



UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

Vidyut Niyamak Bhawan, Vibhuti Khand, Gomti Nagar, Lucknow-226010.

Petition No 1757 / 2021

Quorum

Shri Raj Pratap Singh, Chairman

Shri Kaushal Kishore Sharma, Member

Shri Vinod Kumar Srivastava, Member (Law)

In the matter of:

A petition under Section 86(1)(f) of the Electricity Act, 2003 read with Regulation 2(viii) and Regulation 7 of the Uttar Pradesh Electricity Regulatory Commission (Captive and Renewable Energy Generating Plants) Regulations, 2019 seeking clarification that the Time-of-Day structure as provided in the tariff orders do not apply to provision of banking facility as per the Uttar Pradesh Electricity Regulatory Commission (Captive and Renewable Energy Generating Plants) Regulations, 2019 and that no separate Short Term Open Access agreement will be required for withdrawal and delivery of banked power where there is an existing Long Term Open Access arrangement along with consequential orders.

Amplus Green Power Private Limited,
A-57, DDA Sheds,
Okhla Industrial Area, Phase II,
New Delhi-110020.

.....Petitioner

Versus

1. Uttar Pradesh Power Corporation Limited,
Shakti Bhawan Extn.,
14 Ashok Marg, Lucknow. -226001
2. Uttar Pradesh State Load Despatch Centre
4/768, Virat Khand Rd, Vibhav Khand -4
Gomti Nagar, Lucknow, UP 226010
3. Purvanchal Vidyut Vitran Nigam Limited
Having its registered office at:





DLW Bhikharipur, Varanasi,
Uttar Pradesh - 221004

4. Paschimanchal Vidyut Vitran Nigam Limited
Having its registered office at:
Victoria Park, Meerut,
Uttar Pradesh – 250001
5. Madhyanchal Vidyut Vitran Nigam Limited
Having its registered office at:
4A, Gokhale Marg, Block I, Gokhale Vihar,
Butler Colony, Lucknow, Uttar Pradesh – 226001
6. Kanpur Electricity Supply
Company Limited (Kesco)
Having its registered office at:
14/71 Kesa House, Civil Lines, Kanpur,
Uttar Pradesh – 208001
7. Dakshinanchal Vidyut Vitran
Nigam Limited (DvvnI)
Having its registered office at:
Urja Bhavan Agra - Delhi, Bypass Road,
Sikandra, Agra, Uttar Pradesh – 282007
8. Noida Power Company Limited
Having its registered office at:
Electric Sub-station, Knowledge Park – IV,
Greater Noida, Gautam Buddha Nagar,
Uttar Pradesh – 201310
9. UPNEDA
Vibhuthi Khand, Gomti Nagar,
Lucknow- 226010

..... Respondents

The following were present:

1. Shri Deepak Raizada, CE (PPA) UPPCL
2. Shri Abhishek Kumar, Counsel of UPPCL
3. Shri Nived Veerapani, Counsel of UPPCL
4. Superintending Engineer, SLDC
5. Shri Divyanshu Bhatt, Counsel of UPSLDC
6. Shri Sanjay Sen, Counsel of Petitioner
7. Shri Mandakini Ghosh, Counsel
8. Shri Alok Verma, Amplus Green Power Private Limited





9. Shri Himanshu Nishad, Amplus Green Power Private Limited,

ORDER

(Date of Hearing: 09.09.2021)

- 1 M/s Amplus Green Power Private Limited filed Petition no 1757 of 2021 under Section 86(1)(f) of the Electricity Act, 2003 read with Regulation 2(viii) and Regulation 7 of the Uttar Pradesh Electricity Regulatory Commission (Captive and Renewable Energy Generating Plants) Regulations, 2019 seeking clarification that the Time-of-Day structure, as provided in the tariff orders, do not apply to provision of banking facility as per the Uttar Pradesh Electricity Regulatory Commission (Captive and Renewable Energy Generating Plants) Regulations, 2019 and that no separate Short Term Open Access agreement will be required for withdrawal and delivery of banked power where there is an existing Long Term Open Access arrangement along with consequential orders.
- 2 The Petitioner is a solar power Developer and has set up a 50 MW ground mounted Solar Power Project in Mirzapur, Uttar Pradesh, pursuant to a Memorandum of Understanding dated 21.02.2018 with the Government of U.P for its industrial and commercial Captive Users under open access mechanism.
- 3 Counsel for the Petitioner, inter alia submitted that the Commission issued the UPERC (Captive and Renewable Energy Generating Plants) Regulations, 2019 were notified and came into force on 01.04.2019. Regulation 31(1)(iii) of the CRE Regulations, 2019 provides for banking of power as under:

“

“31. Banking of Power

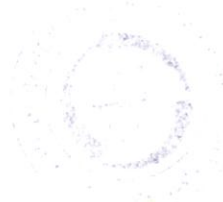
(a) Renewable Energy Source based Generation and Co-Generation Plants/Captive RE:

....

iii. Withdrawal of banked power shall be allowed only as per TOD system i.e., withdrawal of power in the peak/off-peak hours shall not be more than the power banked in that respective TOD slot.”

