy tariff
- OA approval and recurring fees
- CSS
- AS
- Wheeling charges/losses
- Transmission charges/losses
- Banking charges/losses
- SLDC/scheduling charges
- Deviation/balancing cost
- Electricity duty and taxes

This reduces post-signing disputes because each line item has an owner.

Separate seller-controllable risk from regulatory risk

Lenders prefer seller performance risk to remain with the seller and pure regulatory risk to be passed through or shared under a defined formula. For example:

- Plant underperformance: seller risk
- Curtailment due to internal evacuation failure: seller risk
- State commission increase in wheeling charge: pass-through or shared regulatory risk
- Captive non-compliance caused by a buyer's underconsumption: buyer-specific risk

Define materiality thresholds and relief mechanics

Not every change should trigger renegotiation. A workable approach is to set a material adverse threshold, such as:



- Increase in landed cost by more than INR 0.30 to 0.50/kWh, or
- Reduction in expected buyer savings by more than 15% to 20% from base-case model, or
- Reduction in annual project revenue beyond an agreed DSCR sensitivity band

Once triggered, the contract can provide:

- Automatic pass-through
- Tariff adjustment formula
- Temporary sharing until regulatory clarity emerges
- Portfolio reallocation or source substitution
- Termination right only as a last resort

Link schedules to documentary evidence

Every pass-through should be backed by documentary support such as:

- Regulatory order
- SLDC or DISCOM invoice
- Transmission utility statement
- Banking settlement statement
- Court or commission order

This is basic but essential. Many payment disputes arise because invoices aggregate multiple regulatory components without a transparent audit trail.

Build timing and cash-flow provisions

Even if everyone agrees a cost is pass-through, timing matters. The PPA should say:

- Whether pass-through is provisional or only after final order
- Who carries the working-capital burden during dispute or appeal
- Whether late-payment surcharge applies on deferred regulatory true-up
- Whether escrow, LC or reserve support covers variable regulatory invoices

This is crucial for financed projects because delayed recovery of regulatory costs can stress debt servicing.

A worked 2026 example: how savings vanish without clause discipline

Consider a Maharashtra or Karnataka C&I consumer with 15 MW contracted solar-hybrid supply under open access, annual draw of about 30 million units, and an initial modeled landed cost of INR 5.35/kWh versus grid alternative of INR 8.10/kWh. Base-case saving is INR 2.75/kWh, or roughly INR 8.25 crore per year.

Now assume three changes over 18 months:

- Banking treatment worsens, reducing realised value by INR 0.55/kWh
- Wheeling and system charges rise by INR 0.22/kWh
- Additional balancing/scheduling cost adds INR 0.08/kWh

Revised landed cost becomes INR 6.20/kWh. Saving versus grid still exists, but drops to INR 1.90/kWh, or about INR 5.7 crore per year. That is a 31% reduction in expected annual savings.



If the PPA had a banking-change sharing mechanism, a re-profiling option and a hybrid augmentation pathway, the buyer and seller might recover part of this loss. Without those provisions, the parties are left arguing over whether the tariff was “all-inclusive” or whether the buyer implicitly accepted all downstream regulatory risk.

This is why sophisticated buyers are investing more effort in [Sourcing strategy](/coreservices/greenenergyppa/sourcingstrategy) and [PPA structuring & negotiation](/coreservices/greenenergyppa/ppastructuringandnegotiation) before tender close rather than trying to repair risk allocation after commercial operation.

What buyers, developers and lenders should do before signing

For C&I buyers:

- Build a state-specific landed-cost model with downside sensitivities, not just base-case savings
- Test monthly and seasonal coincidence of load with supply shape
- Map exactly which charges are exempt, variable or uncertain under chosen structure
- Seek cure rights if banking or captive assumptions change

For developers:

- Avoid overpromising “fixed savings” where regulations are visibly unstable
- Disclose regulatory assumptions in bid clarifications and PPA annexures
- Align PPA, OA application documents and captive/shareholder paperwork
- Price working-capital impact from delayed regulatory recoveries

For lenders:

- Stress-test DSCR under charge increases, banking restrictions and captive failure scenarios
- Review not only tariff but charge pass-through language and payment timing
- Check whether force majeure and change in law are improperly overlapping or leaving gaps
- Ensure termination compensation is coherent with regulatory-risk allocation

For policymakers and utilities:

- Consistency and billing transparency matter as much as headline policy support
- Frequent retrospective or quasi-retrospective implementation changes increase market friction and financing cost
- Clear treatment of banking, losses and surcharge exemptions reduces disputes and improves contracting quality

The 2026 takeaway: cheapest tariff is not the cheapest contract

In Indian open access, the best PPA in 2026 is rarely the one with the lowest quoted energy tariff in isolation. It is the one that preserves savings across regulatory movement, allocates controllable versus non-controllable risk sensibly, and gives both parties practical tools to adjust when rules change.

That means buyers should compare bids not only on INR/kWh, but on change-in-law schedules, captive-risk allocation, banking protection, documentary true-up process and termination design. Developers that can explain these elements clearly will be more financeable and more likely to retain customers through policy cycles.



If your team is evaluating open access sourcing, revisiting an existing portfolio, or stress-testing landed-cost risk under 2026 regulations, contact Growthifye's advisory desk for transaction-focused support on commercial modelling, contract strategy and implementation.

Explore Growthifye's related capabilities

This analysis connects directly to our advisory practice: [Demand & ToD analysis](/coreservices/greenenergyppa/demandandtodanalysis) · [Sourcing strategy](/coreservices/greenenergyppa/sourcingstrategy) · [Competitive developer selection](/coreservices/greenenergyppa/competitivedeveloperselection) · [PPA structuring & negotiation](/coreservices/greenenergyppa/ppastructuringandnegotiation).

ABOUT THE AUTHOR

Sudarshan Karweer — Chief Executive Officer, Growthifye

Over 23 years in management consulting — concept to scale — building and scaling new-age digital and energy businesses. An EY alumnus, Sudarshan leads Growthifye's renewable energy & storage advisory, EPC, transmission engineering and green-financing practices for developers, utilities and C&I consumers across India.
Contact: info@growthifye.com · +91 84510 99371 · growthifye.com

This article is for general information only and does not constitute engineering, financial or legal advice. © Growthifye. Sharing with attribution is welcome.