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- 4 Counsel for the Petitioner submitted that the banking of energy up to 100% of the generators' capacity is allowed under the CRE Regulations, 2019. The CRE Regulations stipulates that the withdrawal of banked power shall be allowed as per the Time of Day ("TOD") system during the peak and/or off-peak hours. For the said purpose, the Regulations define "Banking of Power" and "Peak Hours / Off-Peak Hours" in following manner:

“

***"Banking of power** is the process under which a Generating Plant supplies power to the grid with the intent of exercising its eligibility to draw back this power from the grid for its own use as per the conditions provided in these Regulations;*

***Peak Hours/Off Peak Hours** means the hours declared as such by the State Load Despatch Centre from time to time unless specified by Order of the Commission."*

“

- 5 The Petitioner submitted that in terms of the above provisions, the energy banked in "Peak Hours" (1700 Hrs to 2300 Hrs) and "Off-Peak Hours" (remaining hours of the day) can be withdrawn in "Peak Hours" and "Off-Peak Hours" respectively. He further said same specification of peak and off-peak hours was also reiterated by the Ld. Commission during the public hearing dated 28.01.2020 on notification of "Standard Wheeling & Banking Agreement for RE Generating power plants (except Small Hydro Power & Municipal Solid Waste plants) / Captive generator".
- 6 The Petitioner also submitted that the objective of the CRE Regulations, 2019 is to promote renewable energy, co-generation and captive generation in line with the statutory mandate under the Electricity Act, 2003. As far as solar energy is concerned, the facility of banking of power would support such generation only if the power that is generated during the daytime is also available for drawal of energy during non-generation hours. It is in this context that the division of peak/off peak hours under the CRE Regulations, 2019 must be understood.
- 7 Counsel for Petitioner further submitted that as per UPERC CRE Regulation 2019, Regulation 31 (a)(iii) of the CRE Regulations, 2019 provides for Banking of Power as under:

"31. Banking of Power





*Renewable Energy Source based Generation and Co-Generation
Plants/Captive RE:*

.....

iii. Withdrawal of banked power shall be allowed only as per TOD system i.e. withdrawal of power in the peak/off-peak hours shall not be more than the power banked in that respective TOD slot."

- 8 The Petitioner submitted that there are only two slots viz., off-peak and peak hours but the time period for the two slots has not been defined / mentioned in the aforesaid regulation, whereas the TOD slots mentioned in the Tariff Order are completely different and is meant for the purposes of imposition on retail tariff of the consumers but somehow SLDC is using the TOD slots given in the tariff Order *stricto-sensu* for the purposes of banking and withdrawal of the energy in the case of petitioner.
- 9 The Petitioners, in view of the aforesaid facts and circumstances, has made the following prayers:
- Pass appropriate order(s) clarifying that the banking and withdrawal of banked power under the CRE Regulations, 2019 is to be allowed as per peak/off-peak hours;
 - Energy banked in peak hours (1700 Hrs to 2300 Hrs) can be withdrawn anytime during this peak hour period only; and
 - Energy banked in off-peak hours (2300 Hrs to 1700 Hrs) can be withdrawn anytime during this off-peak hour period only.
 - Pass appropriate orders restraining the Respondents from denying banking facility to the Petitioner based on the TOD structure as provided in tariff orders issued by the Hon'ble Commission.
 - Pass appropriate Order allowing the Petitioner / its users to withdraw the lapsed power banked during the period Nov'20 to Jun'21 and even thereafter, if any, pending orders/ directions.
 - Clarify that no short term open access agreement will be required for withdrawal and delivery of banked power where there is an existing long term open access arrangement.
- 10 During the hearing counsel for UPPCL and UPSLDC were present and requested to grant some time to make written submission. The Commission had granted two-week

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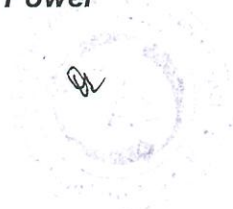
time to both the counsels providing details on peak and off-peak hours for the purposes of banking of electricity under the CRE Regulations 2019

- 11 UPPCL and UPSLDC i.e. Respondent No. 1 and Respondent No. 2 respectively furnished detailed submission on legal and factual issues involving the dispute and also submitted the peak & off-peak hours details, as historically witnessed, on the directions of the Commission. These submissions will be dealt issue wise.
- 12 The Commission has taken into consideration the submissions of both UPSLDC and UPPCL as well as the submissions made by the Petitioner. Accordingly, it has been observed that the reliefs that have been sought by the Petitioners are actually linked to each other inextricably. If clarification on TOD slots for banking under the CRE Regulations is provided, other reliefs would consequently follow. Accordingly, the Commission has identified the key issues that will have to be addressed to break the impasse.

Issue No. 1: Whether the TOD slots, as specified by the Commission vide its tariff orders, are applicable to the provision of banking and withdrawal of power under the CRE Regulations?

- 13 As submitted by the Petitioners, as per the provisions of the CRE Regulations 2014, the Commission had allowed banking of 100% energy and permitted withdrawal of banked energy during the period other than 17:00 Hrs. to 22:00 Hrs, specified as peak hours. In terms of the provisions of the CRE Regulations 2019, the energy banked in "Peak Hours" and "Off-Peak Hours" can be withdrawn in "Peak Hours" and "Off-Peak Hours" respectively. In view of this, Time of Day Slots/ Structure ("TOD Slots"), as provided by the Hon'ble Commission vide its various Tariff Orders, do not apply to the provisions pertaining to banking facility, as prescribed by the Hon'ble Commission vide its Uttar Pradesh Electricity Regulatory Commission (Captive and Renewable energy Generating Plants) Regulations, 2019 ("CRE Regulations"), for the power availed by the captive users of the captive generating plant;
- 14 Both UPPCL and UPSLDC have made similar submissions in the matter and have been clubbed together. It has submitted that it is relevant to refer to the applicable provisions of the CRE Regulations, specifically Regulations 31(a)(ii) and 31(a)(iii), which have been reproduced herein below:

"31. Banking of Power"





**(a) Renewable Energy source based Generation and Co-Generation Plants/
Captive RE:**

....

ii. *Banking of energy up to 100%, as agreed between the Renewable Energy Generating Power Plants (except for SHP and MSW plants) and the Distribution Licensee, shall be allowed subject to technical feasibility regarding evacuation.*

iii. *Withdrawal of banked power shall be allowed only as per TOD system i.e. withdrawal of power in the peak/off-peak hours shall not be more than the power banked in that respective TOD slot."*

- 15 They have submitted that a bare perusal of the aforementioned provisions clearly exhibits that the withdrawal of power shall be allowed only as per the TOD system, and the withdrawal in the peak/off-peak hours shall not be more than the power banked in that respective TOD slot. It is submitted that the aforementioned provisions are unambiguous and unequivocally clear regarding the fact that withdrawal of banking shall only be allowed as per the TOD slot system.
- 16 It is further submitted by both UPPCL and UPSLDC that admittedly the said TOD slots have not been prescribed by the Commission vide its CRE Regulations. However, the Commission, vide its order dated 30.11.2017, while determining the multi-year tariff for Discoms for FY 2017-18 to FY 2019-20, had introduced TOD tariff for streamlining and managing the demand of consumers, wherein the entire day was divided into four slots of six hours each. The same approach has been adopted by the Commission consistently in subsequent tariff orders. The TOD Slots/ System as provided vide the tariff orders is as follows:

Summer Month (April to September)

Hours	% of Energy Charges
05:00 hrs - 11:00 hrs	(-) 15%
11:00 hrs - 17:00 hrs	0%
17:00 hrs - 23:00 hrs	(+) 15%
23:00 hrs - 05:00 hrs	0%

Winter Months (October to March)





Hours	% of Energy Charges
05:00 hrs - 11:00 hrs	0%
11:00 hrs - 17:00 hrs	0%
17:00 hrs - 23:00 hrs	(+) 15%
23:00 hrs - 05:00 hrs	(-)15%

- 17 As per the submissions made by UPPCL and UPSLDC, there appears to be a rational basis behind the segregation of TOD slots, as prescribed by the Commission. It is because the cost of procurement of power is different during different time slots of the day, across different seasons, as the same is in turn dependent on the demand at the time and the prevailing market rate during that particular time/ period of day in that month/ season. The increase/ decrease across different time slots and months is done keeping in view the demand and market rate of electricity during the slots, with the idea to flatten the load curve as far as possible.
- 18 In light of the above, it is submitted by UPPCL and UPSLDC that the interpretation that withdrawal of power during a particular TOD slot shall not be allowed to be more than the power banked in that particular TOD Slot, appears absolutely reasonable. The said rationale appears even more pertinent when it is applied to the power generated by renewable generation sources. The power generated and banked by renewable generation sources is infirm and only generated during a specific period during the day, which may further vary depending upon the season, the weather and other conditions. However, when the withdrawal of this banked power is sought, the Discom has to inject firm power. As such, if the power is allowed to be withdrawn at any point of time during the day, even other than the hours during when it was banked, it shall lead to a situation wherein the Discoms will have to face a financial burden as it may have to procure additional power from other sources which is more expensive than the power that has been banked. In fact, such an approach may have significant scope of misuse on part of the Renewable Generators as it may allow them to gain undue advantage by indirectly allowing them to convert infirm power for firm power.
- 19 It is also pertinent to mention that UPNEDA has interpreted the aforementioned provisions in a manner that withdrawal of power is not related to the TOD Slot when the power is banked, but only with the peak-off peak hours. However, in complete contrast to the said interpretation.





Commission's View

- 20 Before analysing the issue on hand in next and subsequent paragraphs, it needs to be pointed out that analysis of time is a very complex phenomena, which has been reduced to simplicity or minimalism in the averments put forward by UPPCL and UPSLDC. Section 62(3) of Electricity Act 2003, while giving differentiating parameters for tariff uses two words viz. "specified period or the time at which supply is required" and "total consumption of electricity in any specified period". The first concept has been put to use by various Regulatory Commissions in its retail tariff orders in form of TOD structure, the second concept is yet to be used extensively. So, to put an extremely simple connotation on generic term "time of the day" by correlating it with the TOD structure of tariff order is an exercise in futility.
- 21 Entire controversy in this issue revolves around use and interlinkage of two terms viz. "peak / off-peak hours" and "TOD slot", which germinates from clause 31(iii) of the CRE Regulations 2019, which is reproduced as under –

"withdrawal of banked power shall be allowed only as per TOD system i.e. withdrawal of power in the peak / off-peak hours shall not be more than the power banked in the respective TOD slot."

In order to carry out a harmonious interpretation of this clause, it is also pertinent to refer to the definition of peak hours/ off-peak hours in the CRE Regulations 2019, which is reproduced as under –

"Peak Hours / Off Peak Hours means the hours declared as such by the State Load Despatch Centre from time to time unless specified by an order of the Commission"

If the contention of UPPCL and UPSLDC is to be accepted meaning thereby that peak/ off-peak hours shall be construed to mean the TOD structure given in the tariff order of the Commission, then there was no occasion for the Commission to define the peak and off-peak hours as declared by SLDC from time to time. In fact, the TOD system i.e. Time of the Day system is a generic term, which differs in consumers on the basis of class, category or purpose of use.

- 22 The objective for introducing the TOD tariff under retail tariff orders is to shift the load from peak hours to off-peak hours so that there will be less pressure on the DISCOMs



to supply electricity during peak-hours. Whereas, the TOD system referred in the CRE Regulations, 2019 relates to banking and withdrawal of banked power by Captive Generating Stations ("CGS") which is primarily for feasibility and economic viability of CRE plants, while maintaining the broad discipline of peak and off-peak hours. In other words, requirement of TOD slots for banking by CGS is different from the treatment of TOD as contained in Discoms tariff orders which concern demand management on the consumer side. Applying TOD structure as prescribed in UPERC Tariff Order on withdrawal of banked energy in case of Captive users is not justifiable and will result in defeating the purpose of CRE Regulations, 2019.

- 23 Moreover, the energy that is being retrieved by the captive user is actually the energy that has been banked with the distribution licensee and is not purchased from the licensee. On the other hand, the four slots, as given in the retail tariff order, are applicable for consumers who are purchasing electricity directly from the licensee. Hence, there is a clear distinction between the two sets of transactions wherein in one case it is the utilization of banked energy and in other case it is purchase of electricity. In fact, the situation is akin to the difference in interest that one gets on his deposited money in the bank and the interest that is accrued on an individual, who is borrowing the money from the bank. The ToD tariff can be compared to the interest paid by the borrower of a bank which is different than interest paid by the bank to the depositors.
- 24 Otherwise also, UPPCL serves its base load requirement by purchasing 85% of its power requirement through Long Term PPA and thus the variable cost would remain the same irrespective of the TOD slot of supply from such contracts. In view of this, the submission by UPPCL/ UPSLDC that DISCOM will have to bear financial burden as it will have to procure additional power from other sources which is expensive than the power being banked is exactly not accurate as the generators are further required to pay banking charges in kind.
- 25 It is also an established principle of interpretation that "*use of same words in similar connection in a later statute gives rise to a presumption that they are intended to convey the same meaning as in the earlier statute*". It is also a well settled principle of interpretation "*When a particular form of legislative enactment, which has received authoritative interpretation whether by judicial decision or by a long course of practice, is adopted in the framing of a later statute, it is a sound rule of construction to hold that the words so adopted were intended by the Legislature to bear the meaning which*





has been so put upon them" (both extracts from **Principle of Statutory Interpretation by Justice GP Singh 14th Edition Page number 335**). Accordingly, above interpretations and also the principle of "*stare decisis*" make it clear that the term "peak and off-peak hours" as used in clause 31(iii) of CRE Regulations 2019 must take its colour and connotation from the coterminous Section of banking of power in CRE Regulations 2014 wherein it has been stated that "withdrawal of banked power shall be allowed only during the period other than 17:00 hrs to 22:00 hrs".

- 26 Accordingly, the Commission decides that **TOD slots, as specified by the Commission vide its tariff orders, are not applicable to the provisions of banking and withdrawal of power under the CRE Regulations**. The intent of the Commission in CRE Regulations 2019 is clear that there has to be only two slots i.e. Peak and Off-Peak hours depending upon peak and off-peak of the UP Power system, which can be analyzed based on the historical pattern.

Issue No. 2: Clarity in defining the peak/ off-peak hours' time

- 27 The Petitioner submitted that the Tariff Order dated 30.11.2017 and subsequent Tariff Orders passed by the Commission specifies and categorises the TOD structure as follows:

Summer Months (April to September)

Hours	% of Energy Charges
05:00-11:00	(-15%)
11:00-17:00	0
17:00-23:00	(+15%)
23:00-05:00	0

Winter Months (October to March)

Hours	% of Energy Charges
05:00-11:00	(-15%)
11:00-17:00	0
17:00-23:00	(+15%)
23:00-05:00	0

As per Regulation 31 (a)(iii) of the CRE Regulations, 2019, the banking of power is defined as:-

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"31. Banking of Power

Renewable Energy Source based Generation and Co-Generation Plants/Captive RE:

.....

iii. Withdrawal of banked power shall be allowed only as per TOD system i.e. withdrawal of power in the peak/off-peak hours shall not be more than the power banked in that respective TOD slot."

As the abovementioned provisions of UPERC CRE Regulations, 2019 has only provided for two sets of periods for Banking and withdrawal of Power i.e., Peak and Off Peak, prima facie reading of this provision stipulates that the withdrawal of banked energy is allowed in peak hours (1700 Hrs to 2300 Hrs) can be withdrawn in this period only and Energy banked in off-peak hours for the remaining hours of day (2300 Hrs to 1700 Hrs) can be withdrawn in the same period only. The Petitioner has also submitted that the it banks 95% of power generated during the time block of 05:00 hours to 11:00 hours and 11:00 hours to 17:00 hours i.e., TOD slots 1 and 2 when maximum generation takes place. The Petitioner banks remaining 5% of power during 17:00 hours to 23:00 hours i.e., TOD slot 3. Therefore, to prevent ambiguity and to ensure uniform TOD structure for banking facility and withdrawal of banked energy, the peak and off-peak hours, need to be categorically specified by the Commission.

- 28 On the directions of the Commission for submission of peak hours & Off-Peak hours, as witnessed by UP Power System, UPSLDC submitted that based on operational data available on SCADA system, peak load met for summer season (April to October) and winter season (November to March) were plotted. Calculation has been done based on average of monthly average peak hours for the months considered for summer and winter season for last three years. Accordingly, the timings of winter and summer peak are as below:

Winter Peak	05:00 – 07:00, 18:00 – 22:00
Summer Peak	19:00 – 01:00

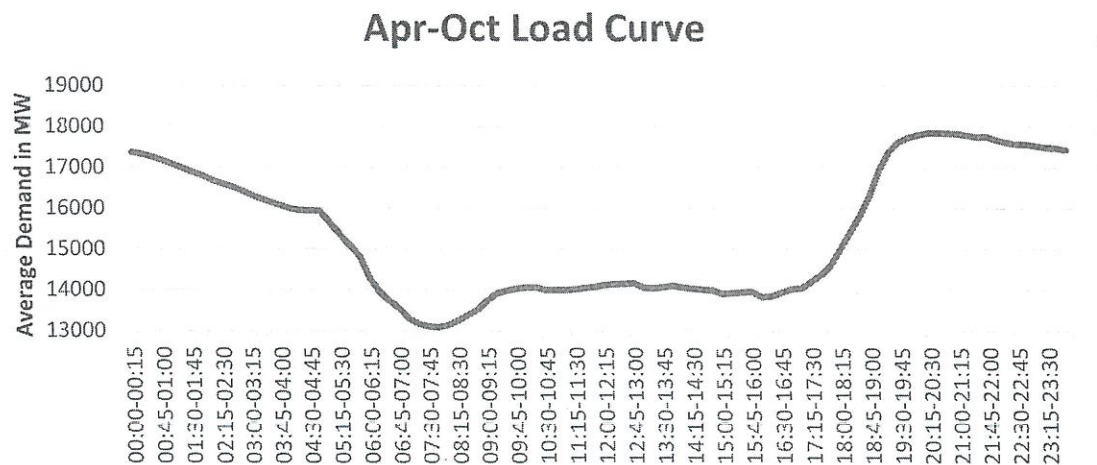
The data reveals two visible peaks (morning and evening) in winter season and only one peak (evening) in summer season.

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- 29 Similarly, UPPCL has submitted that the State of Uttar Pradesh has net total generation of around 22,000 MW. However, the peak demand requirement is around 25,000 MW. Thus, there is shortage of around 3000 MW during the peak hours. Accordingly, to meet the deficit power has been procured through short-term market/DEEP portal (i.e., Discovery of Efficient Electricity Price portal) during 19:00 Hrs to 05:00 Hrs for the peak months and through banking with other States. Taking into account the data pertaining to demand met for April to October months of FY 2018-19, FY 2019-20 and FY 2020-21, UPPCL has submitted that the average demand during 12:00 Hrs to 05:00 Hrs, works out to be 17,100 MW.
- 30 Based on the data UPPCL has submitted that the peak hours can be observed to be from **19:00 Hrs to 03:00 Hrs** in the months from **April to October**. A load curve is plotted for the summer months as show below –



- 31 Similarly, UPPCL has made submission of time block wise average demand data for the Period from November to March (Winter Season) for FY 2018-19 & FY 2019-20. As per the submission, since no rostering was followed from 09:00 Hrs to 13:00 hrs, this period has not been taken into consideration for peak hours analysis. Further, it has also been submitted by UPPCL that during the winter months, since the State has sufficient availability, no power is procured from the DEEP Portal. Based on the data UPPCL has submitted a load curve for the winter months as shown below –

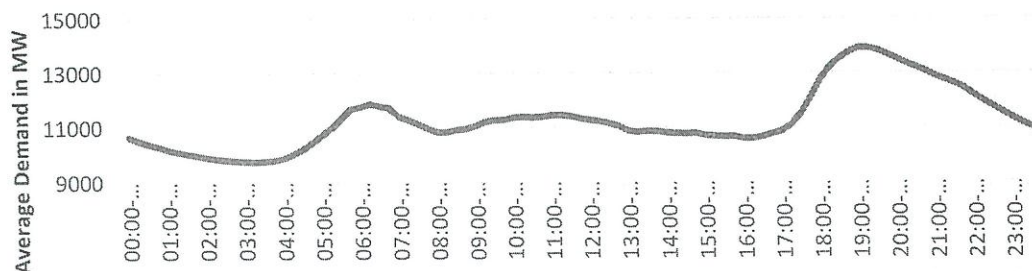
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Nov-Mar Load Curve



- 32 Based on the above peaks in summer and winter season have been submitted as set out in table below:-

Winter Peak	From 06:00 Hrs to 07:00 Hrs and 18:00 Hrs to 23:00 Hrs for the months November to March considering time blocks where average demand was more than 11,500 MW
Summer Peak	19:00 Hrs to 03:00 Hrs in the months from April to October

Commission's View

- 33 Taking into consideration the aforesaid submissions of UPPCL and UPSLDC, it has been observed that morning peak is being witnessed only in winter. Also, the peak demand in the morning is in the range of 11,500 MW whereas the licensees have entered into PPA of capacity which is much higher than the morning peak that has been demonstrated. Hence, the Commission abstains from including morning hours in time slot for peak hours.
- 34 Considering the submissions made by both UPSLDC and UPPCL, slight difference in the peak hours can be seen. As per the Regulations, the definition of term 'peak/off-peak hours' as the hours declared by UPSLDC unless specified by any order passed by the Commission. As peak/ off-peak hours have not been declared by UPSLDC in the context of this Regulation, the Commission, after carefully examining the load curve of the licensee and slight shift in peak hours, defines peak hours as 18:00 hours to 24:00 hours (mid night) thereby slightly expanding the bandwidth of peak hours from CRE Regulations 2014, where peak hours were declared from 17:00 hrs to 22:00 hrs in turn providing an extended cushion to UPPCL to further protect its commercial interests. The remaining hours i.e. from 00:00 hrs (mid night) to 18:00 hrs shall be







considered as off-Peak hours. Accordingly, exercising powers under Regulation 7 (Power to Relax) for the purposes of CRE Regulations 2019, the Commission decides that for banking purposes, the peak hours will be 18:00 to 24:00(mid-night) hours and off-peak hours will be from 00:00 (mid-night) to 18:00 hours.

Issue No. 3: Requirement of Open Access for Withdrawal of banked energy

- 35 The counsel of the Petitioners submitted that it has entered into Banking Agreements and Bulk Power Transmission and Wheeling Agreement with Respondent No.1 for supplying power to its captive users. In this regard, the Petitioner has also secured Long Term Open Access ("LTOA") from the State Utility.
- 36 The Petitioner also submitted that the Respondent No. 2 restrict the Petitioner and/or its Captive Users from availing the facility of withdrawal of banked energy on its website for the reason that solar power generating plants have to enter into a separate Short Term Open Access ("**STOA**") agreement for withdrawal of banked power and as a result, Captive Users of the Petitioners are unable to draw the energy banked with UPPCL. Further, the Petitioner submitted that it has secured LTOA from the State Utility for supplying power to its captive users and there is no requirement to secure a separate STOA to withdraw the banked power.
- 37 UPSLDC submitted that it is important to understand the scheme of Banking as envisaged by the Commission, vide its own CRE Regulations. In this regard, reference may be made to Part II of the Banking Agreement, as approved by the Commission. The Clauses 3 and 4 states that:
- "3. The Distribution Licensee, in whose jurisdiction the Generating Facility is situated, shall pay at the tariff as per Regulation 31(a)(v) or Regulation 31 (b)(vi) of UPERC CRE Regulation 2019, whichever is applicable, of the CRE Regulation, 2019 for the banked energy remaining unutilized at the end of every settlement period, subject to the settlement of banking charges as prescribed in Regulation 31 (a)(vi) of the aforesaid Regulations.*

*4. The Banking as well as withdrawal of banked energy shall be subject to day ahead scheduling only at the Point of Injection of Power. **However, the captive generating facility (including renewable captive generators) may supply banked power to its users in accordance with UPERC Open Access***



Regulations, 2019 and UPERC CRE Regulations 2019 & payment of all applicable charges as per Open Access Regulations, 2019 after adjusting the banking charges in accordance with UPERC CRE Regulations 2019, in case, withdrawal of power is not coinciding with point of injection."

38 Accordingly, UPSLDC submitted that the aforementioned provision mandates that in the event the captive generating facility intends to supply power to its captive users, where the point of withdrawal of power and the point of injection do not coincide, the same can be done only after complying with the provisions of the UPERC (Terms and Conditions for Open Access) Regulations, 2019 ("**Open Access Regulations**"). It is further submitted that in terms of Regulation 31 of the CRE Regulations, the withdrawal can be done until the (Q +2)th quarter and hence it is beyond dispute that banking and withdrawal of power happens during different time periods.

39 UPSLDC also submitted that whether the withdrawal of power constitutes a separate open access transaction or not, has also to be seen in light of Regulation 2.3 of Schedule B of Open Access Regulations, itself prescribes as follows:

"Schedule-B

Procedure for Short-Term Open Access

2. Registration–

2.3 Any additional power or change in points of injection and/or drawl shall require fresh registration with SLDC including with or without inter-state network."

As per the submission of UPSLDC, the aforementioned provision and the understanding for requirement of a separate STOA in the event of change in drawl point or quantum was also reiterated by the Hon'ble Commission as well.

Commission's View

40 It is a known phenomenon that power once injected into the grid cannot be physically identified for any Captive Generating Plant (CGP) or its Captive Users. Identification can be done only by book keeping / energy accounting at the point of injection and withdrawal. Present Open Access Regulations, Forecasting and Scheduling, DSM Regulations and CRE Regulation mandates CGP to give the below schedule on day ahead basis to SLDC:





- a. Entire generation schedule of its plant
- b. Captive User wise schedule for:
 - i. Supply of power including banked energy to be withdrawn for supply to its Captive Users.
 - ii. Power to be banked
- c. Banked power to be withdrawn for its own usage.

Accordingly, the same day ahead scheduling procedure is applied for both supply as well as for banked energy.

- 41 Before analyzing the issue further, it needs to be underlined that Captive Generating Plant has to sign an Open Access agreement, Bulk Power Transmission Agreement (BPTA) with transmission licensees, Bulk Power Wheeling Agreement (BPWA) with Distribution licensee and a banking agreement with UPPCL. After showing the complete architecture of transactions involved in the present case it would be appropriate to reproduce Regulation 31 of the CRE Regulations 2019 and relevant clause of BPTA, BPWA & Banking Agreement to demonstrate the enabling framework of banking and withdrawal facility under CRE Regulations 2019.

Regulation 31 of CRE Regulations 2019

"Banking of Power

(a) Renewable Energy Source based Generation and Co-Generation Plants/Captive RE:

The Renewable energy generating power plants may be allowed to bank power subjected to the following conditions:

- i. *All Renewable energy generating power plants (except for SHP & MSW plants) shall be under ABT mechanism and procedure as mentioned in these regulations, shall apply to them. The Renewable Energy generating power plants (except for SHP & MSW plants) shall provide ABT complaint SEMs, capable of energy accounting for each block of 15 minutes, or as amended from time.*
- ii.

ii.



Similarly, Clause 4 of Banking Agreement is reproduced as under:

"the banking as well as withdrawal of banked energy shall be subject to the day ahead scheduling only at the point of injection of power. However, the captive generating facility (including renewal captive generators) may supply banked power to its users in accordance with the UPERC open access regulation 2019 and UPERC CRE Regulations, 2019 after adjusting the banking charges in accordance with UPERC CRE Regulations 2019, in case, withdrawal of power is not coinciding with the power of injection."

- 42 For energy accounting purposes, the energy banked will be returned to CGP at its injection though physical transfer of energy will happen in form of supply of energy from distribution licensee directly to captive user, but its treatment would be as supply of withdrawn energy from the CGP to the captive user in accordance with the Open Access Regulations and BPTA/ BPWA executed with Transmission and Distribution Licensee.
- 43 Accordingly, since the point of injection and point of drawl are not changing in this case and if the quantum for which open access has been granted is not exceeded in any corridor associated with transaction, there should not be any requirement of fresh short term open access for withdrawal of banked energy. However, if there is change in injection or drawl point or the quantum of energy generated, whether supplied and/ or banked, exceeds the sanctioned quantum for open access, there will be requirement for seeking a fresh open access. Needless to mention that the banked energy has to be withdrawn and consumed by the Captive user in accordance with BPWA signed with the distribution licensee to which CGP and Captive user is connected.
- 44 Summarizing the above, the Captive Generating Plant/ Captive Users shall not be required to apply for separate Open Access for availing banked energy
- if the injection point and withdrawal points are not getting changed
 - If the quantum of power being generated by CGP either for the purposes of supply and/or banking does not exceed the quantum and time for which open access has been granted.

If there are any deviations from the above, then there will be requirement of fresh open access for the same.





45 While parting with the order, it is worthwhile to summarize the findings of the Commission in the nutshell –

- a. For the purpose of banking and withdrawal, there is no direct correlation of Peak/ Off-Peak hours as stipulated in CRE Regulations 2019 and the TOD structure of retail Tariff Order.
- b. For the purpose of banking and withdrawal of energy, the Commission declares peak period as 18:00 to 24:00 hours and Off-Peak hours as 00:00 to 18:00 hours.
- c. There will be no requirement for signing fresh Open Access agreement if following requirements are met
 - i. if the injection point and withdrawal points are not getting changed
 - ii. If the quantum of power being generated by CGP either for the purposes of supply and/or banking does not exceed the quantum and duration for which open access has been granted.

46 With respect to withdrawal of lapsed banked power, the issue has already been taken up by the Commission in a separate petition (Petition No. 1768 of 2021) in which directions have already been issued to respondent UPPCL to submit response. Since that petition is already in an advanced stage, with respect to this issue, therefore the Commission will prefer to deal with it there. After determination of this issue, in petition 1768 of 2021, if present petitioner feels that it has some issue left then it may prefer filing a separate Petition in the matter.

47 The Petition is hereby disposed of.

(Vinod Kumar Srivastava)
Member

(Kaushal Kishore Sharma)
Member

(Raj Pratap Singh)
Chairman

Place: Lucknow

Dated: 01.12.2021



